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# New Mexico Register

The official publication for all official notices of rulemaking  
and filing of proposed, adopted and emergency rules.

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# New Mexico Register

Volume XXVII, Issue 22

November 30, 2016

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**Notices of Rulemaking and Proposed Rules**

**AUDITOR, OFFICE OF THE STATE**

**NOTICE OF PROPOSED RULEMAKING**

The Office of the State Auditor is in the process of repealing and replacing in full: *The Audit Rule* (2.2.2.8 NMAC et seq.). The Audit Rule establishes policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic audits of governmental agencies of the state of New Mexico, and is governed by the Audit Act, Sections 12-6-1 to 12-6-14, NMSA 1978.

Copies of the proposed new rule are available at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507 and on the Office of the State Auditor website, <http://www.osanm.org>. The Agency will consider adopting the proposed new rule at a public hearing on January 12, 2017, which will take place at 1:30 p.m. at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507. Please mail or deliver written comments on the proposed new rule to: Emily Oster, Director of Compliance and Quality Control, at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507, or by email at [Emily.Oster@osa.state.nm.us](mailto:Emily.Oster@osa.state.nm.us) by December 31, 2016.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the public hearing, please contact Ms. Oster at least one week prior to the public hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Ms. Oster at 505-476-3800 or [Emily.Oster@osa.state.nm.us](mailto:Emily.Oster@osa.state.nm.us) if a summary or other type of accessible format is needed.

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

**NOTICE OF PUBLIC HEARING 8.15.2 NMAC and 8.16.2 NMAC**

The Children, Youth and Families Department (CYFD), Early Childhood Services (ECS), will hold a formal public hearing on January 10, 2017, at 11:00 a.m. in Apodaca Hall located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding changes to regulation 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers; and 8.16.2 NMAC Child Care Licensing Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs.

The proposed regulation changes may be obtained at [www.newmexicokids.org](http://www.newmexicokids.org) or by calling 505-827-7499 or 1-800-832-1321. Interested persons may testify at the hearing or submit written comments no later than 12:00 p.m. on January 10, 2017. Written comments will be provided the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Reagan Smetak, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-9978. For questions regarding the proposed regulation changes, please call 505-841-4831 or 1-800-832-1321.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please call 505-827-7499 or 1-800-832-1321. ECS requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

**NOTICIA DE AUDIENCIA PÚBLICA 8.15.2 NMAC and 8.16.2 NMAC**

El Departamento de Niños, Juventud y Familias (CYFD), Servicios de Niñez Temprana (ECS), tendrá una audiencia pública formal día martes 10 de enero del 2017, a las 11:00 de la mañana en el salón Apodaca, localizado en 1120 Paseo de Peralta, Santa Fe, New Mexico, para recibir comentarios públicos con respecto a cambios propuestos a los reglamentos NMAC 8.15.2, Los Requisitos para Programas de Ayuda de Guardería para Clientes y Proveedores; y 8.16.2 NMAC Licencias de Cuidado Infantil para centros, Programas de Cuidado después de la Escuela, Programas de Cuidado Infantil en Casas y otros Programas de Cuidado y Educación Temprana.

Los cambios propuestos de los reglamentos pueden ser obtenidos en [www.newmexicokids.org](http://www.newmexicokids.org) o llamando al 505-827-7499 o al 1-800-832-1321. Las personas interesadas pueden testificar en la audiencia pública o presentar comentarios escritos hasta las 12:00 del mediodía del martes 10 de enero del 2017. Los comentarios escritos serán proporcionados la misma consideración como testimonio oral en la audición. Los comentarios escritos deben ser dirigidos a: Reagan Smetak, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax #: 505-827-9978. Preguntas con respecto a los cambios propuestos de los reglamentos, por favor llame 505-841-4831 o 1-800-832-1321.

Si usted es una persona con capacidades diferentes y usted requiere esta información en un formato alternativo o requiere alojamientos especiales para tomar parte en la audiencia pública, por favor llame 505-827-7499 o 1-800-832-1321. CYFD requiere aviso de las peticiones por lo menos 10 días de preaviso para proporcionar formatos solicitados alternativos y alojamientos especiales.

**HUMAN SERVICES  
DEPARTMENT**

MEDICAL ASSISTANCE DIVISION

Notice of Public Hearing to Receive  
Testimony on the Proposed Rule  
8.308.12 NMAC

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend *8.308.12 NMAC, Managed Care Program, Community Benefit*. The Department's intent is to add language under both Agency-Based (ABCB) and Self-Directed (SDCB) sections that requires providers to meet new Federal Home and Community-Based Settings Rule requirements, incorporate standardized rule language, and provide additional clarification for providers and recipients. The register for these proposed amendments to this rule will be available November 30, 2016 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD at (505) 827-6252.

A public hearing to receive testimony on this proposed rule will be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico December 28, 2016 at 10 a.m., Mountain Standard Time (MST).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to [madrules@state.nm.us](mailto:madrules@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments

must be received no later than 5:00 p.m. MST, December 30, 2016.

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 MAD in Santa Fe at (505) 827-6252. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling (505) 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

**PUBLIC REGULATION  
COMMISSION**

**SECOND NOTICE OF  
PROPOSED RULEMAKING  
HEARING TO AMEND THE  
FUEL SURCHARGE RULE  
AND STATEWIDE WRECKER  
TARIFF AMENDMENTS PUBLIC  
HEARING  
CASE NO. 15-00063 TR-R**

The New Mexico Public Regulation Commission (NMPRC or Commission) gives second notice of public hearing on its proposed adoption of Alternative Amendments to the Fuel Surcharge Rule 18.3.15 NMAC and Substitute Statewide Wrecker Tariff public hearing by the Commission pursuant to the Motor Carrier Act, NMSA 1978, Sections 65-2A-1 to 41 (amended 2013). Copies of the **Second Notice of Proposed Rulemaking Hearing to Amend the Fuel Surcharge Rule and Statewide Wrecker Tariff Amendments Public Hearing** containing additional information and filing instructions may be downloaded from the Proposed Rulemaking section of the Commission's website at <http://www.nmprc.state.nm.us>

under Case No. 15-00063-TR-R or by calling the Commission's Records Management Bureau at (505) 827-6968.

**Alternative Amendments to Fuel Surcharge Rule Hearing:** Written Initial Comments and written Response Comments shall be filed by the deadlines below with the Commission's Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written Initial Comments not later than December 7, 2016 and written Response Comments not later than December 14, 2016. Comments shall refer to Case No. 15-00063-TR-R.

**Substitute Statewide Wrecker Tariff Hearing:** Written Pre-filed Testimony and written Response Testimony shall be filed by the deadlines below with the Commission's Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written Pre-filed Testimony not later than December 7, 2016 and written Response Testimony not later than December 14, 2016. Comments shall refer to Case No. 15-00063-TR-R.

A public hearing will be held on January 4, 2017, at 1:30 p.m. at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe. The purpose of the hearing is to **receive oral comments**. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, **any individual who wants to provide oral comments may be limited to five minutes to express those comments, subject to the Commission's discretion**. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same



message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony **or other** evidence will be taken **at the hearing as this is a rulemaking proceeding.**

The record of this case will close on the date the public hearing is held on January 4, 2017.

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

Statutory Authority: New Mexico Constitution, Article XI, Sec. 2; NMSA 1978, Section 8-8-4(B)(10) (1998); the Motor Carrier Act, NMSA 1978, Sections 65-2A-1 to 65-2A-41 (2003, amended 2013).

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**End Of Notices of  
Rulemaking and  
Proposed Rules**

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## Adopted Rules

### 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 in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
OIL CONSERVATION  
COMMISSION**

This is an amendment to 19.15.5 NMAC, amending Section 9, effective 11/30/2016.

**19.15.5.9 COMPLIANCE:**

- A.** An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:
- (1) currently meets the financial assurance requirements of 19.15.8 NMAC;
  - (2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;
  - (3) does not have a penalty assessment that is unpaid more than 70 days after issuance of the order assessing the penalty; and
  - (4) has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met:
    - (a) two wells or [50] fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;
    - (b) five wells if the operator operates between 101 and 500 wells;
    - (c) seven wells if the operator operates between 501 and 1000 wells; and
    - (d)

10 wells if the operator operates more than 1000 wells.

**B.** The division shall notify an operator on a monthly basis when, according to records on file with the division, a well on the inactive well list described in Subsection F of 19.15.5.9 NMAC shows no production or injection for the past 12 months by ~~sending a letter by first class mail to the address the operator has provided the division pursuant to Subsection C of 19.15.9.8 NMAC~~ making such information available on the division's website. ~~Further, at least 60 days prior to commencing an enforcement action against an operator for a violation of 19.15.5.9 NMAC, the division shall notify the operator by first class mail to the address provided to the division pursuant to Subsection C of 19.15.9.8 NMAC.~~

**C.** The division shall make available on its website and update weekly the status of operators' financial assurance 19.15.8 NMAC requires, according to division records.

**D.** Orders requiring corrective action.

(1) The division shall make available on its website division or commission orders, issued after notice and hearing, finding an operator to be in violation of an order requiring corrective action.

(2) An operator who contests an order finding it to be in violation of an order requiring corrective action may appeal and may seek a stay of the order. An order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.

(3) An operator who completes the corrective action the order requires may file

a motion with the order's issuer to declare the order satisfied. The division or commission, as applicable, may grant the motion without hearing, or may set the matter for hearing.

**E.** Penalty assessments.

(1) The division shall make available on its website penalty assessments assessed under the Oil and Gas Act over the last 12 months and the date the operator paid them, according to division records.

(2) ~~[An operator who contests an order assessing penalties may appeal and may seek a stay of the order. An] Any order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.~~

**F.** Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;

(b) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.14 NMAC; and

(c) is not subject to an agreed compliance order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC and imposing sanctions if the operator does not meet the schedule.

(2) For purposes of 19.15.5.9 NMAC, the listing of a well on the division's inactive well list as a well inactive for more than one year plus 90 days

creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/08; A, 11/30/16]

## MEDICAL BOARD

This is an amendment to 16.10.14 NMAC, Sections 6 through 11 and part name, effective 11/30/2016.

### PART 14 MANAGEMENT OF PAIN [WFFH] AND OTHER CONDITIONS WITH CONTROLLED SUBSTANCES

#### 16.10.14.6 OBJECTIVE:

[It is the position of the board that practitioners have an obligation to treat chronic pain and that a wide variety of medicines including controlled substances and other drugs may be prescribed for that purpose. When such medicines and drugs are used, they should be prescribed in adequate doses and for appropriate lengths of time after a thorough medical evaluation has been completed.] This part governs the prescribing of controlled substances in the treatment of pain and other conditions to ensure that they are prescribed for appropriate doses and durations and after a thorough medical evaluation.

[16.10.14.6 NMAC - N, 1/20/03; A, 4/3/05; A, 11/30/16]

#### 16.10.14.7 DEFINITIONS:

**A.** ["Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

**B.** "Acute pain" means

the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

**C.** "Chronic pain" means pain that persists after reasonable medical efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. "Chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

**D.** "Clinical expert" means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**E.** "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.

**F.** "Pain" means acute or chronic pain or both.

**G.** "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**H.** "Prescription monitoring program" means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

**I.** "Therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

**J.** "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.]

**"Acute pain"** means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

**B.** "Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

**C.** "Benzodiazepine" means any controlled substance referenced at Subsection A of 16.19.20.68 NMAC, as may be amended from time to time.

**D.** "Chronic pain" means pain that persists after reasonable medical efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. "Chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

**E.** "Clinical expert" means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**F.** "Controlled Substance" means a drug or substance listed in schedules I through

V of the Controlled Substances Act or regulations adopted thereto.

**G. “Delegate”** means a person designated by a practitioner pursuant to 16.19.29.9 NMAC for the purpose of requesting and receiving prescription monitoring program (PMP) reports for that practitioner.

**H. “Opioid”** means the class of drugs that includes the natural derivatives of opium, which are morphine and codeine, and related synthetic and semi-synthetic compounds that act upon opioid receptors.

**I. “Pain”** means acute or chronic pain or both.

**J. “Physical dependence”** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**K. “Practitioner”** means a New Mexico medical board licensee maintaining licensure pursuant to state law that allows that individual to prescribe, order, administer or dispense controlled substances to patients (see 16.19.29.7 NMAC).

**L. “Prescription monitoring program”** means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

**M. “Schedule II-V”** refers to any controlled substance listed in schedule II, III, IV, or V of the Controlled Substances Act found at Chapter 30, Article 31 NMSA 1978, regulations promulgated by the New Mexico board of pharmacy found at 16.19.20 NMAC, or federal controlled substances regulations promulgated pursuant to 21 U.S.C. 812.

**N. “Stimulant”** means any controlled substance referenced in Subsection C of 16.19.20.66 NMAC,

Subsection A of 16.19.20.67 NMAC, Subsection D of 16.19.20.68 NMAC, or Subsection B of 16.19.20.69 NMAC, as may be amended from time to time.

**O. “Therapeutic purpose”** means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management and other conditions.

**P. “Tolerance”** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug’s effects over time. [16.10.14.7 NMAC - N, 1/20/03; A, 9/28/12; A, 11/30/16]

**16.10.14.8 [REGULATIONS:]**

The following regulations shall be used by the board to determine whether a health care practitioner’s prescriptive practices are consistent with the appropriate treatment of pain:

**A.** The treatment of pain with various medicines or controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation:

**B.** The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following:

**(1)** A practitioner shall complete a physical examination and include an evaluation of the patient’s psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of

controlled substances:

**(2)** A practitioner shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The practitioner shall consider an integrative approach to pain management.

**(3)** A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

**(4)** The practitioner shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

**(5)** Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for opioids shall include indications for use. For chronic pain patients treated with controlled substance analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. As part of a written agreement, chronic pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

**(6)** The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic pain, the patient’s state of health, and any new information about the etiology of the chronic pain at least every six months. In addition,



a practitioner shall consult, when indicated by the patient's condition, with health care professionals who are experienced (by the length and type of their practice) in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(7) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

C. Pain management for patients with substance use disorders shall include:

(1) a contractual agreement;

(2) appropriate consultation;

(3) drug screening when other factors suggest an elevated risk of misuse or diversion; and

(4) a schedule for re-evaluation at appropriate time intervals at least every six months.

D. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

E. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

F. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be

in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Medical Practice Act or board rules.] **PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:** The intent of the New Mexico medical board in requiring participation in the PMP is to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

A. Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

C. Before a practitioner prescribes or dispenses for the first time, a controlled substance in schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record.

D. A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in schedule II, III, IV or V for each patient. The practitioner shall document

the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

E. A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in schedule II, III, IV or V:

(1) for a period of four days or less; or  
(2) to a patient in a nursing facility; or  
(3) to a patient in hospice care; or  
(4) when prescribing, dispensing or administering of:

(a) testosterone; or  
(b) pregabalin; or  
(c) lacosamide; or  
(d) ezogabine; or  
(e)

stimulant therapy for pediatric patients less than age 14.

F. Upon review of a prescription monitoring report for a patient, the practitioner shall identify, document and be aware of a patient currently:

(1) receiving opioids from multiple prescribers;  
(2) receiving opioids and benzodiazepines concurrently;  
(3) receiving opioids for more than 12 consecutive weeks;  
(4) receiving more than one controlled substance analgesic;

(5) receiving opioids totaling more than 90 morphine milligram equivalents per day;

(6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for

specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

G. Upon recognizing any of the above conditions described in Subsection F of 16.10.14.8 NMAC, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

H. Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a patient's initial enrollment into the opioid treatment program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in schedule II, III, IV or V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the patient's medical record. [16.10.14.8 NMAC - N, 1/20/03; A, 4/3/05; A, 9/28/12; A, 2/14/13; 16.10.14.8 NMAC - Rp, 16.10.14.10 NMAC, 11/30/16]

**16.10.14.9 [PHYSICIAN, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANTS TREATED WITH OPIATES:** Physicians, physician assistants or anesthesiologist assistants who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing

in practice. In addition, they must remain under the care of a physician for as long as they remain on opiates while continuing to practice.]

**REGULATIONS FOR THE APPROPRIATE TREATMENT OF PAIN WITH CONTROLLED SUBSTANCES:** The following regulations shall be used by the board to determine whether a health care practitioner's prescriptive practices are consistent with the appropriate treatment of pain.

A. The treatment of pain with various medicines or controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

(1) A practitioner shall complete a physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

(2) A practitioner shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The practitioner shall consider an integrative approach to pain management.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture,

and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) The practitioner shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

(5) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for opioids shall include indications for use. For chronic pain patients treated with controlled substance analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. As part of a written agreement, chronic pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

(6) The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic pain, the patient's state of health, and any new information about the etiology of the chronic pain at least every six months. In addition, a practitioner shall consult, when indicated by the patient's condition, with health care professionals who are experienced by the length and type of their practice in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(7) When prescribing opioids for chronic pain, practitioners shall require urine drug testing when starting opioid therapy and shall use urine drug testing at

least every six months to assess for prescribed medications as well as other controlled prescription drugs and illicit drugs.

(8) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

C. Pain management for patients with substance use disorders shall include:

(1) a contractual agreement;

(2) appropriate consultation;

(3) drug screening when other factors suggest an elevated risk of misuse or diversion; and

(4) a schedule for re-evaluation at appropriate time intervals at least every six months.

D. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

E. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

F. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Medical Practice Act or board rules.

[16.10.14.9 NMAC - N, 4/3/05; A, 9/28/12; 16.10.14.9 NMAC - Rp, 16.10.14.8 NMAC, 11/30/16]

**16.10.14.10 [PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

The intent of the New Mexico medical board in requiring participation in the PMP is to assist practitioners in balancing the safe use of controlled substances with the need to impede illegal and harmful activities involving these pharmaceuticals.

A. A health care practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A health care practitioner shall, before prescribing, ordering, administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when one of the following situations exists:

(1) the patient is a new patient of the practitioner, in which situation a patient PMP report for the previous 12 months shall only be required when Schedules II, III, and IV drugs are prescribed for a period greater than 10 days; and

(2) during the continuous use of opioids by established patients a PMP shall be requested and reviewed a minimum of once every six months.] **PHYSICIAN, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANTS TREATED WITH OPIATES:**

Physicians, physician assistants or anesthesiologist assistants who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by a medical doctor or doctor of osteopathy pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must

remain under the care of a physician for as long as they remain on opiates while continuing to practice.

[16.10.14.10 NMAC - N, 9/28/12; A, 2/14/13; 16.10.14.10 NMAC - Rp, 16.10.14.9 NMAC, 11/30/16]

**16.10.14.11 [PAIN MANAGEMENT] CONTINUING EDUCATION FOR THE PRESCRIBING OF CONTROLLED SUBSTANCES:**

This section applies to all New Mexico medical board licensees who hold a federal drug enforcement administration registration and [licensure to prescribe opioids] a New Mexico controlled substances registration. Pursuant to the Pain Relief Act, in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

**A. Immediate requirements effective November 1, 2012.** Between November 1, 2012 and no later than June 30, 2014, all New Mexico medical board licensees who hold a federal drug enforcement administration registration and [licensure to prescribe opioids] a New Mexico controlled substances registration, shall complete no less than five continuing medical education hours in appropriate courses that shall include:

(1) an understanding of the pharmacology and risks of controlled substances;  
(2) a basic awareness of the problems of abuse, addiction and diversion;

(3) awareness of state and federal regulations for the prescription of controlled substances;

(4) management of the treatment of pain; and

(5) courses may also include a review of this rule 16.10.14 NMAC the applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. Practitioners who have taken continuing medical education hours in these educational



elements between July 1, 2011 and November 1, 2012, may apply those hours toward the required five continuing medical education hours described in ~~[this]~~ Subsection A of 16.10.14.11 NMAC.

**B. Triennial requirements for physicians.** Beginning with the July 1, 2014 triennial renewal date, pursuant to 16.10.4.8 NMAC, as part of the 75 continuing medical education hours required during each triennial renewal cycle, all New Mexico medical board physician licensees who hold a federal drug enforcement administration registration and ~~[license to prescribe opioids]~~ a New Mexico controlled substances registration, shall be required to complete and submit five continuing medical education hours. Appropriate courses shall include all of the educational elements described in ~~[Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval.]~~ Paragraph (1) through (5) of Subsection A of 16.10.14.11 NMAC. A licensee may request prior board approval of the applicability of any courses may be requested. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A of 16.10.14.11 above, may be included as part of the required continuing medical education hours in pain management in either the triennial cycle in which these hours are completed, or the triennial cycle immediately thereafter.

**C. Biennial requirements for physician assistants.** Beginning with the July 1, 2014 biennial renewal date, 16.10.15.16 NMAC, in addition to the national commission on certification of physician assistants (NCCPA) certification required during each biennial renewal cycle pursuant to 16.10.15.16 NMAC, all New Mexico medical board physician assistant licensees who hold a federal

drug enforcement administration registration and ~~[license to prescribe opioids]~~ a New Mexico controlled substances registration, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in ~~[Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval.]~~ Paragraph (1) through (5) of Subsection A of 16.10.14.11 NMAC, or other courses in pain management with controlled substances. A licensee may request prior board approval of the applicability of any courses may be requested. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A of 16.10.14.11 NMAC above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter. Any or all three of these hours may also be applied to satisfy NCCPA requirements for certification.

**D. Biennial requirements for anesthesiologist assistants.** Beginning with the July 1, 2014 biennial renewal date, 16.10.19.15 NMAC, all New Mexico medical board anesthesiologist assistant licensees who hold a federal drug enforcement administration registration and ~~[license to prescribe opioids]~~ a New Mexico controlled substances registration, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in ~~[Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval.]~~ Paragraph (1) through (5) of Subsection A of 16.10.14.11 NMAC, or other

courses in pain management with controlled substances. A licensee may request prior board approval of the applicability of any courses may be requested. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A of 16.10.14.11 NMAC above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter.

**E. Requirements for new licensees.** All New Mexico medical board licensees, whether or not the New Mexico license is their first license, who hold a federal drug enforcement administration registration and ~~[license to prescribe opioids]~~ a New Mexico controlled substances registration, shall complete five continuing medical education hours in pain management during the first year of licensure. These ~~[five]~~ continuing medical education hours completed prior to the first renewal may be included as part of the hours required in Subsections B, C or D ~~[above]~~ of 16.10.11.14.11 NMAC.

~~[F. The continuing medical education requirements of this section may be included in the total continuing medical education requirements set forth at 16.10.4.8 NMAC, 16.10.15.16 NMAC and 16.10.19.15 NMAC.]~~  
[16.10.14.11 NMAC - N, 9/28/12; A, 2/14/13; A, 11/30/16]

**PUBLIC RECORDS,  
COMMISSION OF**

This is an amendment to 1.21.2 NMAC, Sections 7, 9 & 119, repealing Sections 115 and 338, and adding Section 122, effective 11/30/2016.

**1.21.2.7 DEFINITIONS:**  
The following terms shall have the respective meanings provided in



this rule. Terms not defined in this rule which are defined in the Public Records Act, Section 14-3-1 et seq. NMSA 1978 shall have the respective meanings accorded such terms in the act.

**A. “Archives”** means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico.

**B. “Disposition”** means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

**C. “Executive level”** means elected and appointed officials, statutory agency heads and management personnel with decision making authority granted by the agency head.

**D. “File closed”** means the date the trigger event occurred, or, for electronic records, equivalent to the date last modified unless otherwise stated in retention.

**E. “Historical”** means records deemed to have archival value by the commission.

**F. “Non-record”** means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of [~~correspondence~~] official records, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters, and reading [~~file~~] files or informational files.

**G. “Official copy of record”** the single record determined to be the official copy for the

purposes of fulfilling the retention requirements.

**[G:] H. “Retention”** means the period of time during which [~~records~~] the official copy of record shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

**[H:] I. “Transitory”** means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.

**[I:] J. “Trigger event”** means the closing event of a record which begins the retention period. [1.21.2.7 NMAC - N, 10/01/2015; A, 11/30/2016]

**1.21.2.9 INSTRUCTIONS:**

**A.** The records retention and disposition schedule identifies the types of records maintained by all agencies and [~~specify a period of time which records~~] specifies a period of time for which the official copy of record must be retained. A retention period may be stated in terms of months or years and is contingent upon the occurrence of a trigger event. Each record classification will be itemized by NMAC section number and title in the format listed below.

**(1) Category -** describes the hierarchy of the function

**(2) Description -** describes the function of the record classification

**(3) Retention -** defines the length of time records must be kept before they are eligible for destruction or archival preservation

**B.** Record classification descriptions are not intended to be exhaustive. Descriptions may include records that do not appear in the files, and conversely, files may include records

not listed in the description.

**C.** Refer questions concerning the confidentiality of a record to legal counsel for the agency. For the destruction of confidential records, please refer to 1.13.30 NMAC.

**D.** Public records should be maintained in their native format (paper/digital). Records may be microfilmed or digitized provided a microphotography plan has been approved by the state records administrator. Refer to Section 14-3-17 NMSA 1978 and 1.14.2 NMAC. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes.

**E.** Agencies are encouraged to create secondary and tertiary descriptors for each classification (e.g., account receivable - invoices - acme inc., goods and services - IT consulting - data hub LLC., infrastructure project files - railroad project - Lamy station upgrade, etc.). These additional descriptors will assist with the accessibility of the records.

**F.** Upon storage or disposition, public records shall be classified according to content and retained at a minimum for the length of time specified in the records retention and disposition schedule.

**G.** For guidance on electronic messaging, refer to 1.13.4 NMAC.

**H.** For guidance on the destruction of non-record material, refer to 1.13.30 NMAC.

**I.** Records classifications related to the legislative and judicial branches of government provided herein are applicable for legislative and judicial agencies that utilize the records center services and permanent archival repository.

**J.** Non-scheduled public records created by an agency in pursuance of law or in connection with the transaction of public business shall have a retention period of permanent until such time the non-scheduled record has been scheduled and a retention period adhering to operational, legal, fiscal, historical or other purposes is established.

**K.** For guidance on classifying county and municipal records, refer to the records retention and disposition guidance for counties and municipalities.

**L.** For guidance on destruction of county records, refer to Section 14-1-8 NMSA 1978.

**M.** Classifications that have a disposition of transfer to archives may be submitted for direct transfer before the allotted time period specified in the retention with the approval of the custodial agency and state records administrator.

**N.** Upon adoption of this rule, records retained at the records center shall be reclassified according to the new records classifications for retention and disposition.

**O.** The official copy of a record may contain duplicates of other records. If your program requires the submission of documentation, and your agency is not required to submit this documentation to another agency for additional or final processing, your agency is the keeper of the official copy of record.  
[1.21.2.9 NMAC - N, 10/01/2015; A, 11/30/2015; A, 11/30/2016]

**1.21.2.115** ~~[REFERENCE MATERIAL:~~  
~~**A. Category:**~~  
~~Administration - general management~~  
~~**B. Description:**~~  
~~Records related to information received from other agencies, commercial or private entities and other reference materials which are maintained solely for ease of access and reference.~~  
~~**C. Retention:** destroy when no longer needed for reference]~~  
**[RESERVED]**  
[1.21.2.115 NMAC - N, 10/01/2015; Repealed, 11/30/2016]

**1.21.2.119** **SPEECHES AND PRESENTATIONS** ~~[EXECUTIVE LEVEL]:~~  
**A. Category:**  
Administration - general management  
**B. Description:**  
[Speeches and presentations given by

~~executive level personnel and related records:] Speeches, presentations and related records, does not include records related to training.~~

**C. Retention:**  
permanent, transfer to archives when no longer needed for reference  
[1.21.2.119 NMAC - N, 10/01/2015; A, 11/30/2016]  
[For training materials, refer to Section 1.21.2.254 NMAC]

**1.21.2.122** **GRANT ADMINISTRATION:**  
**A. Category:**  
Administration - general management  
**B. Description:**  
Records related to grant administration.  
**C. Retention:** destroy three years from the date file closed  
[1.21.2.122 NMAC - Rn & A, 1.21.2.338 NMAC, 11/30/2016]

~~**1.21.2.338** **GRANT ADMINISTRATION:**  
**A. Category:**  
Financial and accounting - grant, financial aid and loan management  
**B. Description:**  
Records related to grant administration.  
**C. Retention:** destroy three years from the date file closed]~~  
**[RESERVED]**  
[1.21.2.338 NMAC - N, 10/01/2015; Repealed, 11/30/2016]

**PUBLIC REGULATION COMMISSION**

**This is an amendment to 18.3.1 NMAC, Section 7, effective 11/30/2016.**

**18.3.1.7** **DEFINITIONS:**  
In addition to the definitions in Sections 24-10B-3, 65-2A-3 and 65-6-2 NMSA 1978, as used in these rules:

**A. director** means the director of the transportation division of the New Mexico public regulation commission or his designee;  
**B. facilities** includes lands, buildings, and improvements to real property owned, leased, or used

in the operations of a motor carrier;

**C. FMCSA** means the federal motor carrier safety administration or any predecessor or successor agency;

**D. hazardous matter** has the meanings given in 49 CFR Section 390.5 for the terms hazardous material, hazardous substance, and hazardous waste;

**E. inspection** means the examination by the commission, the motor transportation division, or other lawful entity of a motor carrier's operations, including the facilities and equipment used in connection with its operations, and all pertinent records;

**F. limousine service** means specialized passenger service providing the unscheduled compensated transportation of passengers in a chauffeur-driven luxury motor vehicle at the exclusive use of one individual or group at a fixed charge for the motor vehicle and chauffeur for a period of time that is not less than [thirty] 30 minutes by prearrangement and not by soliciting on the streets;

**G. MTD** means the motor transportation division of the New Mexico department of public safety;

**H. non-emergency medical transport service** means a specialized passenger service providing the scheduled medically necessary transportation of passengers not requiring medical monitoring or treatment in a motor vehicle to or from a required medical or therapeutic appointment;

**I. principal place of business** means the mailing address of the motor carrier and the street address and other physical location of a motor carrier's business office and records;

**J. public liability insurance** means automobile bodily injury and property damage liability insurance;

**K. repossession service** means the compensated transportation of a motor vehicle lawfully seized without consent from the owner or operator;

**L. small passenger**

**vehicle means** a passenger vehicle used by a passenger service other than an ambulance service, with a carriage capacity of eight or fewer persons including the driver, and is typically a sedan, SUV or minivan; provided that small passenger vehicle does not include a truck primarily designed to carry property, a stretcher van, wheelchair van, or other vehicle used in non-emergency medical transport service, or an ambulance;

[E] **M. stationing point** means a fixed physical location from which a motor carrier responds to a call for service or stores the vehicles it currently uses to provide service and does not include the point where a vehicle responding to a service call is temporarily located;

[M] **N. these rules** means the rules codified in Title 18, Chapter 3 of the New Mexico Administrative Code;

[N] **O. tour and sightseeing service** means specialized passenger service providing scheduled or unscheduled guided compensated transportation of passengers in motor vehicles to scenic points or other points of interest at rates that apply to each individual passenger;

[O] **P. volunteer driver** means a person who drives for an ambulance or commuter service without remuneration; the provision of or reimbursement for training, equipment, uniforms, and supplies necessary to the performance of driving duties are incidental and do not constitute remuneration for purposes of these rules.

[18.3.1.7 NMAC - Rp, 18.3.1.7 NMAC, 2-13-15; A, 11/30/2016

**PUBLIC REGULATION COMMISSION**

This is an amendment to 18.3.2 NMAC, Sections 9, 21, 22 and 26, effective 11/30/2016.

**18.3.2.9 LIMITATIONS ON PASSENGER SERVICES:**

**A. General shuttle services.** A general shuttle service: (1) may

not provide [~~full services, general municipal or general~~] taxicab services, ambulance services, specialized passenger services, or household goods services; and

(2) may use chauffeur-driven luxury motor vehicles to provide general shuttle service.

**B. Charter services.**

A charter service:

(1) may not hold itself out as a full service or general service motor carrier; (2) may not provide full service or general service;

(3) may not use the terms bingo bus service, commuter service, limousine service, non-emergency medical transport service, shared ride service, shuttle service, tour and sightseeing service, taxicab service, general service, full service or terminal shuttle service in its business name, markings on motor vehicles, or advertising, except as permitted by Subsection D of Section 65-2A-15 NMSA 1978;

(4) may only provide round-trip transportation of passengers;

(5) may not charge rates that apply to each individual passenger;

(6) may not use chauffeur-driven luxury motor vehicles to provide charter services, except when providing charter service pursuant to contracts with government agencies;

(7) may not solicit business on the streets;

(8) shall enter into a single prearranged written contract for charter services; such contract shall not be arranged, accepted, entered into or paid for with or through the driver of the motor vehicle; and

(9) may only provide charter service to a group of persons (two or more).

**C. Commuter service.**

A commuter service:

(1) may not provide general services or full services; and

(2) may not

use chauffeur-driven luxury motor vehicles to provide commuter service.

**D. Limousine service.**

A limousine service:

(1) may not provide full services, general shuttle services, general taxicab services, or household goods services;

(2) may not charge rates that apply to each individual passenger;

(3) may not solicit business on the streets; and (4) shall enter into a contract for limousine service in advance of providing the service; such contract shall not be arranged, accepted, or entered into with or through the driver of the motor vehicle.

**E. Non-emergency medical transport service.** A non-emergency medical transport service:

(1) may not provide full services, general shuttle services, general taxicab services, or household goods services;

(2) may only transport passengers who do not require medical intervention to maintain their level of response, airway, breathing and circulatory status, with the exception of self-administered oxygen not to exceed six liters per minute via a nasal cannula; the oxygen container must be secured in accordance with other state and federal laws; and

(3) may not transport passengers that require medical monitoring or medical intervention.

**F. Scheduled shuttle service.** A scheduled shuttle service:

(1) may not provide ambulance service, municipal or general taxi service, specialized passenger service, or household goods service;

(2) may solicit business at scheduled stops on its regular route or may prearrange to provide service; and

(3) may use chauffeur-driven luxury motor vehicles to provide shuttle service.

**G. Municipal taxicab service.** A municipal taxicab service:

(1) may not provide ambulance service, scheduled or general shuttle service, specialized passenger service, or household goods service;

(2) shall charge metered rates based on one charge for the first person and an additional small fixed charge for each additional person, or may charge, at the passenger's informed option, a predetermined calculated full fare based on dropflag and mileage component rates as provided by tariff, and may use surge pricing as provided by tariff;

(3) shall grant exclusive direction to the first person engaging the taxicab service for metered carriage;

(4) may provide one-way transportation of passengers;

(5) may solicit business on the streets or may prearrange to provide service;

(6) may not use chauffeur-driven luxury motor vehicles to provide taxicab service; and

~~(7) must respond to 95% of all pre-arranged calls for service within eight minutes of the time agreed upon for the taxicab to be at the customer's location;~~

~~(8) must respond to 85% of all calls for immediate service within 30 minutes of receiving the request for service;~~

~~(9) (7) except for hailed or for pre-arranged service, hereby defined as "any call requesting service made 30 minutes or longer before service is required", may only respond to calls for service that are dispatched by the taxicab service [in determining if the requirements of Paragraphs (7) and (8) above are met, the commission may examine a municipal taxicab service's response times based on six-month rolling average].~~

**H. General taxicab service.** A general taxicab service:

(1) may not provide ambulance service, scheduled or general shuttle service, specialized

passenger service, or household goods service;

(2) shall charge metered rates based on one charge for the first person and an additional small fixed charge for each additional person, or may charge, at the passenger's option, a predetermined calculated full fare based on dropflag and mileage component rates as provided by tariff, and may use surge pricing as provided by tariff;

(3) shall grant exclusive direction to the first person engaging the taxicab service for metered carriage;

(4) may provide one-way transportation of passengers;

(5) may solicit business on the streets or may prearrange to provide service;

(6) may not use chauffeur-driven luxury motor vehicles to provide taxicab service; and

(7) except for hailed or pre-arranged service (defined as "any call requesting service made 30 minutes or longer before service is required), may only respond to calls for service that are dispatched by the taxicab service.

**I. Tour and sightseeing service.** A tour and sightseeing service:

(1) may not provide full services, general shuttle services, general taxicab services, or household goods services; and

(2) may use chauffeur-driven luxury motor vehicles to provide tour and sightseeing service.  
[18.3.2.9 NMAC - Rp, 18.3.2.9 NMAC, 2/13/2015; A, 11/30/2016]

**18.3.2.21 REQUIREMENTS APPLICABLE TO ALL PASSENGER SERVICE CARRIERS EXCEPT AMBULANCE SERVICES:**

**A. Rates to be posted in vehicles.** A taxicab service [~~and shuttle service~~] shall post the rates for metered transportation services in the passenger compartment of the

vehicle in a place and manner that is readily accessible and viewable by passengers. A shuttle service shall post the rates for transportation services in the passenger compartment of the vehicle in a place and manner that is readily accessible and viewable by passengers.

**B. Seat belts.** A passenger service carrier shall ensure that each motor vehicle it uses that is capable of transporting 15 or fewer persons is equipped with a separate seat belt assembly for each passenger.

**C. Child restraints.** A passenger service carrier except commuter services shall ensure that each motor vehicle it uses that is capable of transporting 15 or fewer persons complies with all federal and state requirements regarding child restraint systems.

[18.3.2.21 NMAC - Rp, 18.3.2.25 NMAC, 2/13/2015; A, 11/30/2016]

**18.3.2.22 ADDITIONAL REQUIREMENT FOR TAXICAB SERVICES:** Unless expressly requested to do otherwise, a taxicab [~~services~~] service shall transport metered-fare passengers over the shortest available route. A predetermined calculated full fare shall be calculated on the basis of the shortest available route.

[18.3.2.22 NMAC - Rp, 18.3.2.26 NMAC, 2/13/2015; A, 11/30/2016]

**18.3.2.26 SUSPENSION OR REVOCATION OF OPERATING AUTHORITIES:**

**A. For lapse in financial responsibility.** Upon receipt of a form K, the director shall issue a letter notifying a motor carrier that its operating authority has been indefinitely suspended as of the date of the letter, without further notice or a public hearing, until the commission receives a valid form E and, if applicable, a valid form H. The letter shall also state that suspension of the operating authority will not take effect if the commission receives a valid form E and, if applicable, a valid form H, before the motor carrier's financial responsibility coverage expires.

**B. For safety**



**violation.** Upon receipt of sufficient information that a motor carrier's operations endanger the public health or safety, the director shall present to the commission at its next meeting or at an emergency meeting the safety requirement of the Motor Carrier Act or the rules of the commission or motor transportation division (MTD) alleged to have been violated and all facts known to the director concerning the matter. If the commission is satisfied that the facts show that a motor carrier's operations endanger the public health and safety and merit immediate temporary suspension, the commission shall personally serve or mail by certified mail, return receipt requested, an order notifying a motor carrier that its operating authority is temporarily suspended. The order shall set the matter for an expedited hearing. The commission may authorize issuance of the order over the signature of a single commissioner. The motor carrier shall suspend operations immediately upon receipt of the commission's order. If the commission determines after the hearing that the motor carrier's operations prior to the suspension were not endangering the public health or safety, the commission shall vacate the suspension order and the motor carrier shall be allowed to resume operations without applying for reinstatement following involuntary suspension or paying any additional fees. The commission may impose lesser temporary restraints or conditions if it believes that the public health and safety will not be compromised.

**C. For failure to render reasonably continuous and adequate service.** The commission may suspend or revoke the operating authority, or impose a fine, on a full service carrier that does not meet the standards for reasonably continuous and adequate service contained in these rules and in the Motor Carrier Act. In determining whether the size of the fleet deployed by a full-service transportation service meets the requirements for continuous and adequate service, the commission shall consider competition and the

availability of other transportation and the effects of competition by both competing transportation services and competing transportation network company services on the public need, volume of demand and expense of providing full service in the full-service territory.

[18.3.2.26 NMAC - Rp, 18.3.2.30 NMAC, 2/13/2015; A, 11/30/2016]

**PUBLIC REGULATION  
COMMISSION**

**This is an amendment to 18.3.4 NMAC, Sections 10, 12 and 14, effective 11/30/2016.**

**18.3.4.10 REQUIREMENTS APPLICABLE TO ALL DRIVERS:**

**A. Drug and alcohol testing:**

(1) For drivers of small passenger vehicles.

(a) A transportation service shall implement and enforce a zero-tolerance policy regarding drug and alcohol use by transportation service drivers. The zero-tolerance policy shall prohibit any use or impairment due to intoxicating drugs or liquor while a transportation service driver is driving.

(b) A transportation service shall publish on its website notice of its zero-tolerance policy, as well as procedures for a rider to report a complaint about a driver suspected to have been under the influence of illegal drugs or alcohol during a ride.

(c) A transportation service shall immediately conduct an investigation into every reported complaint of violation of its zero-tolerance policy, and the policy shall include procedures for suspension or termination of transportation service drivers.

(d) A transportation service shall maintain records relevant to the enforcement of the requirements of this section for a period of at least four years from the date that a rider complaint is received

by the transportation service.

(e)

Passenger services may voluntarily adopt and implement more stringent policies and procedures for drivers of small passenger vehicles, including full or modified forms of federal drug and alcohol testing.

(2) Procedures for transportation workplace drug and alcohol testing programs for drivers other than drivers of small passenger vehicles. This rule adopts by reference title 49, part 40 of the code of federal regulations in its entirety.

(3) Controlled substances and alcohol use and testing for drivers other than drivers of small passenger vehicles. This rule adopts by reference title 49, part 382 of the code of federal regulations, except for sections 382.117 and 382.119.

**B. Hours of service of all drivers except drivers of ambulance services:**

(1) drivers of small passenger vehicles; a driver shall not drive the service vehicle for more than 12 hours out of any 24 hour period;

(2) all other drivers: this rule adopts by reference Title 49, Part 395 of the Code of Federal Regulations, except that section 395.1(e)(1) is amended to add: "or operates in intrastate commerce within a 150 air-mile radius of the normal work reporting location."

**C. Hours of service for drivers of ambulance services:**

Ambulance services shall adopt and enforce a policy governing hours of service for their drivers.

[18.3.4.10 NMAC - Rp, 18.3.4.10 NMAC, 2/13/2015; A, 11/30/2016]

**18.3.4.12 REQUIREMENTS APPLICABLE ONLY TO NON-CDL DRIVERS:**

**A. Operators' and chauffeurs' licenses.** This rule adopts by reference Chapter 66, Article 5, Part 1 NMSA 1978.

**B. Qualifications, investigations, inquiries, reporting, records, driving, equipment, inspection repair and maintenance by and for small passenger and drivers of small passenger**

vehicles.

(1) Before allowing a transportation service driver to provide carriage:

(a) the prospective driver shall submit an application to the transportation service that includes the individual's address, age, driver's license number and state, and driving history:

(b) the transportation service shall obtain a local and national criminal background check for the prospective driver that shall include:

(i) multistate or multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation and primary source search; and

(ii) a national sex offender registry; and

(iii) the transportation service shall obtain and review a driving history research report for the prospective driver.

(2) A transportation service shall not permit a person to act as a transportation service driver who:

(a) has had more than three moving violations in the preceding three-year period or one violation in the preceding three-year period involving any attempt to evade law enforcement, reckless driving or driving on a suspended or revoked license;

(b) has been convicted within the past seven years of:

(i) a felony;

(ii) misdemeanor driving under the influence, reckless driving, leaving the scene of an accident or any other driving-related offense or any misdemeanor violent offense or sexual offense; or

(c) more than three misdemeanors of any kind;

(d) is identified by a national sex offender registry;

(e) does not possess a valid license; or

(f) is not at least 21 years old.

(3) A transportation service shall not use a small passenger vehicle that:

(a) is not in compliance with all federal, state and local laws concerning the operation and maintenance of the motor vehicle;

(b) has fewer than four doors; or

(c) is designed to carry more than eight passengers, including the driver.

(4) A transportation service shall inspect or cause to be inspected every motor vehicle used by a driver to provide transportation services before allowing the driver to use the motor vehicle to provide transportation services and not less than once each year thereafter. The type of inspection required shall follow the Commission rules for annual inspections for transportation network company service driver vehicles promulgated as 18.17.1.8 NMAC.

(5) Provided that passenger services may voluntarily adopt and implement other more stringent policies and procedures for small passenger vehicles and drivers of small passenger vehicles, including full or modified forms of federal safety policies and procedures.

**[B] C. Qualifications of drivers other than drivers of small passenger vehicles.** This rule adopts by reference only the following specific sections of Title 49, Part 391 of the Code of Federal Regulations:

- (1) general qualifications of drivers:** Section 391.11(b)(8);
- (2) application for employment:** Section 391.21;
- (3) investigations and inquiries:** Section 391.23, except that:
  - (a)** this section shall not apply to commuter services;

**(b)** "public regulation commission" should be substituted for:

- (i)** department of transportation in section 391.23(a)(2), (i)(1), and (i)(2);
- (ii)** FMCSA in section 391.23(c)(3) and (j)(6);
- (iii)** DOT in section 391.23(c)(4) and (e);

**(c)** section 391.23(d)(2) is amended to substitute "in the uniform accident report form prescribed by the state of New Mexico" for "as specified in section 390.15(b)(1) of this chapter";

**(4) annual inquiry and review of driving record.** Section 391.25, except that:

- (a)** Subsections 391.25(a) and (b) are amended to delete: "Except as provided in subpart G of this part;"
- (b)** Section 391.25 shall not apply to volunteer drivers;

**(5) record of violations:** Section 391.27, except that section 391.27(a) is amended to delete: "Except as provided in subpart G of this part;"

**(6) road test:** Section 391.31, except that section 391.31(a) is amended to delete: "Except as provided in subpart G;"

**(7) equivalent of road test:** Section 391.33; an ambulance service may also accept from a person who seeks to drive an ambulance a copy of a certificate of completion from an emergency vehicle operator's course approved by the emergency medical services bureau;

**(8) physical qualifications for drivers:** Section 391.41, except that drivers for ambulance and commuter services are exempt from section 391.41(a);

**(9) medical examinations; certificate of physical examination:** Section 391.43, except that:

- (a)** for volunteer drivers of ambulance services only, the medical examiner (as defined in 49 CFR Section 390.5)

performing the medical examination shall perform a medical examination sufficient to enable the medical examiner to certify, in accordance with Subsection C of 18.19.5.33 NMAC, whether or not the driver has a condition that may interfere with the safe operation of an ambulance; and

(b)

this section shall not apply to commuter services;

(10) persons

**who must be medically examined and certified:** Section 391.45, but this section shall not apply to volunteer drivers;

(11)

**general requirements for driver qualification files:** Section 391.51, except that:

(a)

subsections 391.51(b)(8) and (d)(5) are not adopted;

(b)

this section shall not apply to commuter services;

(12) driver

**investigation history file:** Section 391.53, but this section shall not apply to commuter services.

[E] **D. Driving of commercial motor vehicles other than small passenger vehicles.** This rule adopts by reference the following sections of Title 49, Part 392 of the Code of Federal Regulations:

(1) ill or

**fatigued operator:** Section 392.3;

(2) drugs and

**other substances:** Section 392.4;

(3) alcohol

**prohibition:** Section 392.5;

(4) emergency

**equipment, inspection and use:** Section 392.8, but this section is amended to substitute NMSA 1978 Section 66-3-849 for the reference to Section 393.95;

(5) inspection

**of cargo, cargo securement devices and systems:** Section 392.9, except that this section shall:

(a)

not apply to ambulance or commuter services;

(b)

only apply to a motor vehicle with a

gross vehicle weight rating of 10,000 pounds or more;

(6) hazardous

**conditions; extreme caution:**

Section 392.14, but this section shall not apply to ambulance services;

(7) use of seat

**belts:** Section 392.16;

(8) obscured

**lamps or reflectors:** Section 392.33;

(9) ignition of

**fuel; prevention:** Section 392.50;

(10) safe

**operation, buses:** Section 392.62;

(11) towing

**or pushing loaded buses:** Section 392.63;

(12) riding

**within closed commercial motor vehicles without proper exits:**

Section 392;

(13) carbon

**monoxide; use of commercial motor vehicle when detected:** Section 392.66;

(14) radar

**detectors; use and/or possession:** Section 392.71.

[D] **E. Equipment for vehicles other than small passenger vehicles.** This rule adopts by reference Chapter 66, Article 3, Parts 9 and 10 NMSA 1978.

[E] **F. Inspection, repair and maintenance for vehicles other than small passenger vehicles.** This rule adopts by reference the following sections of title 49, part 396 of the code of federal regulations:

(1) inspection,

**repair and maintenance:** Section 396.3, but this section shall not apply to commuter services;

(2)

**lubrications:** Section 396.5;

(3) driver

**vehicle inspection reports:** Section 396.1; a commuter service shall be exempt from this section, but each commuter service shall require its drivers to report to it, and each commuter service shall timely repair any defect or deficiency that would be likely to affect the safe operation of the motor vehicle;

(4) driver

**inspection:** Section 396.13, except that commuter services are exempt

from subsections 396.13 (b) and (c);

(5) periodic

**inspection:** Section 396.17;

(6) inspector

**qualifications:** Section 396.19;

(7)

**periodic inspection recordkeeping**

**requirements:** Section 396.21;

(8) equivalent

**to periodic inspection:** Section 396.23(a);

(9)

**qualifications of brake inspectors:** Section 396.25.

[18.3.4.12 NMAC - Rp, 18.3.4.12 NMAC, 2/13/2015; A, 11/30/2016]

**18.3.4.14 MINIMUM EQUIPMENT STANDARDS FOR VEHICLES OTHER THAN SMALL PASSENGER VEHICLES:**

A motor carrier shall only use equipment for vehicles other than small passenger vehicles that has been produced and constructed by a manufacturer of such equipment that regularly produces such equipment of guaranteed quality. The director may approve the use of non-guaranteed equipment if the motor carrier submits an application for use of such equipment accompanied by a verified statement from a reputable testing laboratory regularly engaged in the testing of the same equipment certifying that the equipment is appropriate for the purpose for which it will be used. The motor carrier shall bear all costs of testing and certification.

[18.3.4.14 NMAC - N, 2/13/2015; A, 11/30/2016]

**PUBLIC REGULATION COMMISSION**

**This is an amendment to 18.3.6 NMAC, Section 12, effective 11/30/2016.**

**18.3.6.12 CHANGES IN TARIFFS:**

**A. Application.** A motor carrier that proposes to change its rates, terms and conditions of service, or general schedule, shall file an application for a change in tariff.



(1) An application for amendment of tariff rates that increases any tariff rate to a level greater than that previously approved by the commission for ~~[a full-service carrier]~~ an ambulance service or a towing service providing non-consensual tows shall be submitted to the director for review prior to filing, and shall include:

(a) a proposed tariff including the proposed changes in rates;

(b) a balance sheet for the preceding fiscal year;

(c) an income statement for the preceding fiscal year;

(d) all documentary evidence which the applicant believes supports its proposed change in rates; and

(e) pre-filed direct testimony explaining why a change in rates is required for the motor carrier to achieve revenue levels that will provide a flow of net income adequate to support reasonable expense levels, including reasonable depreciation expense and repayment of a reasonable level of debt, and permit the raising of needed equity capital.

(2) An application for amendment of any tariff rate to a level greater than that previously approved by the commission for a municipal taxicab service carrier, a scheduled shuttle service carrier, or a household goods service carrier shall include:

(a) a proposed tariff including the proposed changes in rates; ~~and~~

(b) a side-by-side comparison of ~~a [the] household goods service carrier's proposed increased rates and the rates contained in the household goods service carrier's maximum tariff; and~~

(c) a side-by-side comparison of all changes in rates and terms of service for a municipal taxicab service carrier or a scheduled shuttle service carrier.

(3) An application for amendment of tariff

rates for any motor carrier not listed in Paragraphs (1) and (2) of this Subsection A of 18.3.6.12 NMAC shall include a proposed tariff.

(4) An application for a change in terms of service or a change in a daily time schedule for a scheduled shuttle service shall include:

(a) a proposed tariff including the proposed changes in terms of service or daily time schedule; and

(b) a description of the proposed changes ~~[and an explanation as to why they are needed; and~~

~~(c) evidence upon which the applicant intends to rely in support of its proposed changes in terms of service or general schedule.~~

~~**B.** Pre-filing review.~~

~~An applicant shall present a single copy of its proposed application for a change in tariff to the director for pre-filing review. Within seven (7) days of receipt of such application, the director will review the application to determine if it is complete.~~

~~**C.** Complete applications. If the application contains all of the information and documents required by these rules, and is in compliance with all other statutory requirements and these rules, the director shall certify in writing that the application satisfies the sixty (60) day completeness requirement of Subsection E of Section 65-2A-36 NMSA 1978, and notify the applicant that the application is complete. If the director determines that the application is incomplete, the director shall promptly return the application to the applicant along with a letter outlining the deficiencies in the application. Any comments by the director shall not constitute approval by the commission as to the reasonableness or lawfulness of any proposed tariff.~~

~~**D] B. Docketing and notice.** [The transportation division shall issue a docket number upon receipt of the complete application and all required documents]. The applicant shall file the [complete]~~

application with [and] the filing fee and serve on, and email a copy to, [with] the transportation division of the commission on the date filed. The director shall promptly post notice of [the] a filed [complete] application on the commission's website. The carrier may implement the tariff's terms of service and rates 20 days after filing pursuant to Subsection F of 65-2A-20 NMSA 1978, unless the director disapproves the application as incomplete, and except for any specific terms of service which the director or commission may disapprove, or any specific rate increases above prior approved rates for a municipal taxicab service or scheduled shuttle service that the director or commission may disapprove. The director [and] shall [promptly] file any disapproval of completeness or of specific terms of service or rates [a recommendation regarding the application] in the docket within 20 days of the date of filing of the application. The commission may file disapproval of specific terms of service or rates in the docket within 20 days of the date of filing of the application. The commission's filed disapproval means that for purposes of Subsection H of Section 65-2A-20 NMSA 1978 the commission, at that time, does not deem the increase to be reasonable.

~~**E.** Publication. The commission or hearing examiner may require that the motor carrier publish the notice prepared by the director in a newspaper or journal circulated in the motor carrier's service territory. The applicant shall file proof of publication in the docket].~~

[18.3.6.12 NMAC - Rp, 18.3.6.14 NMAC, 2/13/2015; A, 11/30/2016]

**PUBLIC REGULATION COMMISSION**

This is an amendment to 18.3.7 NMAC, Section 2, effective 11/30/2016.

18.3.7.2 SCOPE:  
A. 18.3.7.8 NMAC

through 18.3.7.13 NMAC apply to all motor carriers subject to the jurisdiction of the commission other than in the operation of small passenger vehicles, except that ambulance services are exempt from 18.3.7.8, 18.3.7.9, and 18.3.7.13 NMAC.

**B.** 18.3.7.14 NMAC through 18.3.7.16 NMAC apply only to motor carriers operating pursuant to a certificate or a permit other than in the operation of small passenger vehicles.

**C.** Commuter services are subject to 18.3.7.11 NMAC only.

**D.** The maintenance, inspection and production of documents for carriers providing passenger transportation services through the use of small passenger vehicles is governed by the following provisions:

(1) A transportation service shall maintain:  
(a) individual ride records for at least four years from the date each ride was provided; and

(b) individual records of transportation service drivers for at least four years after the driver's relationship with the transportation service has ended.

(2) In response to a specific complaint, the public regulation commission, its employees or its duly authorized agents may inspect those records held by a transportation service for the investigation and resolution of the complaint.

(3) No more than semiannually and as determined by the public regulation commission, the commission, its employees or its duly authorized agents may, in a mutually agreed setting, inspect those records held by a transportation service whose review is necessary to ensure public safety; provided that such review shall be on an audit rather than a comprehensive basis.

[18.3.7.2 NMAC - Rp, 18.3.7.2 NMAC, 2/13/2015; A, 11/30/2016]

**PUBLIC REGULATION COMMISSION**

**This is an amendment to 18.3.9 NMAC, Sections 8, 9 and 10, effective 11/30/2016.**

**18.3.9.8 [APPLICATION AND PRIOR APPROVAL REQUIRED:**

**A.** Application. Prior to leasing equipment, household goods service carriers and passenger service carriers (except charter services and commuter services) must file an application for approval of an equipment lease with the commission. The application shall include:

- ~~(1) one (1) copy of each proposed lease;~~
- ~~(2) proof that each vehicle to be leased has passed an annual vehicle safety inspection in accordance with 49 CFR Part 396 within the preceding twelve (12) months; and~~
- ~~(3) the fee required by Section 65-2A-36 NMSA 1978~~

**B.** Procedure. The director shall promptly review applications for approval of equipment leases. If the director finds that the proposed lease does not circumvent any law or rule pertaining to the status, service, classification of facilities, or rates of motor carriers, as required by Section 65-2A-24 NMSA 1978, the director shall approve, in writing, the proposed equipment lease.

**C.** Special procedure for certain household goods service leases. A household goods service may lease a vehicle for not more than three (3) days without prior approval if the lease is required to complete a move that the household goods service already has under way, and it is not feasible to obtain prior director approval. The household goods service must submit a complete application for the lease to the director within six (6) days of leasing.]

**NOTICE OF LEASE:** Prior to or within three days of first placing a leased vehicle into use, a household goods service carrier or a passenger

service carrier (except a charter service or a commuter service) must file a notice of an equipment lease with the commission by mail or hand delivery. The application shall include:

**A.** the date that the vehicle is or was placed in service and the final date that it was used, if known; full identification of the vehicle make, model, model year and VIN number; the state of registration; and the registration license plate number;

**B.** verification that each vehicle leased or to be leased complies with all applicable laws and these rules, including meeting the financial responsibility requirements prescribed in 18.3.3 NMAC, financial responsibility, and the safety requirements prescribed in 18.3.4 NMAC, safety requirements; and

**C.** the fee required by Section 65-2A-36 NMSA 1978. [18.3.9.8 NMAC - Rp, 18.3.9.8 NMAC, 2/13/2015; A, 11/30/2016]

**18.3.9.9 [REQUIREMENTS FOR EQUIPMENT LEASES:**

**A.** An equipment lease shall be in writing and signed by both parties.

**B.** An equipment lease shall specifically describe the equipment to be leased.

**C.** Any misrepresentation in the terms of a proposed equipment lease or violation of the terms of any approved equipment lease shall be considered a violation of these rules and may result in revocation of commission approval of the equipment lease or other appropriate sanctions.

**D.** The lessee shall carry a copy of the equipment lease and the commission order approving the equipment lease in every leased motor vehicle.

**E.** Either party to an equipment lease may cancel the equipment lease by giving fifteen (15) days notice in writing to the other party and to the commission.

**F.** A motor carrier seeking to change the terms of an equipment lease must obtain the prior approval of the commission by

submitting a copy of the proposed new lease to the commission and canceling the old lease in its entirety.]

**[RESERVED]**

[18.3.9.9 NMAC - Rp, 18.3.9.9 NMAC, 2/13/15; Repealed, 11/30/2016]

**18.3.9.10 RESPONSIBILITY FOR COMPLIANCE WITH APPLICABLE LAW:**

~~A. [If an equipment lease is between two authorized motor carriers, the equipment lease shall specify which of the two authorized motor carriers will be responsible for complying]~~ The leased vehicle must comply with all applicable laws and these rules before being placed into service, including meeting the financial responsibility requirements prescribed in 18.3.3 NMAC, financial responsibility, and the safety requirements prescribed in 18.3.4 NMAC, safety requirements.

~~B. [If the equipment lease is between an authorized motor carrier and a person who is not an authorized motor carrier, the equipment lease shall specify that]~~ The authorized motor carrier leasing the vehicle shall be and remain responsible at all times for insuring that the leased vehicle complies [complying] with all applicable laws and these rules, including meeting the financial responsibility requirements prescribed in 18.3.3 NMAC, financial responsibility, and the safety requirements prescribed in 18.3.4 NMAC, safety requirements.

C. The motor carrier leasing the vehicle shall maintain a copy of the written lease and a record of use of the leased vehicle in its equipment records, including the dates that the vehicle is or was in service; full identification of the vehicle make, model, model year and VIN number; the state of registration; and the registration license plate number.

[18.3.9.10 NMAC - Rp, 18.3.9.10 NMAC, 2/13/2015; A, 11/30/2016]

**PUBLIC SAFETY, DEPARTMENT OF**

On November 1, 2016, the Secretary of the Department of Public Safety repealed the rule 10.8.2 NMAC - Carrying Concealed Handguns, filed on November 26, 2003 and replaced it with 10.8.2 NMAC - Carrying Concealed Handguns, effective November 30, 2016.

**PUBLIC SAFETY, DEPARTMENT OF**

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT  
CHAPTER 8 WEAPONS AND EXPLOSIVES  
PART 2 CARRYING CONCEALED HANDGUNS**

**10.8.2.1 ISSUING**  
**AGENCY:** Department of Public Safety.  
[10.8.2.1 NMAC - Rp, 10.8.2.1 NMAC, 11-30-16]

**10.8.2.2 SCOPE:** This rule applies to all persons who wish to carry a concealed handgun or to be an approved instructor in New Mexico.  
[10.8.2.2 NMAC - Rp, 10.8.2.2 NMAC, 11-30-16]

**10.8.2.3 STATUTORY AUTHORITY:** Section 29-19-1 through Section 29-19-15 NMSA 1978; Section 30-7-2 NMSA 1978; Section 30-7-2.1 NMSA 1978; and Section 30-7-2.4 NMSA 1978.  
[10.8.2.3 NMAC - RP, 10.8.2.3 NMAC, 11-30-16]

**10.8.2.4 DURATION:** Permanent.  
[10.8.2.4 NMAC - Rp, 10.8.2.4 NMAC, 11-30-16]

**10.8.2.5 EFFECTIVE DATE:** November 30, 2016, unless a later date is cited at the end of a section.  
[10.8.2.5 NMAC - Rp, 10.8.2.5 NMAC, 11-30-16]

**10.8.2.6 OBJECTIVE:** The purpose of this rule is to implement the Concealed Handgun Carry Act by establishing requirements and procedures governing licenses to carry concealed handguns and approval of instructors and firearms training courses.

[10.8.2.6 NMAC - Rp, 10.8.2.6 NMAC, 11-30-16]

**10.8.2.7 DEFINITIONS:**  
In addition to the definitions in Section 29-19-2 NMSA 1978, unless the context clearly indicates otherwise, as used in this rule:

**A. act** means the Concealed Handgun Carry Act, Sections 29-19-1 through 29-19-15 NMSA 1978;

**B. approved instructor** means a person to whom the department has issued a permit to provide all or any part of classroom and firing range instruction;

**C. controlled substance** means controlled substance as defined in the New Mexico Controlled Substances Act, Sections 30-31-4 et seq. NMSA 1978, or a similar act of any other jurisdiction;

**D. conviction** means an adjudication of guilt, and includes a guilty plea, judgment, or verdict, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in an adjudication of guilt in any court of competent jurisdiction. A conviction includes a deferred sentence and a conditional discharge prior to satisfaction of the conditions and after satisfaction of conditions where required by the act;

**E. court** means any federal, state, county, municipal, or tribal court;

**F. days** means business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more;

**G. department** means the New Mexico department of public safety;

**H. instructor applicant** means a person seeking a permit as an approved instructor;

**I. mounted patrol**



means a current member of the New Mexico mounted patrol who has successfully completed a law enforcement academy basic law enforcement training program for New Mexico mounted patrol members pursuant to Section 29-6-4.1 NMSA 1978;

**J. military service person** means a person who:

(1) is on active duty with the United States armed forces;

(2) is on reserve or guard duty with the United States armed forces;

(3) is a veteran or a retiree who received an honorable discharge as indicated on a United States department of defense form 214; or

(4) is his or her dependent.

**K. peace officer** means any public official or public officer vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

**L. permit** means the authorization granted by the department to teach firearms qualification courses as an approved instructor;

**M. range qualification** means the performance requirements that must be met by an applicant or licensee for his or her approved caliber of handgun;

**N. reciprocity** means permission granted for an out of state license issued to a person who is not a New Mexico resident to be used in the state of New Mexico by a licensee visiting or passing through the state;

**O. resident** means:

(1) a person who, for a period of not less than 90 days immediately preceding the date of application for the license, has been domiciled in New Mexico, does not claim residence elsewhere for any purpose, and is not otherwise entitled to claim residence in another state; or

(2) a person who is a member of the armed forces of the United States and permanently

assigned to a military installation located within this state. A military person's dependent may be considered a resident for the purposes of this rule.

**P. respondent** means, in the context of 10.8.2.27 NMAC, an applicant, instructor applicant, approved instructor, or licensee;

**Q. retired peace officer** means a New Mexico resident who has retired in good standing from any law enforcement agency with at least 15 years as a certified police officer or by work related disability;

**R. revocation** means the involuntary termination of a license or permit by the department for cause for an indefinite period of time;

**S. secretary** means the secretary of the department of public safety or his designee;

**T. suspension** means the involuntary termination of a license or permit by the department for cause for a specified period of time;

**U. transfer** means issuance of a permit in New Mexico under the act when the applicant holds a valid concealed carry permit or license issued by another state with which New Mexico has reciprocity, and the other conditions prescribed in this rule have been satisfied.

[10.8.2.7 NMAC - Rp, 10.8.2.7 NMAC, 11-30-16]

**10.8.2.8 FILINGS AND CORRESPONDENCE:**

**A. To the department.**  
(1) A

person shall address all filings and correspondence relating to hearings held pursuant to this rule to the New Mexico Department of Public Safety, Post Office Box 1628, Santa Fe, New Mexico 87504-1628, Attention: Office of Legal Affairs-Concealed Handgun Section.

(2) A person shall address all filings and correspondence relating to licenses, instructor approval, meetings, and all other matters to the New Mexico Department of Public Safety, Concealed Handgun Licensing Unit, 6301 Indian School Road NE, Suite

310, Albuquerque, New Mexico 87110.

**B. From the department.** The department shall send all legal notices and orders required by the act and this rule by certified mail to the last address reported to the department by an applicant, instructor applicant, licensee, or approved instructor. The department shall send all other correspondence by regular mail. [10.8.2.8 NMAC - Rp, 10.8.2.8 NMAC, 11-30-16]

**10.8.2.9 INCOMPLETE FILINGS:** The department may deny or reject an incomplete filing. A filing will be considered incomplete if:

- A. it is unsigned;
- B. documents that are required to be certified or notarized are not certified or notarized;
- C. it omits any information required by law or department rule, form, or order;
- D. it is not filed on a department-prescribed form and a form exists for that purpose; or
- E. the required fee is not paid with the application.

[10.8.2.9 NMAC - Rp, 10.8.2.9 NMAC, 11-30-16]

**10.8.2.10 DEPARTMENT-PRESCRIBED FORMS:**

**A. Use required.** The department has prescribed forms to carry out certain requirements of this rule. The most current version of a department form must be used when a form exists for that purpose, unless the department waives this requirement.

**B. How to obtain.** Department-prescribed forms may be obtained:

- (1) at New Mexico state police offices throughout the state; or
  - (2) from the department's website at [www.dps.state.nm.org](http://www.dps.state.nm.org)
- [10.8.2.10 NMAC - Rp, 10.8.2.10 NMAC, 11-30-16]

**10.8.2.11 APPLICATION REQUIREMENTS FOR A LICENSE:**

**A. Filing.** An applicant must file an application for a license with the department in person or by mail.

**B. Fees.** All fees are non-refundable, and are required by the act or this rule to be paid to the department and shall be in the form of cash, credit card, a personal check, cashier's check, certified check, or money order made payable to the New Mexico department of public safety.

**C. Completeness.** All applications must be complete and legible.

(1) If an application is incomplete, the department will return the application and a letter outlining the deficiencies in the application to the applicant by regular mail. The applicant will have 45 days from the date the letter is postmarked to cure the deficiencies. If the applicant fails to return the application to the department within 45 days from the date the letter was postmarked, the application will be deemed abandoned, the application file will be closed, and all fees paid will be forfeited to the state. The department will send a letter notifying the applicant that the application has been deemed abandoned, the file has been closed, and all fees paid have been forfeited to the state.

(2) If the applicant returns the application to the department within 45 days from the date the initial letter was postmarked but the application is still deficient, the department will return the application and a second letter outlining the deficiencies in the application to the applicant by regular mail. The applicant will have 30 days from the date the second letter is postmarked to cure the deficiencies. If the applicant fails to return the application to the department within 30 days from the date the second letter was postmarked, or returns the application but it is still deficient, the application will be deemed abandoned, the application file will be closed, and all fees paid will be forfeited to the state. The department will send a letter notifying the

applicant that the application has been deemed abandoned, the file has been closed, and all fees paid have been forfeited to the state.

(3) An applicant may contact the concealed carry unit to inquire about the status of his or her application. Agents may provide the information to the applicant after the applicant has supplied sufficient identifiers such as address, social security number, date of birth, etc.

[10.8.2.11 NMAC - Rp, 10.8.2.11 NMAC, 11-30-16]

**10.8.2.12 OTHER REQUIRED DOCUMENTS FOR A LICENSE:**

In addition to the application form, each applicant shall submit copies of other documents required by the act or this rule to the department as set forth below. The copies must clearly show the name of the applicant and all signatures and pertinent information. The department will not accept copies that are too dark, too light, blurry, or otherwise unreadable. An applicant may request the return of original documents by so stating and enclosing a self-addressed stamped envelope.

**A. Proof of residency.**

(1) An applicant may prove residency in New Mexico by submitting a copy of a valid New Mexico driver's license or personal identification card issued by the motor vehicle division of the taxation and revenue department and one of the following:

- (a) proof that the applicant is registered to vote in New Mexico;
- (b) a state or government issued license with name and address;
- (c) a United States armed forces identification card and orders of permanent duty station in New Mexico or a U.S. armed forces dependent ID card and orders of the individual claiming the applicant as a dependent; or
- (d) other proof acceptable to the department.

(2) Possession by an applicant of a driver's license issued by another state shall create a rebuttable presumption of residency in such other state.

**B. Proof of age.** An applicant may prove that he or she is 21 or more years of age by filing:

- (1) a copy of a valid government-issued identification card stating the person's age;
- (2) a copy of a passport; or
- (3) a certified copy of his or her birth certificate.

**C. Proof of handgun competency.** An applicant must submit a certified copy of a certificate of completion for a firearms training course which is approved by the department and issued by an approved instructor. It must be submitted not more than 90 days prior to the date the application is submitted, as required by 10.8.2.15 NMAC.

**D. Proof of disposition of charges.** The burden of proof is on the applicant or licensee to show that the applicant or licensee has a pending or successful completion of any conditional discharge, or that the conviction of any charge has been overturned on appeal. Documentation sufficient to prove the applicant's or licensee's contention related to a conviction or discharge must be provided by the applicant or licensee to the department.

**E. Photographs.** To streamline the application process, the department may obtain digital color photographs of an applicant from the motor vehicle division of the taxation and revenue department or another government agency. If the department requests an applicant to provide photographs pursuant to Paragraph (5) of Subsection (B) of Section 29-19-5 NMSA 1978, the photographs shall be in color, be a minimum of three inches by three inches, and be a full frontal view of the applicant without hat, sunglasses, or any other item that would obstruct or alter the features of the applicant. The department will not accept photographs that are too dark, too bright, fuzzy, or out of focus, or unclear.

**F. Fingerprints.** All new applicants shall submit electronic fingerprints via the department standards that comply with the requirements of Section 29-19-5 NMSA 1978 and 10.8.2.14 NMAC. Applicants who have electronic fingerprints on file shall not be required to resubmit fingerprints.

**G. Application fee.** An applicant shall submit a non-refundable application fee of \$100 and \$75 for renewal applications. Current and retired law enforcement officers, military and mounted patrol officers are exempt from this fee. [10.8.2.12 NMAC - Rp, 10.8.2.12 NMAC, 11-30-16]

**10.8.2.13 LICENSE APPLICATION REVIEW AND ISSUANCE:**

**A. Time period for review.** In accordance with Subsection (A) of Section 29-19-6 NMSA 1978, the department shall review the application, conduct a national criminal background check of each applicant, and make a determination within thirty (30) days of the date the department receives a complete application and background check.

**B. Determination by department.**  
**(1) Approval.** If the department finds that the applicant meets the requirements in the act and this rule for issuance of a license, the department shall issue a license.

**(2) Denial.** If the department finds that the applicant does not meet the requirements for issuance of a license, the department shall issue a notification of denial in accordance with 10.8.2.21 NMAC. The notification of denial shall cite requirement(s) of the act or this rule that the applicant has failed to meet.

**C. Information on license.** In addition to the information required by Subsection (C) of Section 29-19-6 NMSA 1978, a license to carry a concealed handgun may include:

**(1)** a physical description of the licensee, including

the licensee's sex, hair color, eye color, height, and weight;  
**(2)** the state seal;  
**(3)** instructions to the licensee; and  
**(4)** other information as determined by the department.

**D. Term of license.** Original and renewed licenses are effective for four years from the date of issuance by the department. Replacement licenses and licenses that have been endorsed to add another category or highest caliber of handgun shall expire on the date the replaced license would have expired.

**E. Dual licenses prohibited.** A licensee may not own or possess more than one New Mexico license to carry a concealed handgun. A license to carry a concealed handgun shall indicate all categories and highest calibers of handguns the licensee is authorized to carry concealed in New Mexico. [10.8.2.13 NMAC - Rp, 10.8.2.13 NMAC, 11-30-16]

**10.8.2.14 FINGERPRINTING OF APPLICANTS:** All applicants shall submit electronic fingerprints. The department may refuse to accept fingerprints it determines are not legible and classifiable.

**A. Responsibilities of applicant.** The applicant must present a valid government-issued photographic identification card.

**B. Responsibilities of person recording the fingerprints.** The person who records the applicant's fingerprints shall verify that the government-issued photographic identification card is of the person being fingerprinted. [10.8.2.14 NMAC - Rp, 10.8.2.14 NMAC, 11-30-16]

**10.8.2.15 FIREARMS TRAINING FOR APPLICANTS AND LICENSEES:**

**A.** All New Mexico residents must attend a department approved firearms training course taught by a department approved

instructor unless he or she received the license by transfer of an out of state license.

**(1)** An applicant seeking a license shall satisfactorily complete an initial firearms training course approved by the department that includes at least 15 hours of classroom and firing range instruction as specified in Subsection (A) of Section 29-19-7 NMSA 1978 except:

**(a)** a department approved instructor;  
**(b)** a current law enforcement officer;  
**(c)** a retired law enforcement officer who has been retired 10 years or less at time of application;

**(d)** active military personnel;  
**(e)** military service persons who have been discharged within 20 years prior to the time of application; or

**(f)** mounted patrol members who have successfully completed a law enforcement training program for New Mexico mounted patrol.

**(2)** Two years after the issuance of an initial license, a licensee shall complete a refresher course which consists of either range qualification of his or her approved caliber of handgun or an online training course of instruction approved by the department.

**(3)** Four years after the issuance of an initial license, a licensee seeking renewal of a license shall satisfactorily complete a refresher firearms training course approved by the department that includes at least four (4) hours of classroom and firing range instruction as specified in Subsection (A) of Section 29-19-7 NMSA 1978.

**(4)** The department may suspend a license if the licensee does not comply with the refresher course requirements. Upon compliance, the licensee shall submit a \$5 reinstatement fee.

**B. Competency demonstration.**  
**(1)**

An applicant or licensee shall demonstrate competency in the safe use of each category and highest caliber of handgun for which he or she seeks certification by firing the handgun with live ammunition at a target no larger than 12 inches wide and 18 inches high.

(2) An applicant or licensee shall fire 15 rounds from three yards and 10 rounds from seven yards.

(3) An applicant or licensee shall score four points for each shot that hits within the scoring line and zero points for each shot that hits outside the scoring line. An applicant must obtain a score of seventy-two percent of the total score to pass the competency demonstration.

**C. Determination of competency.** An approved instructor shall determine whether or not an applicant is to be issued a certificate of completion based on the applicant's or licensee's score on the competency demonstration and the applicant's or licensee's knowledge and understanding of the subjects specified in the act.

**D. Certificates of completion.** An approved instructor shall issue a certificate of completion to each applicant who demonstrates competency in the safe use of the categories and calibers of handguns for which he or she seeks licensure as prescribed in Subsections B and C of this section. The certificate of completion shall include the name and date of birth of the applicant, the printed name and signature of the approved instructor who scored the competency demonstration, the date the applicant completed the firearms training course, all categories and calibers of handguns for which the applicant demonstrated competency, and a unique number consisting of the instructor number assigned by the department and a sequential number that corresponds with the order in which the instructor has issued certificates.

[10.8.2.15 NMAC - Rp, 10.8.2.15 NMAC, 11-30-16]

**10.8.2.16 TERMS AND CONDITIONS OF LICENSE:**

**A. Carrying only handguns listed on license.** No person shall carry a concealed handgun of a different category or higher caliber than is indicated on the license issued to that person by the department. A licensee shall only carry one concealed handgun at any given time.

**B. Consumption of alcohol prohibited.** No person shall consume alcohol while carrying a concealed handgun.

**C. Carrying while impaired.** No person shall carry a concealed handgun while impaired by the use of alcohol, controlled substances, or over-the-counter or prescribed medications.

**D. Display of license on demand.** A licensee carrying a concealed handgun on or about his person in public shall, upon demand by a peace officer, display his license to carry a concealed handgun.

**E. Prohibited acts.** A licensee shall not deface, alter, mutilate, reproduce, lend, transfer, or sell a license. A licensee shall adhere to Section 30-7-4 NMSA 1978 as it pertains to negligent use of a deadly weapon.

**F. Carrying prohibited on private property.** In addition to other limitations stated in the act, a licensee may not carry a concealed handgun on or about his person on private property that has signs posted prohibiting the carrying of concealed weapons or when verbally told so by a person lawfully in possession of the property.

**G. Carrying prohibited in preschools.** No licensee shall carry a concealed handgun on the premises of a preschool that provides care to infants, toddlers, and children aged five and younger, which includes child care facilities, home-based or center-based, and whether or not the facility is licensed, registered, or regulated.

**H. Schools.** Carrying of a deadly weapon on school premises is prohibited except as

allowed by the law.

**I. University.** Carrying of a firearm on university premises is prohibited except as allowed by the law.

**J. Liquor establishments.** Carrying of a firearm in an establishment licensed to dispense alcoholic beverages is prohibited except as allowed by the law.

**K. Indicia of licensure.** Only a law enforcement officer may carry a badge, patch, card, or any other indication of authority to carry a concealed handgun in New Mexico other than the license issued by the department or a license issued by a state that has been accepted by reciprocity by New Mexico pursuant to the act.

**L. Notice of change in circumstances.** A licensee shall, within 10 days, both notify the department in writing and return the license to it within 10 days upon the occurrence of any of the following:

(1) adjudication of mental incompetence has been entered or issued against the licensee;

(2) the licensee has been committed to a facility for the treatment of mental illness;

(3) the licensee has been committed to a facility for treatment of addiction to alcohol, controlled substances, or other drugs;

(4) an order of protection has been issued by a court against the licensee;

(5) an indictment for or charge with a felony or a disqualifying misdemeanor offense described in Subsection (B) of Section 29-19-4 NMSA 1978 has been issued against the licensee;

(6) is no longer a full time salaried law enforcement officer; or

(7) the licensee is other than honorably discharged from the military.

[10.8.2.16 NMAC - Rp, 10.8.2.16 NMAC, 11-30-16]



**10.8.2.17 LICENSE RENEWAL AND TRANSFER:**

**A. To renew a New Mexico license.** A licensee may submit an application for a renewed license on the form prescribed by the department.

(1) The licensee may submit the application anytime from 60 days before, and until 60 days after the license expires. If the license has expired, a licensee shall not carry a concealed handgun until he or she receives a renewed license.

(2) The licensee shall complete a refresher firearms training course prior to filing the application.

(3) The licensee shall submit to the department:

(a) electronic fingerprints as required by Section 29-19-5 NMSA 1978 and 10.8.2.14 NMAC, unless electronic fingerprints are already on file with the department;

(b) a certified copy of a certificate of completion for a refresher firearms training course approved by the department issued by an approved instructor not more than 90 days prior to the date the application is filed;

(c) a nonrefundable \$75 renewal fee; and

(d) a copy of New Mexico driver's license or other government issued identification which contains a picture.

**B. To transfer a license from another state.** A person establishing New Mexico residency must transfer his or her license from another state. The license holder has 90 days from establishing New Mexico residency to file an application for a New Mexico renewed license on the form prescribed by the department. An applicant for transfer shall not carry a concealed handgun in New Mexico until the applicant receives a New Mexico license unless he or she has a license from a state that has been accepted by reciprocity by New

Mexico.

(1) In addition to the items required by Paragraph 3 of Subsection A of this section, the applicant for license transfer shall file:

(a) proof of residency as provided in Subsection A of 10.8.2.12 NMAC;

(b) proof of age as provided in Subsection B of 10.8.2.12 NMAC; and

(c) a photocopy of the license being transferred.

(2) The applicant for transfer shall complete:

(a) a refresher firearms training course if the firearms training required by the other state meets or exceeds New Mexico firearms training requirements and the licensee completed firearms training not more than one year prior to filing the application; or

(b) an initial firearms training course if the firearms training required by the other state does not meet New Mexico firearms training requirements or the licensee completed firearms training more than one year prior to filing the application.

(3) The applicant for transfer must meet all other requirements for obtaining a license in New Mexico by showing either that:

(a) the requirements for licensure in the other state meet or exceed the requirements for issuance of a license in New Mexico; or

(b) the applicant has satisfactorily completed the requirements for issuance of a license in New Mexico that were not applicable in the other state.

**C. Time period for review.** The department shall review the application for a renewed license, conduct a national criminal background check for each applicant for a renewed license or transfer of a license from another state, and make a determination within 30 days of the date the department receives a complete application and background

check.

**D. Determination by department.**

(1) **Approval.** If the department finds that the applicant for a renewed license or transfer of a license from another state meets the requirements in the act and this rule for a renewed license, the department shall issue a license.

(2) **Denial.** If the department finds that the applicant does not meet the requirements for a renewed license or transfer of a license from another state, the department shall issue a notification of denial in accordance with 10.8.2.21 NMAC. The notification of denial shall cite the particular requirements of the act or this rule that the applicant has failed to meet.

[10.8.2.17 NMAC - Rp, 10.8.2.17 NMAC, 11-30-16]

**10.8.2.18 ADDITIONAL HANDGUN ENDORSEMENT:**

If a licensee wishes to add another category or additional higher calibers of handguns to his or her license, the licensee shall file with the department an endorsement application. The licensee shall also submit a certified copy of a certificate of completion from an approved instructor stating that the licensee has demonstrated competency on a firing range for each additional category and caliber of handgun, his or her current license, and a \$10 processing fee. The licensee need not retake the classroom portion of the firearms training course. The department shall issue an updated license within 10 days of receipt of the application. The updated license shall expire on the same date as the original license would have expired. In accordance with Section 29-19-9 NMSA 1978, a licensee shall not carry the higher caliber concealed handgun until he or she receives the updated license

[10.8.2.18 NMAC - Rp, 10.8.2.18 NMAC, 11-30-16]

**10.8.2.19 REPLACEMENT LICENSE:**

**A. Change of name address, or status:** A licensee who

changes his or her name, address or law enforcement status shall file within 30 days:

(1) an application for a replacement license on the form prescribed by the department;

(2) if applicable, a certified copy of a legal document proving the change of name;

(3) a nonrefundable \$10 processing fee; and

(4) if applicable, proof of reemployment with a law enforcement agency.

**B. Loss, theft, or destruction of license:** A licensee who loses his or her license or whose license is stolen or destroyed shall file a police report within 10 days of the date the licensee discovers the loss, theft, or destruction of the license. The licensee shall not carry a concealed handgun until he or she obtains a replacement license. A licensee who seeks to replace a license that is lost, stolen, or destroyed shall file with the department:

(1) an application for a replacement license on the form prescribed by the department;

(2) the case number of the police report;

(3) a notarized statement made under oath that the license was lost, stolen or destroyed; and

(4) a nonrefundable \$10 processing fee. The department shall issue a replacement license within 10 days of receipt of the application.

[10.8.2.19 NMAC - Rp, 10.8.2.19 NMAC, 11-30-16]

**10.8.2.20 ENFORCEMENT:**

**A. Authority to disarm.** A peace officer acting in the lawful discharge of his or her official duties is authorized to disarm a licensee at any time the peace officer reasonably believes it is necessary for the protection of the licensee, peace officer or another

individual. The peace officer shall return the handgun to the licensee before dismissing the licensee from the scene if the peace officer has determined that the licensee is not a threat to himself or herself, the peace officer, or other individuals, provided that the licensee has not violated any provision of the act or this rule, or committed any other violation which could result in arrest of the licensee. If the peace officer has probable cause to believe that the handgun is stolen, has an altered serial number, or has been used in the commission of a crime, the peace officer shall hold the handgun in evidence and shall submit a copy of his or her agency report to the department within 10 days.

**B. Authority to confiscate license.** A peace officer may confiscate a license if the licensee has violated any provision of the act or this rule, or committed any other violation that could result in arrest of the licensee. If the licensee has committed a violation of the act or rule warranting suspension or revocation of the license, the officer shall file an affidavit of violation as provided in Subsection B of 10.8.2.21 NMAC. A police report may be submitted in lieu of an affidavit. [10.8.2.20 NMAC - Rp, 10.8.2.20 NMAC, 11-30-16]

**10.8.2.21 DENIAL, SUSPENSION AND REVOCATION OF A LICENSE:**

**A. Grounds.** The department may deny, suspend or revoke a license if the licensee:

(1) is found to have violated any provision of the act or this rule;

(2) is a fugitive from justice, in accordance with Paragraph (4) of Subsection (A) of Section 29-19-4NMSA 1978;

(3) is convicted of a felony, in accordance with Paragraph (5) of Subsection (A) of Section 29-19-4 NMSA 1978, including a conditional discharge until discharged, a diversion until its terms are completed, a deferment, a guilty plea, a plea of nolo contendere, or Alford plea;

(4) is under indictment, cited, or summoned to Court to answer for a felony criminal offense, in accordance with Paragraph (6) of Subsection (A) of Section 29-19-4 NMSA 1978;

(5) is prohibited by law from purchasing or possessing a firearm, in accordance with Paragraph (7) of Subsection (A) of Section 29-19-4 NMSA 1978 or any federal database or law;

(6) is adjudicated mentally incompetent or committed to a mental institution, in accordance with Paragraph (8) of Subsection (A) of Section 29-19-4 NMSA 1978;

(7) is addicted to alcohol or controlled substances, in accordance with Paragraph (9) of Subsection (A) of Section 29-19-4 NMSA 1978;

(8) receives a conditional discharge, a diversion or a deferment or is convicted of, pleads guilty to or enters a plea of nolo contendere to a misdemeanor offense involving a crime of violence within 10 years immediately preceding the application, in accordance with Paragraph (1) of Subsection (B) of Section 29-19-4 NMSA 1978;

(9) is convicted of a misdemeanor offense of driving while under the influence of intoxicating liquor or drugs within five years immediately preceding the application, in accordance with Paragraph (2) of Subsection (B) of Section 29-19-4 NMSA 1978;

(10) is convicted of a misdemeanor offense of the possession or abuse of a controlled substance within 10 years immediately preceding the application, in accordance with Paragraph (3) of Subsection (B) of Section 29-19-4 NMSA 1978;

(11) is convicted of a misdemeanor offense of assault or assault against a household member, battery or battery against a household member, in accordance with Paragraph (4) of Subsection (B) of Section 29-19-4 NMSA 1978; or

(12) is subject

to a valid protective order issued by a court.

**B. Affidavit of violation by a licensee.** If a peace officer believes there is probable cause to suspend or revoke a license, the peace officer shall prepare an affidavit on a form prescribed by the department. The affidavit shall cite the provision of law that was violated. The peace officer shall file the affidavit and any other reports or information relating to the licensee available to the officer with the department within 10 days of the date the peace officer learns of the violation. A police report may be submitted in lieu of the affidavit.

**C. Notice of suspension or revocation and surrender of license.** The department shall review the affidavit and attachments, and, if the department finds probable cause to suspend or revoke the license, may issue a notification of the suspension or revocation to the licensee advising the licensee of his or her right to a hearing in accordance with 10.8.2.27 NMAC. If the licensee elects not to request a hearing, the licensee shall surrender his or her license to the department within 15 days of the expiration of the period allowed to request a hearing.

**D. Term of suspension or revocation and reapplication.**

(1) The department may suspend a license when the outcome of a disqualifying matter is pending. The licensee may file an application to renew the license upon expiration of the term of suspension.

(2) The department may revoke a license for a period required by the law up to and including a lifetime revocation. The person will not be eligible for a new license until the revocation period required by law has passed, if ever.

(3) The license of a current law enforcement officer shall expire on the date the officer leaves employment unless the officer provides the department with written proof of hiring by another law enforcement agency in New Mexico.

[10.8.2.21 NMAC - Rp, 10.8.2.21 NMAC, 11-30-16]

**10.8.2.22 DEPARTMENT APPROVAL OF INSTRUCTORS AND FIREARMS TRAINING COURSES:**

**A. Application required.** Any person seeking to instruct firearms training courses pursuant to this rule shall file an application with the department to become an approved instructor. Application shall be made on the form prescribed by the department, and shall be typewritten or legibly handwritten in ink. A person who is not an approved instructor may not instruct a firearms training course pursuant to this rule.

**B. Requirements for approval.** In order to be approved as an instructor, an instructor applicant must:

(1) agree to be subject to New Mexico jurisdiction for the purpose of enforcing the act and this rule;

(2) submit a resume of experience instructing firearms training courses, handgun experience, or both;

(3) submit electronic fingerprints that comply with the requirements in Section 29-19-5 NMSA 1978 and 10.8.2.14 NMAC for positive identification purposes;

(4) submit an authorization for release of information form provided by the department;

(5) submit an affidavit or cover page of an acceptable firearms instruction insurance policy;

(6) submit to the department the curriculum and course materials, meeting the department's core requirements, for a firearms training course that has been certified or sponsored by a federal or state law enforcement agency, an accredited college or university, a firearms training school or a nationally recognized organization approved by the department that customarily offers firearms training,

and a copy of the letter or other document approving the course from the certifying or sponsoring entity. An instructor applicant may develop his own curriculum and materials but must have them certified or sponsored by one of the entities identified in Subsection (A) of Section 29-19-7 NMSA 1978;

(7) The instructor applicant must submit to the department a list of all persons the instructor applicant proposes to engage in any aspect of the concealed carry weapons class at least 10 days prior to the first class, including the individual's name, date of birth, social security number, and concealed carry license number;

(8) provide a description of the instructor applicant's experience in offering firearms training; if any. An instructor-applicant who wishes to conduct firing range instruction must possess a certificate of completion of a firearms instructor-training program approved by the department that was issued or renewed not more than three years prior to the date the application is filed;

(9) be a currently certified law enforcement instructor employed by a law enforcement agency; or

(10) be 21 years of age and agree to be responsible for the actions and omissions of all persons engaged by the approved instructor for the purpose of conducting firearms training courses pursuant to this rule.

**C. Time period for review.** As prescribed in Subsection (A) of Section 29-19-6 NMSA 1978, the department shall review the application of each instructor applicant and make a determination within 30 days of the date the department receives a complete application and background check.

**D. Determination by the department.**

(1) **Approval.**  
(a)

**Instructor.** If the department finds that the instructor applicant meets the requirements specified in Subsection

B of this section, the department shall issue a concealed carry weapon instructor permit that shall be valid for four years. The concealed carry weapon instructor permit shall include the approved instructor's name, business address, and date of birth, the expiration date of the permit, and the instructor number assigned by the department.

**(b)**

**Curriculum.** If the department finds that the proposed curriculum and course materials for the firearms training course meet the requirements of Section 29-19-7 NMSA 1978 and this rule, the department shall approve the proposed firearms training course in writing. The department's approval shall remain in effect for the shortest of:

- (i)** one year;
- (ii)** until the approved instructor substantially changes the curriculum or course materials; or
- (iii)** the requirements in the act or this rule are changed.

**(2) Denial.**

If the department finds either that the instructor applicant or the proposed firearms training course does not meet the requirements of Section 29-19-7 NMSA 1978 or this rule, the department shall issue a notification of denial. The notification of denial shall cite the particular requirements of the act or this rule that the instructor applicant or proposed firearm training course has failed to meet.

**E. Renewal.**

An approved instructor seeking to renew his or her permit shall file with the department at least 60 days before the date his or her permit expires:

- (1)** an application for renewal on the form prescribed by the department;
- (2)** the curriculum and course materials for a firearms training course that is certified or sponsored by a federal or state law enforcement agency, an accredited college or university, a firearms training school, or a

nationally recognized organization approved by the department that customarily offers firearms training and a copy of the letter or other document approving the course from the certifying or sponsoring entity; and

**(3)**

a list of all persons the instructor applicant intends to engage in any aspect of conducting a concealed carry weapons class.

**F. No authority to carry.**

An approved instructor is not authorized to carry a concealed handgun unless the approved instructor obtains a license from the department pursuant to Section 29-19-4 NMSA 1978 of the act and this rule. If an instructor applicant wishes to apply for a concealed carry license at the same time he or she applies for an instructor's permit, he or she may do so by checking the appropriate boxes on the instructor application form, complying with all requirements for a license in the act and this rule, and enclosing the license application fee and all documents required by this rule with the application for an instructor's certificate.

**G. List of approved instructors.**

The department shall maintain and make available to the public a list of approved instructors. An approved instructor may request to be removed from the list, but shall remain subject to a request for inspection of public records pursuant to, Chapter 14, Article, 2 NMSA 1978.

[10.8.2.22 NMAC - Rp, 10.8.2.23 NMAC, 11-30-16]

**10.8.2.23 BACKGROUND INVESTIGATIONS OF APPLICANTS AND INSTRUCTOR APPLICANTS:**

The department shall conduct a state and national criminal background check, and a court records check for protective orders, of each applicant for an original, transferred or renewed license. The department shall conduct a state criminal background check, and a court records check for protective orders, for each instructor applicant for an original

or renewed instructor's permit. The department may require certain applicants to provide information or execute documents to enable the department to obtain criminal history records of disposition of charges. The department may conduct such other investigation of an applicant as the department deems necessary to determine an applicant's suitability for a license or instructor's permit. [10.8.2.23 NMAC - Rp, 10.8.2.23 NMAC, 11-30-16]

**10.8.2.24 RESPONSIBILITIES OF APPROVED INSTRUCTORS:**

**A. Minimum**

**standards for instruction.** An approved instructor shall:

**(1)** engage as instructors only those persons who have been issued a permit by the department, except as provided in Subsection C of this section;

**(2)** have no more students in the classroom or on an indoor firing range than the maximum occupancy allowed by the state or local fire code;

**(3)** use classroom facilities that comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities;

**(4)** use only the curriculum, course materials, handouts, and videos approved by the department;

**(5)** display the permit issued by the department in an appropriate and visible location;

**(6)** not permit a student to begin a firearms training course until the student has received written information stating all fees, including incidental costs, charged for the course, policies for passing and failing, refund and reschedule policies, and attendance requirements.

**B. Minimum**

**standards for firing range instruction.** An approved instructor shall:

**(1)** not allow a student to participate in firing range instruction until the student has



completed the classroom portion of the firearms training that covers safe handgun shooting fundamentals;

(2) conduct firing range instruction under various light conditions when possible;

(3) have no more students firing a handgun on the firing range than the instructor can effectively and safely instruct and monitor, including no more than five students per instructor during daylight training, no more than three students per instructor for lowlight training, and no more than one student per instructor for dynamic training such as shooting on the move.

**C. Guest instructors.**

(1) An approved instructor may use guest instructors who are on the department approved instructor list to teach various parts of a firearms training course, but only with written approval of the department. An approved instructor must file a request for approval to use a guest instructor at least 10 days prior to the date the guest instructor will teach for the first time. The department will conduct background investigations of guest instructors.

(2) no guest instructor shall teach the approved instructor's entire firearms training course.

(3) An approved instructor shall maintain a file on each guest instructor who teaches any portion of the firearms training course. The file shall include a list of the dates and portions of the course each guest instructor has taught, and appropriate documents showing the education, experience, licenses or certifications that qualify the guest instructor to teach the portions of the course he or she has taught.

**D. Monitoring by the department.** The department may monitor all aspects of firearms training courses. Approved instructors shall cooperate with department employees in its efforts to monitor the training of applicants.

(1) Should a department employee determine

that an instructor is not compliant with these rules or is placing his or her students in danger; the employee shall have the authority to end the class. The employee shall obtain the approved instructor's permit, make a written report and submit both to the secretary. The approved instructor may then file an appeal pursuant to the act and these rules.

(2) Failure to adhere to any provisions of Subsection D, these rules, or the act shall be grounds for temporary or permanent loss of an instructor's permit.

**E. After action reports (AAR).**

An approved instructor shall file the following information with the department within 10 days after the end of each firearms training course on the form prescribed by the department:

(1) the name, address, and date of birth of each applicant who attended the course;

(2) the score each applicant achieved in the handgun competency demonstration;

(3) the category and highest caliber of each handgun for which the applicant demonstrated competency; and

(4) whether or not the approved instructor issued a certificate of completion and each category and caliber for which each applicant's certificate was issued.

**F. Records.** An approved instructor shall maintain the records required by this subsection for a period of five years from the date of completion of each firearms training course. The records shall be stored in a safe and secure place and shall be available for inspection by the department promptly upon request. An approved instructor shall maintain:

(1) a record of each handgun competency certificate issued;

(2) a record of the following information for each course:

(a) name, address, and date of birth of each applicant who attended the

course;

(b) the score the applicant achieved in the handgun competency demonstration;

(c) the category and caliber, of each handgun for which the applicant demonstrated competency; and

(d) an indication of whether or not the approved instructor issued a certificate of completion to that person;

(3) a record of the dates and number of hours of each firearms training course;

(4) a record of the curriculum and course materials used in each course; and

(5) copies of documents and correspondence filed with the department.

[10.8.2.24 NMAC – Rp, 10.8.2.24 NMAC, 11-30-16]

**10.8.2.25 IN-SERVICE TRAINING CYCLE FOR CONCEALED CARRY INSTRUCTORS:**

**A.** All New Mexico approved instructors shall receive a minimum of eight hours of training biennially.

**B.** Required training may be conducted by the department's concealed carry program at regional locations and, where scheduling will allow, the concealed carry program will assign staff to instruct the course. [10.8.2.25 NMAC - N, 11-30-16]

**10.8.2.26 SUSPENSION AND REVOCATION OF AN INSTRUCTOR PERMIT:**

**A. Grounds.** The department may suspend or revoke a permit if the approved instructor:

(1) is the subject of valid complaints from applicants, licensees, or other approved instructors;

(2) violates any of the grounds stated in Subsection A of 10.8.2.21 NMAC with respect to a license;

(3) violates any provision of the act or these rules; or

(4) fails to

improve after having been sanctioned.

**B. Notice of suspension or revocation and surrender of permit.** The department shall investigate all allegations concerning grounds for suspension or revocations of permits. If the department finds there is a preponderance of evidence supporting the complaint, and there exists cause to suspend or revoke the permit, the department may issue a notification of suspension or revocation of the permit to the approved instructor, and advising the approved instructor of his or her right to a hearing in accordance with 10.8.2.26 NMAC. If the approved instructor elects not to request a hearing, the approved instructor shall surrender his or her permit to the department within 15 days of the expiration of the period for requesting a hearing and shall cease offering firearms training courses pursuant to this rule.

**C. Immediate suspension of firearms training course and refund of tuition.**

(1) The department may immediately suspend, without notice or a prior hearing, a firearms training course whenever the department finds that the person teaching the course:

(a) is not an approved instructor;

(b) is impaired by the use of alcohol, controlled substances, or over-the-counter or prescribed medications;

(c) has committed a misdemeanor or felony under the New Mexico criminal code or law of another jurisdiction; or

(d) is teaching something that is contrary to law or accepted safety practices.

(2) The approved instructor shall be given the opportunity to request a hearing before the department pursuant to 10.8.2.26 NMAC.

(3) If the department finds, after notice and a hearing, that the person teaching the course was not an approved instructor, was impaired, has committed a misdemeanor or felony under the

criminal code, or was teaching something contrary to law or accepted safety practices, the department may order the person to refund to every student in the class the person was teaching any fees paid by the student to take the class. If the department finds that all or any portion of the firearms training course was deficient because the instructor was not an approved instructor, was impaired, has committed a misdemeanor or felony under the criminal code, or was teaching something contrary to law or safety, the department may require the students in that class to retake the portions that were deficient. The department may also initiate proceedings to suspend or revoke the approved instructor's permit.

**D. Term of suspension or revocation and reapplication.**

(1) The department may suspend a permit for up to one year while the outcome of a disqualifying matter is pending. The approved instructor may file an application to renew the permit upon expiration of the term of suspension.

(2) The department may revoke a permit for a period required by law up to and including a lifetime revocation. The instructor whose permit is revoked will not be eligible for a new permit until the revocation period required by law has passed, if ever.

[10.8.2.26 NMAC - Rp, 10.8.2.25 NMAC, 11-30-16]

**10.8.2.27 HEARING PROCEDURES:**

**A. Written notice required.** The department shall mail a notification of the decision to deny, suspend, or revoke a permit and instructions for requesting a hearing to the respondent in accordance with Subsection B of 10.8.2.8 NMAC.

The notice shall become final on the 30th day after the date the notice was postmarked unless the department receives a request for a hearing, or the notice is returned to the department as undeliverable, before that date, in which case it is immediately final.

**B. Request for hearing.** A respondent who seeks

reconsideration of a notification of denial, suspension, or revocation shall file a request for hearing. The request for hearing shall:

(1) be in writing;

(2) be received by the department within 30 days from the date on the notification;

(3) state with specificity the basis for challenging the notification; and

(4) provide any additional documentation to support the challenge.

**C. Hearing date.** Within 30 days of receipt of a timely request for hearing, the department shall mail a notice of hearing to the respondent. The hearing shall be held within a reasonable period of time, but within 180 days from the date the department receives request for the hearing. The department may extend the time for a hearing one time for up to an additional 60 days upon its own discretion. The department shall not unreasonably deny a request for postponement of the hearing made by a respondent when good cause exists for the request.

**D. Contents of notice.** The notice shall include:

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

(2) a statement of the legal authority and jurisdiction pursuant to which the hearing is being held;

(3) reference to the section(s) of the act or this rule that were cited as the basis for the denial, suspension, or revocation;

(4) a general statement of the matters or issues involved; and

(5) a statement of the rights specified in Subsection I of this section.

**E. Nature of hearing.** The hearing shall be conducted in an informal manner. The hearing may be conducted in person or by telephone conference call, video conferencing, or other appropriate technology.

**F. Hearing examiner.** The department shall designate a hearing examiner who shall conduct

the proceedings and perform all acts and take all measures necessary or proper for the efficient conduct of the hearing. The hearing examiner may:

(1) administer oaths;

(2) issue subpoenas for the attendance of witnesses and the production of relevant books, documents, and records;

(3) exclude any irrelevant, immaterial, or unduly repetitious evidence;

(4) take notice of facts and of recognized technical or scientific facts within the department's specialized knowledge;

(5) hear evidence and admit documentary evidence from the parties. The department may introduce into evidence copies of government records needed to establish the existence of certain facts which could result in denial, suspension, or revocation of a license or permit, including but not limited to records regarding convictions, judgments regarding mental competency or chemical dependency, or other matters that may be established by government records;

(6) call and examine the respondent or other witnesses; and

(7) utilize the department's experience, technical competence, and specialized knowledge in evaluating the evidence.

**G. Testimony.**

Testimony at the hearing shall be taken under oath.

**H. Record of hearing.**

The hearing shall be recorded at the department's expense. No recording devices other than the official hearing recording device shall be allowed. In addition, the department shall make a written record of:

(1) the nature of the proceedings including copies of the affidavit or other documents of grounds for the notification of denial, suspension, or revocation, and the notice of hearing;

(2) the place, date, and time of the hearing and

all continuances or recesses of the hearing;

(3) the appearance or nonappearance of the respondent;

(4) if the respondent appears with an attorney, the name and address of the attorney;

(5) all evidence and testimony and a copy of all exhibits introduced into evidence;

(6) the findings of fact, conclusions of law, and recommended decision of the hearing examiner; and

(7) the decision of the secretary.

**I. Rights of applicant, instructor applicant, approved instructor, or licensee.**

The respondent has the right to:

(1) attend the hearing;

(2) enter evidence into the record, but only in open hearing;

(3) recuse a hearing examiner for cause;

(4) be assisted or represented by an attorney at his or her own expense; and

(5) call, examine and cross-examine witnesses.

**J. Stipulation.**

The respondent, or respondent's attorney in respondent's absence, shall stipulate in writing on a form prescribed by the department that the hearing examiner shall be released from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the hearing. Failure to so stipulate shall result in termination of the hearing and continuation of the notification issued by the department.

**K. Deliberation.** At the close of the hearing, the hearing examiner shall review and consider the entire record, prepare findings of fact, conclusions of law, and a recommended decision, and submit them to the secretary within 20 days after the close of the hearing.

The hearing examiner shall make a finding on each ground for denial, suspension, or revocation alleged. The recommended decision shall be

based upon substantial, competent, and relevant evidence and testimony appearing in the record of hearing.

**L. Final order.**

Within 20 days of receipt of the recommended decision, the secretary shall review the record of the hearing and issue a final order affirming the denial of an application for, or suspension or revocation of, a license or permit or reversing the denial, suspension, or revocation and authorizing issuance or reinstatement of a license or permit. The department shall mail a copy of the final order to the respondent. The final order shall be based upon substantial, competent, and relevant evidence and testimony appearing in the record of hearing.

**M. Appeals.** A

respondent adversely affected by a final order of the department may file a petition for a writ of certiorari, pursuant to Rule 1-075 NMRA, in the district court in the county where the respondent resides within 30 days of the date the final order was postmarked. The appellant shall bear the costs of the appeal.

[10.8.2.27 NMAC - Rp, 10.8.2.26 NMAC, 11-30-16]

**10.8.2.28 DEPARTMENTAL**

**IMMUNITY:** The department, or any employee of the department, shall not be criminally or civilly liable for acts:

**A.** performed by the department or employee in good faith based on information available to the department or employee at the time the act was performed;

**B.** committed by a licensee; or

**C.** committed by a person approved by the department or employee to offer a firearms training course.

**D.** occurring during and through the course of any proceeding pertaining to a concealed carry license.

[10.8.2.28 NMAC - Rp, 10.8.2.28 NMAC, 11-30-16]

**10.8.2.29 RECIPROCITY:**

The secretary or his designee shall



have discretionary authority to afford transfer or reciprocity to a concealed handgun license issued by another state. Transfer or reciprocity may be granted if the other state:

**A.** issues a license or permit with an expiration date printed on the license or permit;

**B.** is available to verify the license or permit status for law enforcement purposes within three days of request;

**C.** has disqualification, suspension and revocation requirements for a concealed handgun license or permit;

**D.** requires that an applicant for a concealed handgun license or permit submit to a national criminal history background check;

**E.** requires that an applicant not be prohibited from possessing firearms pursuant to federal or state law; and

**F.** requires that an applicant satisfactorily complete a firearms safety program that covers deadly force issues, weapons care and maintenance, safe handling and storage of firearms and marksmanship.

**G.** Each state which the department has afforded transfer or reciprocity shall be listed on the department's web page.

**H.** No reciprocity shall be afforded to a license issued by another state to a New Mexico resident.

[10.8.2.29 NMAC - Rp, 10.8.2.29 NMAC, 11-30-16]

**10.8.2.30 CURRENT LAW ENFORCEMENT OFFICERS OR MOUNTED PATROL OFFICERS:**

**A.** Any current law enforcement officer residing in New Mexico shall be allowed to obtain a five-year concealed handgun carry license by submitting:

(1) all forms as required in 10.8.2.11 NMAC;

(2) a letter from his or her agency head verifying that the applicant is employed in good standing and is qualified under Section 29-19-4 NMSA 1978;

(3) a copy

of his or her law enforcement certification and number; and

(4) a copy of his or her latest firearms qualification score with category and caliber designated, signed and dated by the authorized firearms instructor conducting the course.

**B.** An application may be denied if:

(1) the head of the law enforcement agency employing the officer requests in writing that a license not be issued and supplies sufficient information to enable the department to determine if the denial should be granted; or

(2) if the applicant has pending criminal charges or serious administrative allegations involving his or her conduct as a law enforcement officer.

**C.** The agency and applicant will be notified in writing of the department's decision. If denied, the applicant may follow the process contained in 10.8.2.27 NMAC.

**D.** The applicant's agency will be notified of any disqualifying information that may become known during the background check.

**E.** A license issued under this section may not be used, and must be turned in to the department's concealed carry unit, when the officer is no longer employed by a law enforcement agency.

[10.8.2.30 NMAC - Rp, 10.8.2.30 NMAC, 11-30-16]

**10.8.2.31 RETIRED LAW ENFORCEMENT OFFICERS:**

Any retired law enforcement officer shall be allowed to obtain a five-year concealed handgun carry license if the retired law enforcement officer:

**A.** has submitted all forms as required in these rules, including 10.6.2.12 NMAC;

**B.** is a resident of the state of New Mexico;

**C.** has retired from a law enforcement agency after a minimum of 15 years employment, unless the retirement was due to a job related disability;

**D.** has submitted a letter from the agency verifying employment if the 15 years is with more than one agency;

**E.** has submitted a letter from the agency verifying employment he or she retired from which indicates he or she retired in good standing with the effective date of retirement;

**F.** has submitted a copy of his or her last firearms qualification scores indicating category and caliber designation, dated and signed by the department's firearms instructor;

**G.** has taken a firearms course in accordance with the act if the officer has been retired longer than ten years at the time of application;

**H.** has submitted a copy of his or her law enforcement certification and number; and

**I.** has qualified and adheres to the provisions of the act and these rules.

[10.8.2.31 NMAC - Rp, 10.8.2.31 NMAC, 11-30-16]

**10.8.2.32 MILITARY SERVICE PERSONS:** Any military service persons shall be allowed to obtain a five-year concealed handgun carry license under the following requirements:

**A.** by submitting all forms as required in these rules, including 10.8.2.12 NMAC; and

**B.** documentation satisfactory to the department that the applicant is a military service person; or

**C.** documentation satisfactory to the department that the applicant was a prior military service person honorably discharged.

[10.8.2.31 NMAC - N, 11-30-16]

**HISTORY OF 10.8.2 NMAC:** 10.8.2 NMAC, Carrying Concealed Handguns, filed on 9-4-01, was removed pursuant to Supreme Court Opinion 2002 NMSC-017. 10.8.2 NMAC, Carrying Concealed Handguns, was refiled on 11-14-03, effective 11-26-03.

**History of Repealed Material:**

10.8.2 NMAC, Carrying Concealed Handguns, effective 11-26-03, repealed and replaced effective 11-30-16.

**REGULATION AND LICENSING DEPARTMENT**  
REAL ESTATE COMMISSION

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 61 REAL ESTATE BROKERS**  
**PART 27 FOREIGN BROKERS**

**16.61.27.1 ISSUING**  
**AGENCY:** New Mexico Real Estate Commission  
[16.61.27.1 NMAC - N, 1-1-2017]

**16.61.27.2 SCOPE:** The provisions of Part 27 of Chapter 61 apply to all real estate brokers who are licensed by a licensing jurisdiction other than the state of New Mexico.  
[16.61.27.2 NMAC - N, 1-1-2017]

**16.61.27.3 STATUTORY AUTHORITY:** Part 27 of Chapter 61 is promulgated pursuant to the Real Estate License Law, NMSA 1978, Section 61.29.16.1.  
[16.61.27.3 NMAC - N, 1-1-2017]

**16.61.27.4 DURATION:** Permanent.  
16.61.27 NMAC, Foreign Brokers, filed 11-30-2001 - Repealed effective 1-1-2014.  
[16.61.27.4 NMAC - N, 1-1-2017]

**16.61.27.5 EFFECTIVE DATE:** January 1, 2017 unless a late date is cited at the end of a section.  
[16.61.27.5 NMAC - N, 1-1-2017]

**16.61.27.6 OBJECTIVE:** The purpose of Part 27 of Chapter 61 is to set forth the conditions under which real estate brokers licensed by licensing jurisdictions other than the state of New Mexico can engage in certain commercial real estate transactions in the state.  
[16.61.27.6 NMAC - N, 1-1-2017]

**16.61.27.7 DEFINITIONS:**  
Refer to 16.61.1.7 NMAC.  
[16.61.27.7 NMAC - N, 1-1-2017]

**16.61.27.8 FOREIGN BROKERS:** A foreign broker may act in the capacity of a qualifying or associate broker with respect to commercial real estate located in New Mexico; provided that prior to performing any of the real estate activities of a qualifying or associate broker, the foreign broker enters into a transaction-specific written agreement with a New Mexico qualifying broker that includes, at a minimum:

- A. a description of the parties, the commercial real estate and any additional information necessary to identify the specific transaction governed by the agreement;
- B. the terms of compensation between the foreign broker and the New Mexico qualifying broker;
- C. the effective date and definitive termination date of the agreement; and
- D. a statement that the foreign broker agrees to:

(1) Cooperate fully with the New Mexico qualifying broker and all associate brokers designated by the New Mexico qualifying broker;

(2) Except for the foreign broker's interaction with the foreign broker's client, conduct all contact with parties, including the general public and other brokers, in association with the New Mexico qualifying broker or associate broker designated by the New Mexico qualifying broker;

(3) Conduct all marketing and solicitations for business in the name of the New Mexico qualifying broker;

(4) Timely furnish to the New Mexico qualifying broker, copies of all documents related to the transaction that are required by the laws of New Mexico to be retained by its licensees, including without limitation, agency disclosure, offers, counteroffers, purchase and sale contracts, leases and closing statements; and

(5) Comply with and be bound by and subject to New Mexico law and the regulations of the commission.  
[16.61.27.7 NMAC - N, 1-1-2017]

**16.61.27.9 CONSENT TO SERVICE AND REFERRAL FEES:** Foreign brokers agree to submit to the jurisdiction of the courts of New Mexico with respect to the transaction and any and all claims related thereto by service of process upon the secretary of state of New Mexico and upon the appropriate official of the state, province or nation of the foreign broker's real estate licensure. When a New Mexico associate broker or qualifying broker makes a referral to or receives a referral from a foreign broker for the purpose of receiving a fee, commission or any other consideration, the qualifying broker of the New Mexico brokerage and the foreign broker shall execute a written, transaction-specific referral agreement at the time of the referral.  
[16.61.27.9 NMAC - N, 1-1-2017]

**HISTORY of 16.61.27 NMAC:**  
**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center: Rule No. 17, Amendment No. 2 (aka REC-17), Cooperating With Foreign Broker, filed 6-15-79. REC 70-16 Cooperating With Foreign Broker, filed 10-6-81. Rule No. 14 Foreign Broker/ Cooperation With, filed 12-18-87. NMREC Rule 14, Foreign Broker/ Cooperation With, filed 10-3-94.

**History of Repealed Material:** 16.61.27 NMAC, Foreign Brokers, filed 11-30-2001 - Repealed effective 1-1-2014.

**REGULATION AND LICENSING DEPARTMENT**  
REAL ESTATE COMMISSION

This is an amendment to Section 7 of 16.61.1 NMAC, effective January 1, 2017.

**16.61.1.7 DEFINITIONS:**

**A.** “Acceptable financial institution”: is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

**B.** “Agency”: the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

**C.** “Agent”: the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, “agent” means the person who has been authorized to act by that associate broker’s qualifying broker. In the case of property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the property management agreement.

**D.** “Approved education course”: a commission approved course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

**E.** “Approved training course”: A commission approved course offering in personal and property protection for the broker and clients; offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker’s service to the public; offerings concerning professional development, customer

relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

**F.** “Associate broker”: a person holding a New Mexico associate broker’s license who is affiliated with a New Mexico qualifying broker.

**G.** “Broker”: any person holding a current New Mexico associate broker’s or qualifying broker’s real estate license.

**H.** “Brokerage”: a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.

**I.** “Brokerage relationship”: the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.

**J.** “Brokerage trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.

**K.** “Broker duties”: ~~[the duties that brokers owe to their clients and customers in the course of a real estate transaction.]~~ Certain duties owed by brokers to customers, clients, tenants, and other brokers.

**L.** “Broker in charge”: a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.

**M.** “Client”: a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

**N.** “Commercial real estate”: real estate that is zoned for business or commercial use by a city or county; or designated by a city or county to allow five or more multi-family units; provided that all units

are located on a single parcel of land with a single legal description.

**O.** “Core course”: the four hour commission-approved continuing education course that all brokers are required to complete annually as a condition of license renewal.

**P.** “Core elective course”: a four hour commission-approved continuing education course in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle.

~~[N:]~~ **Q.** “Credit hour(s)”: credits toward education requirements as assigned by the real estate commission for each commission-approved course.

~~[O:]~~ **R.** “Custodial trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner’s name with the qualifying broker as trustee. This account may be interest bearing.

~~[P:]~~ **S.** “Customer”: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

~~[Q:]~~ **T.** “Designated agent”: a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

~~[R:]~~ **U.** “Designated agency”: a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another

as agent of the seller in the same transaction.

~~[S:] V.~~ “Distance education”: distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

~~[F:] W.~~ “Dual agency”: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

~~[G:] X.~~ “Dual agent”: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

~~[V:] Y.~~ “Employee”: for the purposes of Section 61-29-2 C (1) of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following:

(1) does the employer withhold income tax from the person’s wages, salary, or commission;

(2) does the employer pay a portion of the person’s FICA tax;

(3) is the person covered by workers’ compensation insurance;

(4) does the employer make unemployment insurance contributions on behalf of the person.

~~[W:] Z.~~ “Errors and omissions insurance”: a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers

licenses for errors and omissions made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of the specific insurance policy or policies in place.

~~[X:] AA.~~ “Exclusive agency”: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, ~~[and subagency agreements:]~~ subagency and residential property management.

~~[Y:] BB.~~ “Expired license”: an associate broker’s or qualifying broker’s license that has not been renewed as of the last day of the month following the broker’s birth month at the end of the broker’s three-year licensing cycle.

~~[Z:] CC.~~ “Express written agreement: any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

~~[AA:] DD.~~ “Facilitator”: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

~~EE.~~ “Foreign broker”: a real estate broker who does not hold a real estate license issued by the New Mexico real estate commission, but who holds a current and valid real estate broker’s license issued by another state in the United States, a province of Canada, or any other sovereign nation.

~~FF.~~ “Honesty and reasonable care and ethical and professional conduct”: conduct that a reasonable person would understand to meet standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior.

~~[BB:] GG.~~ “Inactive

broker”: a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.

~~[EE:] HH.~~ “In house transaction”: a transaction that occurs under the supervision of one qualifying broker in the same brokerage.

~~[DD:] II.~~ “Land title trust account”: a pooled interest-bearing account subject to the land title trust fund act.

~~[EE:]~~ “Mandatory course”: ~~the commission-approved course required of all brokers, except exempt brokers, as a condition of license renewal.]~~

~~[FF:] JJ.~~ “Military service member”: a person, or the spouse of a person, who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the National Guard.

~~[GG:] KK.~~ “Owner or property owner”: a person who is recognized and held responsible by law as the owner of real property, including real property held by any legally recognized entity in which the owner has an interest of ten (10) percent or more.

~~[HH:] LL.~~ “Party to the transaction”: a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

~~[H:] MM.~~ “Person”: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

~~[JJ:] NN.~~ “Post-licensing course”: the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.



~~[KK:]~~ **OO.** “Principal”: any person who authorizes or employs another to do certain acts on behalf of that person.

~~[LL:]~~ **PP.** “Property ledger”: a record of deposits and disbursements within a trust account that are associated with the same property or owner.

~~[MM:]~~ **QQ.** “Property management”: real estate services as specified by a management agreement which include, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports and other documents. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management.

~~[NN:]~~ **RR.** “Property management trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

~~[OO:]~~ **SS.** “Property manager”: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others. The property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the Uniform Owner-Resident Relations Act and/or under the rental or lease agreement.

~~[PP:]~~ **TT.** “Qualifying broker”: a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

~~[QQ:]~~ **UU.** “Recent

veteran”: a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for a real estate broker’s license.

~~[RR:]~~ **VV.** “Reconciliation”: the process by which the property ledgers within a trust account are balanced with the trust account and the trust account is balanced with the bank statement.

~~[SS:]~~ **WW.** “Referral”: the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

~~[TT:]~~ **XX.** “Responsible person”: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Paragraph (7) of Subsection A of Section 61-29-12 NMSA 1978.

~~[UU:]~~ **YY.** “Scope of authority”: the range of authority granted by the principal to act on behalf of that principal.

~~[VV:]~~ **ZZ.** “Short-term/vacation rental”: with the exception of hotels and motels, the rental of real property for a period of 29 days or less.

~~[WW:]~~ **AAA.** “Special trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

~~[XX:]~~ **BBB.** “Sponsor”: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

~~[YY:]~~ **CCC.** “Subagent”: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

~~[ZZ:]~~ **DDD.**

“Transaction”: any real estate activity subject to the jurisdiction of the commission.

~~[AAA:]~~ **EEE.** “Transaction broker”: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

~~[BBB:]~~ **FFF.** “Trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account, custodial trust account or special trust account.

~~[CCC:]~~ **GGG.** “Unlicensed assistant”: a person who does not hold an active New Mexico broker’s license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

~~[HHH:]~~ **“Virtual office”:** A real estate brokerage office that provides communication and address services without providing dedicated office space.  
[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2012; A, 1/1/2017]

**REGULATION AND LICENSING DEPARTMENT**  
REAL ESTATE COMMISSION

This is an amendment to Section 9 of 16.61.3 NMAC, effective January 1, 2017.

**16.61.3.9 EXAMINATION AND LICENSING REQUIREMENTS:**

- A.** Associate broker’s license: prior to applying for an associate broker’s license, an applicant must pass the real estate broker’s examination prescribed by the commission.
- B.** Examination application.
  - (1) Applications to take the broker’s

examination are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30 hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application to take the broker's examination. Exam candidates who are licensed as associate brokers and are taking the broker's examination to upgrade to qualifying broker are exempt from the three-year time limit and must only provide documentation of course completion.

(2) Exam candidates currently licensed as real estate salespersons or brokers in other states or jurisdictions will be exempt from completing the real estate principles and practice and real estate law courses in New Mexico and from taking the national portion of the broker's examination if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent. A New Mexico associate broker upgrading to qualifying broker will also be exempt from taking the national portion of the broker's exam.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30 hour broker basics course.

(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30 hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one 30 hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

**C. License application.**

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examinations six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico

or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that he/she has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

**D. Qualifying broker's license examination:** there is no separate qualifying broker's examination.

**E. License application.**

(1) Before being issued a qualifying broker's license, an applicant must document that their associate broker's or equivalent license has been on active status with a real estate brokerage for two of the last five years immediately preceding their application to become a qualifying broker, and must provide a certificate of completion of the commission-approved 30 hour brokerage office administration course. Applicants with current licenses who can document that they were New Mexico qualifying broker's on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

(2) Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the associate broker's

examination prior to being issued a qualifying broker's license.

(3) An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied with documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

F. Military service members.

(1) The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker's or qualifying broker's license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.

(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal. [16.61.3.9 NMAC - Rp, 16.61.3.8 NMAC, 1-1-2012; A, 1-1-2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE COMMISSION**

This is an amendment to Sections 9

and 10 of 16.61.5 NMAC, effective January 1, 2017.

**16.61.5.9 TERMS OF COVERAGE:** The group policy shall provide, at a minimum, the following terms of coverage:

- A. coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;
- B. an annual premium not to exceed the amount set by statute 61-29-4.2B NMSA 1978;
- C. that the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a broker becomes inactive or has their license revoked or an applicant is denied a license;
- D. pro-ration of premiums for coverage which is purchased during the course of the calendar year but with no provision for refunds of unused premiums;
- E. not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of brokers or entities to which a settlement or claim may apply;
- F. an aggregate limit of \$500,000 per licensed individual or entity;
- G. a deductible amount for each ~~[occurrence]~~ claim of not more than \$1,000 per claim and no deductible for legal expenses and defense;
- H. ~~[the obligation of the insurance carrier to defend all covered claims;]~~ payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible;
- I. ~~[coverage of a broker's use of lock boxes;]~~ the obligation of the insurance carrier to defend all covered claims with payment of defense costs outside of policy limits;
- J. coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage

or loss of use of property arising from a lock box claim:

- ~~K.~~ L. the ability of a broker, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the insurance provider as may be determined by the provider;
- ~~[K:]~~ L. that coverage is individual and license specific and will cover the associate broker regardless of changes in qualifying broker;
- ~~[H:]~~ M. an extended reporting period of not less than 365 days;
- ~~[M:]~~ N. a conformity endorsement allowing a New Mexico resident broker to meet errors and omissions insurance requirements for an active license in another group mandated state without the need to purchase separate coverage in that state.  
[16.61.5.9 NMAC - N, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2017]

**16.61.5.10 EQUIVALENT ERRORS AND OMISSIONS INSURANCE POLICIES:** New Mexico real estate associate broker or qualifying broker applicants may obtain errors and omissions coverage equivalent to the group plan from any insurance carrier subject to the following terms and conditions.

- A. The insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in this state and is in conformance with all New Mexico statutes.
- B. The insurance provider maintains an A.M. Best rating of "B" or better.
- C. The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in a certificate issued to the insured real estate broker or broker applicant in a form acceptable to the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage. The commission will make no independent determination of whether equivalent

policies meet the requirements of Part 5.

**D.** Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

**E.** Coverage cannot be cancelled by the insurance provider except for nonpayment of premium or in the event a broker becomes inactive or the license is revoked, or in the event an applicant is denied a license.

**F.** Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim and not less than a \$500,000 aggregate limit per licensed individual or entity.

**G.** A deductible amount for each [occurrence] claim of not more than \$1,000.

**H.** Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.

**I.** ~~[An extended reporting period of not less than 365 days.]~~ The obligation of the insurance carrier to defend all covered claims with defense costs outside of policy limits.

**J.** ~~[Coverage of a broker's use of lock boxes:]~~ Coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim.

**K.** Real estate brokers or broker applicants who obtain equivalent coverage and wish to be on active status must present to the commission the certificate referred to in 16.61.5.10 NMAC:

- (1) when renewing an active license, no later than at the time of renewal; or
- (2) upon any request for reinstatement or activation of a license; or
- (3) upon application for an active license.

**L.** An automatic 90-day extended reporting period with the ability of the broker, upon

payment of an additional premium, to obtain an optional extended reporting period of one, two, or three years. [16.61.5.10 NMAC - N, 1-1-2002; A, 1-1-2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE COMMISSION**

This is an amendment to Section 8 of 16.61.6 NMAC, effective January 1, 2017.

**16.61.6.8 REQUIREMENTS:**

~~[Upon compliance with all requirements set out in the real estate license law and the real estate commission rules for licensure as a New Mexico qualifying broker, the commission shall issue a New Mexico qualifying broker's license to the applicant(s). Such license shall bear the name of the qualifying broker, the trade name of the brokerage and the address as registered with the commission. In the event a qualifying broker is unable for any reason to perform their qualifying broker duties, a corporate officer, family member or other responsible person, shall designate a broker in charge until such time as an individual files a trade name registration form with the commission.]~~

**A.** A corporation, partnership, association, proprietorship, limited liability company, or any other business entity engaged in real estate brokerage in New Mexico, except as otherwise provided in 61-29-2 (C) NMSA 1978, must employ or enter into an independent contractor agreement with a qualifying broker(s) to qualify such entity to engage in real estate brokerage in the state.

**B.** Upon compliance with all requirements set out in the real estate license law and the real estate commission rules for licensure as a New Mexico qualifying broker, the commission shall issue a New Mexico qualifying broker's license to the applicant. Such license shall bear the name of the qualifying broker, the trade name of the brokerage that

the qualifying broker has qualified to conduct real estate brokerage business and under which the brokerage will be conducting business and the address as registered with the commission from which the brokerage will be conducting business.

**C.** In the event a qualifying broker is unable for any reason to perform their qualifying broker duties, a corporate officer, family member or other responsible persons shall designate a broker in charge to conduct the brokerage business and supervise brokers affiliated with the brokerage until such time as an individual files a trade name registration form or additional license application form with the commission designating that individual as the qualifying broker. [16.61.6.8 NMAC - Rp, 16.61.6.8 NMAC; A, 1-1-2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE COMMISSION**

This is an amendment to Section 8 of 16.61.7 NMAC, effective January 1, 2017.

**16.61.7.8 REQUIREMENTS:**

**A.** All persons applying for or renewing a New Mexico real estate broker's license or upgrading an associate broker's license to a qualifying broker's license must be fingerprinted as a condition of licensure or license renewal.

**B.** Applicant fingerprints and processing fees are submitted electronically to the New Mexico department of public safety from approved live scan vendor sites for the purpose of matching applicant fingerprints with fingerprints in state and national arrest record databases. Applicants must register on the vendor web site prior to being fingerprinted. The vendor web site address and a list of approved live scan sites are available on the real estate commission web site at www.rld.state.nm.us.

**C.** To verify



compliance with the fingerprinting requirement, applicants for licensure or license renewal shall submit to the commission along with their license or renewal application a copy of the commission-approved fingerprint certification form completed by the vendor. ~~[To ensure that the commission is receiving the most current information available, fingerprinting should be done no earlier than six months prior to applying for or renewing a license.]~~ To ensure that the commission is receiving the most current information available, fingerprinting shall be done no earlier than 21 days prior to submitting documents to apply for or renew a license.  
 [16.61.7.8 NMAC - Rp, 16.61.7.8 NMAC, 1-1-2012; A, 1-1-2017]

**REGULATION AND LICENSING DEPARTMENT**  
 REAL ESTATE COMMISSION

This is an amendment to Section 8 of 16.61.11 NMAC, effective January 1, 2017.

**16.61.11.8 REQUIREMENTS:**

Every real estate license expires every three years on the last day of the month following the broker's birth month, unless it is renewed on or before that date. Renewal of a license is the sole responsibility of each broker. A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a reinstatement fee three times the regular license renewal fee. In addition to paying a reinstatement fee, the broker will be required as a condition of reinstatement to provide documentation of the completion of [30] 36 hours of commission-approved continuing education courses. Application for renewal shall be on the renewal form prescribed by the commission. Renewal forms will be mailed to brokers at the last residential mailing address on file at the commission. The broker must notify the commission of a residential address change within 10 days of

address change. The qualifying broker may pay a commission to a broker whose license is expired or to the estate of a deceased broker if the transaction was under contract while the broker's license was current.  
 [8-15-97; A, 1-1-2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012; A, 1-1-2017]

**REGULATION AND LICENSING DEPARTMENT**  
 REAL ESTATE COMMISSION

This is an amendment to Section 8 of 16.61.13 NMAC, effective January 1, 2017.

**16.61.13.8 REQUIREMENTS:**

[Except for brokers who were exempt from continuing education prior to July 1, 2011:

- ~~\_\_\_\_\_ A. \_\_\_\_\_ All active and inactive associate brokers and qualifying brokers shall successfully complete thirty (30) credit hours of continuing education in courses approved by the commission during each licensing cycle.~~
- ~~\_\_\_\_\_ B. \_\_\_\_\_ All associate brokers and qualifying brokers shall successfully complete the approved eight (8) credit hour real estate commission mandatory course during each licensing cycle. Of the remaining twenty-two (22) credit hours, ten (10) credit hours may be credited toward the continuing education requirement from approved training category courses. At least twelve (12) credit hours must be taken from approved education category courses; however, all twenty-two (22) credit hours may be taken from the list of commission-approved continuing education courses.~~
- ~~\_\_\_\_\_ C. \_\_\_\_\_ Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education credit for license renewal. The commission approved thirty (30) hour post-licensing course may also count for up to ten (10) education category credit hours toward continuing~~

- ~~education:~~
- ~~\_\_\_\_\_ D. \_\_\_\_\_ No commission approved continuing education course in either the education or the training category will be granted more than ten (10) credit hours of continuing education credit.~~
- ~~\_\_\_\_\_ E. \_\_\_\_\_ Continuing education credit hours cannot be carried forward to the next licensing cycle.~~
- ~~\_\_\_\_\_ F. \_\_\_\_\_ The same continuing education course cannot be repeated for credit in a three-year renewal cycle.~~
- ~~\_\_\_\_\_ G. \_\_\_\_\_ Brokers may receive four (4) approved education course credit hours during each licensing cycle for attending commission meetings, rule hearings and disciplinary hearings.~~
- ~~\_\_\_\_\_ H. \_\_\_\_\_ Approved instructors may use up to ten (10) credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses. Teaching documentation must be provided by the course sponsor.~~
- ~~\_\_\_\_\_ I. \_\_\_\_\_ Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.] Except for brokers who are exempt from continuing education by virtue of having attained 65 years of age and a minimum of 20 years of continuous licensure prior to July 1, 2011:~~
- ~~\_\_\_\_\_ A. \_\_\_\_\_ All active and inactive associate brokers and qualifying brokers shall successfully complete a minimum of 36 credit hours of continuing education in courses approved by the commission during each licensing cycle.~~
- ~~\_\_\_\_\_ B. \_\_\_\_\_ Required courses include the four hour New Mexico real estate commission (NMREC) core course to be completed annually; a four hour commission-approved core elective course to be completed once during each three year licensing; and four hours of commission-approved ethics courses to be completed during each three year licensing cycle.~~
- ~~\_\_\_\_\_ C. \_\_\_\_\_ Of the remaining~~

16 credit hours, no more than 10 credit hours may be earned toward the continuing education requirement from commission-approved training category courses. All 16 remaining credit hours may be earned toward the continuing education requirement from commission-approved education category courses.

**D.** The NMREC core course requirements shall apply to those associate brokers and qualifying brokers who have not completed the eight hour mandatory course in their current licensing cycle by December 31, 2016. If a broker has so completed the eight hour mandatory course, the NMREC core course requirement will not apply until their next licensing cycle. Brokers who have completed the eight hour mandatory course in their current licensing cycle and who wish to take the NMRE core course will receive four additional hours of education category credit in their current licensing cycle.

**E.** The NMREC core course will have a unique course name and course number each year, including the year in which it was presented. The commission shall ensure that the content is unique for each year's course to ensure that brokers are not receiving identical information in more than one course.

**F.** Commission-approved pre-licensing courses may count for up to 10 credit hours toward continuing education credit for license renewal. The commission approved 30 hour post-licensing course may also count for up to 10 education category credit hours toward continuing education.

**G.** No commission-approved continuing education course in either the education or the training category will be granted more than 10 credit hours of continuing education credit.

**H.** Continuing education credit hours cannot be carried forward to the next licensing cycle.

**I.** The same continuing education course cannot be repeated for credit in a three-year renewal cycle.

**J.** Brokers may receive up to a maximum of four approved education course credit hours during each licensing cycle for attending commission meetings, rule hearings, disciplinary hearings, or meetings of the education advisory committee (EAC).

**K.** Approved instructors may use up to 10 credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses. Teaching documentation must be provided by the course sponsor.

**L.** Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.

[1-1-2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 12-31-2008; A, 1-1-2012; A, 1-1-2017]

**REGULATION AND LICENSING DEPARTMENT**

**REAL ESTATE COMMISSION**

This is an amendment to Sections 8, 9, 11 and 12 of 61.61.15 NMAC, effective January 1, 2017.

**16.61.15.8 EDUCATION [STEERING] ADVISORY COMMITTEE:**

The commission shall appoint an [education steering committee (ESC)] education advisory committee (EAC), hereinafter referred to as the committee, with the goal of upgrading and improving the real estate education program in order to carry out the commission's mission of protecting the public and increasing the professional competence of real estate brokers. The committee shall advise the commission on all matters related to broker education.

**A.** The committee shall meet monthly or as required for the purpose of [certification reviews of] evaluating applications for real estate course sponsors, courses, and instructors and shall make

recommendations to the commission as to its findings.

(1) The committee shall use specific criteria to evaluate a course, an instructor or course sponsor for approval. These specific criteria shall consider both the instructor's depth of knowledge of the subject and the instructor's ability to convey that knowledge.

(2) The committee shall clearly state in writing to the applicant the reasons for which a course, an instructor or course sponsor are not approved.

(3) A sponsor or instructor applicant not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

**B.** [~~The committee shall consist of at least nine members appointed by the commission. The committee member shall serve a term of three years or until their successors are appointed. The commission may remove a member for cause].~~

The committee shall consist of nine voting members and no fewer than three non-voting instructor/advisory members. The chair and vice chair shall be appointed from among the voting members. Upon the effective date of this rule, approximately half of the members shall be appointed to two-year terms, and half to three-year terms. Thereafter, all members shall be appointed to three-year terms. Members shall serve a maximum of two three-year terms, but may reapply for membership one year after the expiration of their second term. The commission shall appoint members to fill vacancies until the end of the term of the vacant position.

[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC; A, 1-1-2017]

**16.61.15.9 APPROVAL OF EDUCATION PROGRAMS:**

**A.** Courses offered for New Mexico real estate commission approved credit must be offered by sponsors approved by the New Mexico real estate commission.

**B.** Applications for sponsor, instructor and course approvals shall be accompanied

by the fee(s) specified in 16.61.2.8 NMAC of the commission rules.

(1) An approved education category course shall consist of a course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, and ethical practice of real estate; and real estate related local, state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

(2) Approved training category courses include personal and property protection for the broker and clients; using the computer, the internet, business calculators and other technologies to enhance the broker's service to the public; concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

(3) With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable continuing education classes shall include courses taken in fulfillment of another state's continuing education requirements. Other non-acceptable courses include mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar courses.

C. The [ESC] committee shall review instructor candidates:

(1) to determine the candidate's knowledge of the subject matter;

(2) to determine the candidate's ability to communicate his/her knowledge to students;

(3) to

determine if the candidate uses appropriate teaching delivery skills;

(4) to determine if the candidate is honest, truthful, reputable, and competent. [16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2012; A, 1-1-2017]

**16.61.15.11 APPROVAL OF COURSES:**

A. Any pre-licensing or continuing education course must have been approved by the commission before the course being offered for credit. Courses must incorporate New Mexico law and regulations when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the ~~[education steering committee (ESC)]~~ committee.

(1) Before course approval, the instructor teaching the course shall make a presentation before the [ESC] committee according to presentation criteria established by the [ESC] committee.

(2) The [ESC] committee shall assign the number of credit hours to each course and determine whether the course is in the education or training category.

(3) Commission approved pre-licensing courses may count for up to ten credit hours toward continuing education requirements for license renewal.

B. The [ESC] committee may waive ~~an ESC~~ a course presentation appearance by a nationally recognized professional real estate organization that provides professional designations if the organization can document to the [ESC's] committee's satisfaction that the course instructor received training in the course subject matter in addition to attending a train the trainer class.

C. The commission must approve any continuing education course offered for one-time credit before the course being offered.

(1) A commission approved application form for one-time credit approval

must be completed and submitted to the [ESC] committee before consideration of the course for credit.

(2) Approved sponsors are limited to four course submittals for one-time credit during each calendar year.

(3) The sponsor, or its representative, requesting one-time course credit, shall make a presentation before the [ESC] committee according to presentation criteria established by the [ESC] committee.

D. The course shall conform to the generally accepted principles of education as prescribed by the real estate educators association (REEA) and shall comply with commission approved course content requirements. The minimum length of a course shall be one hour.

E. The commission will maintain a list of courses that have been approved for credit.

F. If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last three years the [ESC] committee may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

G. Distance education: For purposes of this part, distance learning is education and training that takes place outside of the traditional classroom setting and in which non-traditional instructional media are used because the teacher and student are separated by distance or time. Distance education sponsors seeking continuing education credit for their courses will be required to designate a New Mexico approved instructor to make a presentation to the [ESC] committee and shall submit for [ESC] committee review and approval:

(1) course



syllabus which clearly states the course objectives and the specific learning objectives for desired student competencies;

(2) instructions for accessing, using and testing the online materials for [ESC] committee auditing purposes including everything necessary for evaluating course content materials, duration, accuracy and timeliness;

(3) reference materials appropriate to the course;

(4) when a series of courses is offered in a curriculum, evidence of sequential development and logical progression;

(5) description of the method, such as examination and quizzes, by which student progress and mastery of the subject matter are measured, and for determining what is required for a student to successfully complete the course;

(6) description of the method by which student identity is verified, such as user name and password;

(7) the names, telephone numbers and email addresses of individuals, web-sites or other resources that students can contact for technical assistance;

(8) the name and contact information of the New Mexico instructor approved to teach the course [~~must be available~~] who will be available to answer subject matter questions during regularly posted hours;

(9) a description of the methodology used by the sponsor in determining the classroom hour equivalency of each distance education course.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2012; A, 1-1-2017]

**16.61.15.12 APPROVAL OF INSTRUCTORS:**

**A.** Commission approved course instructors. Instructors must be approved by the commission before teaching courses. The following requirements apply to all commission approved courses.

(1) Be honest, truthful, reputable and competent.

(2) Submit a commission-approved application before presenting the course to the [ESC] committee.

(3) Complete a commission approved instructor training course within one year of being initially approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor-training course will not be re-certified.

(4) Provide copies of student handouts during their course presentation.

(5) Make a minimum 15 minute presentation to the [ESC] committee exhibiting their teaching skills and knowledge of the subject matter, and be prepared to answer questions. Presentations must conform to the generally accepted principles of education (GAPE) as established by the real estate educators' association (REEA).

**B.** Pre-licensing instructors. Pre-licensing courses include: real estate law, real estate principles and practices, broker basics and brokerage office administration. In addition to Subsection A. above, these instructor candidates must:

(1) pass the New Mexico broker's examination with a minimum score of 84 within the previous three years from the date of application;

(2) audit the course they wish to teach before being approved as an instructor for that course; documentation of having audited the course must be submitted with the candidate's application;

(3) broker basics: be approved to teach real estate law and real estate principles and practice;

(4) brokerage office administration: be approved to teach real estate law and real estate principles and practice and broker basics; in addition, candidates must also have two years experience as a qualifying broker in New Mexico or another licensing jurisdiction.

**C.** [~~Mandatory~~] Core course instructors. In addition to Subsection A. above [~~mandatory~~] core course instructor candidates must:

(1) [~~be a currently approved instructor for real estate law and real estate principles and practice or be currently approved to teach three or more continuing education courses;~~] complete a core course training and be approved by the committee;

(2) ensure the [~~mandatory~~] NMREC core course materials they present include the most recent updates provided by the New Mexico real estate commission; and

(3) make a [~~minimum 60 minute~~] presentation to the [ESC] committee and answer questions.

**D.** Qualifying broker refresher course instructors. In addition to Subsection A. above, qualifying broker refresher course instructor candidates must comply with one of the following:

(1) be a currently approved instructor for real estate law and real estate principles and practice and broker basics and be a qualifying broker or would qualify to be one; or

(2) be approved to teach the mandatory course and be a qualifying broker.

**E.** New broker business practices post-licensing course instructors. In addition to Subsection A. above, new broker business practices course instructors must:

(1) have two years' experience as an active qualifying broker with supervisory responsibilities or two years actively licensed as an associate broker and served in the capacity as a trainer for the brokerage, or two years actively licensed as an associate broker and be approved as a continuing education instructor;

(2) attend, when offered, a commission approved train-the-trainer on how to instruct the post-licensing course and attend, when offered, a periodic update of the



course offered by the commission or the commission contractor; and  
 (3) make a minimum 60 minute presentation to the [ESC] committee and answer questions.

**F.** [ESC] Committee approval process. The [ESC] committee will make its recommendation to the commission to grant or deny instructor approval. If the application is denied, a written evaluation to the candidate will provide specific reasons for denial and recommendations for improvement. An instructor candidate not recommended for approval by the [ESC] committee may ask the commission to review the [ESC's] committee's unfavorable recommendation.

**G.** Post-approval requirements. After approval all instructors must comply with the following:

- (1) pay applicable fee(s);
- (2) conduct all classes in accordance with commission rules and educational policies;
- (3) ensure all instruction is free from all misrepresentation, solicitations of products and recruitment;
- (4) conform to commission-approved course content requirements; and
- (5) allow access to any class to any duly appointed representative of the commission.

**H.** Instructor approval expiration and re-certification.

(1) Expiration. Instructor approvals expire on the same three-year cycle as the instructor's broker's license. If an instructor is not a real estate broker, then the expiration will be three years from the date of initial approval.

(2) Re-certification. Instructors seeking re-certification shall:

- (a) submit the commission-approved form;
- (b)

submit documentation of having completed a commission-approved instructor training course;

(c) an instructor who has not taught a course in the preceding three year instructor renewal cycle will not be recertified to teach that course; an instructor may submit at the time of renewal, a written request to the ~~[ESC]~~ committee to be re-certified to teach that course; the written request must specify how the instructor has remained current on the course material, and must include the course outline and course material.

**I.** Failure to comply with this part may result in the loss of instructor approval. The commission may investigate any claim of instructor impropriety pursuant to 16.61.36.8 NMAC of the commission rules.

[16.61.15.12 NMAC - Rp, 16.61.15.12 NMAC, A 1-1-2017]

**REGULATION AND LICENSING DEPARTMENT  
 REAL ESTATE COMMISSION**

This is an amendment to Section 9, 16.61.16 NMAC, effective January 1, 2017.

**16.61.16.9 RESPONSIBILITIES:** A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

- A.** conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission;
- B.** prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office; in the event of a virtual office, this requirement is met by displaying a legible photo or scanned image of the licenses on the brokerage's web site through a link labeled "real estate licenses";
- C.** have in the brokerage office and available to

all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual;

**D.** notify the commission in writing within ten days of a change of the brokerage office address or telephone number;

**E.** supervise all real estate related activities performed by the brokerage on behalf of others including but not limited to advertising of real estate or real estate services conducted on behalf of others by associate brokers ~~[and]~~ qualifying brokers, and employees ~~[affiliated with the brokerage and execute and maintain current written employment or independent contractor agreements with them;]~~ and trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers.

**F.** execute and maintain current written employment or independent contractor agreements with all persons affiliated with the brokerage, including brokers and brokerage owners whether or not the brokerage owners are licensed real estate brokers.

~~[F.]~~ **G.** maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage; the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than six years; in the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

~~[G.]~~ **H.** deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties to the transaction documents;

**[H:] L.** receive and disburse all commissions, referral fees, and other considerations to any broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at the time the transaction went under contract; the qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, the deceased broker's surviving spouse, or any legally recognized entity wholly owned by an associate broker and their spouse. Such partnership, corporation, or limited liability company shall not be required to have a qualifying broker for purposes of this sub-part;

**[H:] J.** assure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, there be a transaction specific written co-brokerage or referral agreement signed by the qualifying broker;

**[H:] K.** designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation in writing. During this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

**[H:] L.** return the associate broker's license to the commission within 48 hours of termination or discharge;

**[H:] M.** ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5 NMAC of the commission rules;

**[H:] N.** successfully complete as a condition of license renewal or as a condition of reinstatement of qualifying broker status the commission-approved four hour qualifying broker refresher course;

**[H:] O.** ensure that associate brokers affiliated with their brokerage

complete the commission-approved new broker business practices course or the CCIM 101 course within their first year of licensure.

**P.** ensure that the qualifying broker's name and contact information is clearly and conspicuously displayed on any written document generated by the brokerage or presented to a prospective customer or client, and that has the potential to become an express written agreement.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1-1-2012; A, 1-1-2017]

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**REGULATION AND  
LICENSING DEPARTMENT  
REAL ESTATE COMMISSION**

This is an amendment to Section 9 of 16.61.17 NMAC, effective January 1, 2017.

**16.61.17.9 RESPONSIBILITIES:**

An active associate broker shall:

**A.** complete ~~[in the first year]~~ within their first year of licensure, the commission-approved new broker business practices course or the CCIM 101 course. Associate brokers who have been on inactive status since their initial licensure shall complete the new broker business practices course or the CCIM 101 course prior to activation of their license;

**B.** be affiliated with only one qualifying broker at a time;

**C.** not engage in any real estate activity for any other qualifying broker other than the qualifying broker with whom the broker is affiliated;

**D.** not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker;

**E.** not engage in any real estate activities on their own behalf outside the knowledge of the qualifying broker with whom the broker is affiliated;

**F.** not engage in any real estate activity under a trade name(s) other than the trade name(s)

of the qualifying broker with whom the broker is affiliated;

**G.** not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom the broker was affiliated with at the time the transaction went under contract, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;

**H.** when advertising real estate or real estate services for others, include in the advertising the trade name and telephone number as registered with the commission of the qualifying broker with whom the broker is affiliated;

**I.** remit all funds received from others related to real estate transactions to the qualifying broker or their designee as soon as possible after receipt of those funds, and after securing signatures of all parties to the transaction;

**J.** deliver in a timely manner to their qualifying broker all records required to be maintained by their qualifying broker under 16.61.16 NMAC; and

**K.** maintain a current errors and omissions insurance policy as provided in Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5.8 NMAC of the commission rules, and provide documentation of such policy to their qualifying broker.

[1-1-2000, A, 2-14-2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012; A, 1-1-2014; A, 1-1-2017]

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**REGULATION AND  
LICENSING DEPARTMENT  
REAL ESTATE COMMISSION**

This is an amendment to Section 8 of 16.61.23 NMAC, effective January 1, 2017.

**16.61.23.8 DESCRIPTION, DESIGNATION AND RECONCILIATION:**

**A.** Funds of others.  
A qualifying broker who receives money belonging to others related to

a real estate transaction shall deposit same only in a trust account in an acceptable financial institution, title company or with a qualifying broker also involved in the transaction.

**B. Designation.** All trust accounts shall be designated on the institution's records as "trust account" and include the trade name of the brokerage as registered with the commission.

**C. Electronic transactions.** Online payments, direct deposits and other electronic transactions are permitted as long as each transaction can be tracked on the bank statement and on the property ledger.

**D. Reconciliation.** ~~[Trust accounts must be reconciled monthly.]~~ As defined in Subsection VV. of 16.61.1.7 NMAC of the commission rules, trust account reconciliation must be performed monthly and verified by the qualifying broker.

**E. Property ledgers.** Each trust account transaction shall be assigned to a managed property (e.g. single family home, apartment complex or commercial property).

**F. Number of trust accounts.** A brokerage may have more than one trust account. [16.61.23.8 NMAC - Rp, 16.61.23.8 NMAC, 1-1-2012; A, 1-11-2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE COMMISSION**

This is an amendment to Section 13 of 16.61.24 NMAC, effective January 1, 2017.

**16.61.24.13 MANAGEMENT AGREEMENTS:**

**A.** There shall be a signed written management agreement between the brokerage and the owner for each property managed. The agreement shall be executed prior to acting on behalf of the owner and shall specify the brokerage relationship.

**B.** The agreement shall define the duties and responsibilities

of the brokerage and the owner including, but not limited to, the following:

(1) duties to be provided by the brokerage;

(2) disclosure of all fees to be charged to owner; ~~[and]~~

(3) disclosure of all fees to be charged to tenant that are retained by the brokerage; and

(4) a question asking the owner to disclose the status of any foreclosure or other financial situation that could affect the tenant's occupancy.

**C.** If the property manager is prohibited by law or contract from providing the owner with a given document, such as a tenant's criminal background check or credit report, the property management agreement shall include the following:

(1) a written disclosure to the owners that the property manager is prohibited by law or contract from providing such documents to the owner; or

(2) the owner's written consent that such documents will not be provided.

[16.61.24.13 NMAC - Rp, 16.61.24.13 NMAC, 1-1-2012; A, 1-1-2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE COMMISSION**

This is an amendment to Section 8 of 16.61.32 NMAC, effective January 1, 2017.

**16.61.32.8 ADVERTISEMENTS:**

**A.** All real estate advertising shall be a true and factual representation of the property and real estate services being advertised and the brokerage providing the services and shall not be presented in such a manner that will confuse or mislead the public.

**B.** Every qualifying broker advertising real property for others for sale, purchase, lease,

exchange or rent, including short-term or vacation rentals, or advertising real estate services, shall at a minimum, use in such advertising the trade name and current brokerage office telephone number as registered with the commission. Directional signs are exempt from these requirements. Additional telephone numbers may be used in such advertising.

**C.** Associate brokers, when advertising real property for others for sale, purchase, lease, exchange or rent, or when advertising real estate services, shall include in the advertisement the trade name and the current telephone number as registered with the commission of the brokerage with which they are affiliated. Effective January 1, 2017, the brokerage trade name and telephone number shall be prominently displayed in a type size not less than thirty-three percent of the type size of the associate broker's name, or in the case of a team of associate brokers, the team name.

**D.** A broker advertising to, sell, or exchange real property which the broker owns or partially owns shall indicate within such advertising, including signs, that the broker owns the real property. Disclosure of such ownership must also be made in the listing contract, purchase agreement, or exchange agreement. If an owner-broker engages a third party broker to list the owner-broker's property, the third party broker is not required to make an owner-broker disclosure in advertising and signs, but such disclosure is required in the listing contract, purchase agreement or exchange agreement. A broker advertising to rent or lease real property which the broker owns or partially owns is not required to disclose such ownership in advertising and signs, but is required to make such disclosure in rental or lease agreements.

**E.** When advertising real property owned by a broker and the telephone number of the brokerage is used in the advertisement, the advertisement must also include the trade name of



the brokerage as registered with the commission.

**F.** All advertising must be in compliance with all local, state and federal laws and regulations.

**G.** These requirements apply to all forms of advertising, including but not limited to print, audio and video recordings, computer presentations, online and electronic media. In the event that disclosure of the brokerage name and telephone number as registered with the commission is not practical in electronic displays of limited information, such as thumbnails, text messages, links and tweets of 200 characters or less, such displays are exempt from the disclosure requirement provided such displays are linked to a display that includes all of the required disclosures.

[N, 1-1-2000; 16.61.32.8 NMAC - Rn, 16 NMAC 61.32.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 1-1-2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE COMMISSION**

This is an amendment to Section 9 of 16.61.36 NMAC, effective January 1, 2017.

**16.61.36.9 INVESTIGATIONS:**

In conducting an investigation, the commission shall give the person under investigation the opportunity to answer the complaint made against them in writing and to produce relevant documentary evidence, in accordance with the Uniform Licensing Act. If the person under investigation fails to respond within 10 working days of having been provided with a copy of the complaint and having been informed by the commission in writing that a complaint has been filed against him or her, the investigation may proceed without benefit of that person's response.

**A.** If the investigation reveals that the complaint does not involve a violation of the Real Estate License Law or the commission rules, the complaint will be dismissed by

the commission, and the parties to the complaint will be so advised.

**B.** If the investigation reveals that the complaint does involve a violation of the Real Estate License Law or the commission rules, the commission may refer the complaint to the attorney general's office and request that a notice of contemplated action (NCA) be issued to the respondent, or offer the respondent a pre-NCA settlement with the understanding that if the respondent does not accept the settlement offer, the complaint will be referred to the attorney general's office for the issuance of an NCA.

~~[B:]~~ **C.** Withdrawal of a complaint by a member of the commission, a member of the public, or another broker does not bind the commission to dismiss the complaint. [16.61.36.9 NMAC - Rp, 16 NMAC 61.36.9, 1-1-2002; A, 1-1-2017]

**WORKFORCE SOLUTIONS,  
DEPARTMENT OF**

On November 3, 2016, the Department of Workforce Solutions repealed 11.3.400 NMAC, Tax Administration and replaced it with 11.3.400 NMAC, Tax Administration, effective 11/30/2016.

**WORKFORCE SOLUTIONS,  
DEPARTMENT OF**

**TITLE 11 LABOR AND WORKERS COMPENSATION  
CHAPTER 3 EMPLOYMENT SECURITY  
PART 400 TAX ADMINISTRATION**

**11.3.400.1 ISSUING**  
**AGENCY:** New Mexico Department of Workforce Solutions, Workforce Transition Services Division.  
[11.3.400.1 NMAC - Rp, 11.3.400.1 NMAC, 11/30/2016]  
[Address: Post Office Box 1928, Albuquerque, N.M. 87103]

**11.3.400.2 SCOPE:** General public  
[11.3.400.2 NMAC - Rp, 11.3.400.2 NMAC, 11/30/2016]

**11.3.400.3 STATUTORY AUTHORITY:** Sections 51-1-1 to 51-1-59 NMSA 1978.  
[11.3.400.3 NMAC - Rp, 11.3.400.3 NMAC, 11/30/2016]

**11.3.400.4 DURATION:** Permanent  
[11.3.400.4 NMAC - Rp, 11.3.400.4 NMAC, 11/30/2016]

**11.3.400.5 EFFECTIVE DATE:** November 30, 2016, unless a later date is cited at the end of a section.  
[11.3.400.5 NMAC - Rp, 11.3.400.5 NMAC, 11/30/2016]

**11.3.400.6 OBJECTIVE:** The purpose of these rules is to provide clarification of the Unemployment Compensation Law. These rules assist employers and claimants in better understanding how specific sections of the law are being administered by the department. The rules also assist employers in better compliance and provide understanding of the department's procedure necessary to meet its requirements.  
[11.3.400.6 NMAC - Rp, 11.3.400.6 NMAC, 11/30/2016]

**11.3.400.7 DEFINITIONS:**  
**A.** "Account" means the employer account, identified by an account number, established and maintained for each employer, or employer member of a group account, for the purpose of determining liability for contributions or payments in lieu of contributions and includes a record of all unemployment insurance activity including benefit charge allocations, contributions and wages from which benefits to eligible claimants can be determined.

**B.** "Agency" means any officer, board, commission, or other authority charged with the administration of the unemployment



compensation law of a participating jurisdiction.

**C.** “Alternate base period” means the last four completed quarters immediately preceding the first day of the claimant’s benefit year.

**D.** “Annual payroll” means the total taxable amount of remuneration from an employer for employment during a 12-month period ending on a computation date.

**E.** “Base period” means the first four of the last five completed quarters as provided in Subsection A of Section 51-1-42 NMSA 1978 or the alternate base period.

**F.** “Base-period employers” means the employer of an individual during the individual’s base period.

**G.** “Base-period wages” means the wages of an individual for insured work during the individual’s base period on the basis of which the individual’s benefit rights were determined.

**H.** “Benefit charges” means the dollar amounts allocated or accrued to an employer’s account for unemployment benefits paid to individuals.

**I.** “Benefit payments used to calculate the average benefit cost rate” means all unemployment compensation benefits and state extended benefits paid from the trust fund to claimants with wages from non-reimbursable covered employment.

**J.** “Benefit ratio” means the result determined by dividing an employer’s benefit charges by the employer’s taxable payroll.

**K.** “Common ownership” means that two or more businesses are substantially owned, managed or controlled by the same person or persons.

**L.** “Computation date” means for each calendar year the close of business on June 30 of the preceding calendar year.

**M.** “Contributions” means the tax payments required by Section 51-1-9 NMSA 1978 to be made into the fund by an employer

on account of having individuals performing services for the employer.

**N.** “Contribution rate” means the rate applicable to the tax payments the employer is required to pay into the fund.

**O.** “Employer’s reserve” means the difference between all of the employer’s previous years’ contribution payments and all of the employer’s previous years’ benefit charges, divided by the average of the employer’s annual payrolls for the immediately preceding fiscal years, up to a maximum of three fiscal years.

**P.** “Employing enterprise” means a business activity engaged in by an employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters.

**Q.** “Employment” means services performed by an individual including corporate officers for wages or other remuneration for an employer that has the right, whether utilized or not, to control or direct the individual in the performance of the services at the employer’s place of business which includes all locations where services are performed for the employer under the individual’s contract of service and the individual is not customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of services.

**R.** “Excess claims premium” means the charge in addition to the contribution rate applicable to the employer if an employer’s contribution rate is calculated to be greater than five and four-tenths percent, provided that an employer’s excess claims premium shall not exceed one percent of the employer’s annual payroll.

**S.** “Experience history factor” means the determination based on the employer’s reserve which is the difference between all of the employer’s previous years’ contribution payments and all of the employer’s previous years’ benefit charges, divided by the average of the

employer’s annual payrolls for the immediately preceding fiscal years, to a maximum of three fiscal years.

**T.** “Good cause” means a substantial reason, one that affords a legal excuse, a legally sufficient ground or reason. In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the department may consider any relevant factors including, but not limited to, whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party that prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party’s physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action. However, good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by the claimant’s, failure to keep the department directly and promptly informed of the claimant’s correct email or postal mailing address or the employer’s or employing unit’s failure to keep the department directly and promptly informed of the employer’s or employing unit’s correct email address. A written decision concerning the existence of good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order.

**U.** “Group account” means the account, identified by an account number, established for two or more employers whose application to become liable for payments in lieu of contributions and for sharing the cost of benefits paid by them, has been approved by the department in accordance with Subsection E of

Section 51-1-13 NMSA 1978.

**V.** “Group member” means any employer who has become associated with another or others to form a group account.

**W.** “Interested agency” means the agency of an interested jurisdiction.

**X.** “Interested jurisdiction” means any participating jurisdiction to which an election submitted under this rule is sent for its approval.

**Y.** “Jurisdiction” means any state of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands or, with respect to the federal government, the coverage of any federal unemployment compensation law.

**Z.** “Knowingly” means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.

**AA.** “Participating jurisdiction” means a jurisdiction whose administrative agency has subscribed to the interstate reciprocal coverage arrangement and whose adherence thereto has not terminated.

**BB.** “Predecessor” means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise.

**CC.** “Reserve factor” means the annual factor determined by the department that is necessary to ensure that the unemployment trust fund sustains an adequate reserve.

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

**EE.** “Successor” means any person or entity that acquires an employing enterprise and continues to operate such business entity.

**FF.** “Taxable year”

means the calendar year beginning the first day of January and ending the last day of December.

**GG.** “Total wages for the purpose of computing the reserve ratio and the benefit cost rate” means all wages paid to covered employees for payroll periods ending in a calendar year as reported on the quarterly census of employment and wages.

**HH.** “Trust fund balance” means the trust fund balance on deposit with the U.S. treasury in the state’s account as of June 30 that includes only funds that will be used for payments of benefits to claimants.

**II.** “Violates or attempts to violate” means intent to evade, a misrepresentation or a willful nondisclosure.

**JJ.** “Wages” means all remuneration for services, including commissions, bonuses or unpaid loans to employees and the cash value of all remuneration in any medium other than cash.

[11.3.400.7 NMAC - Rp, 11.3.400.7 NMAC, 11/30/2016]

**11.3.400.8 THROUGH 11.3.400.400: [RESERVED]**

**11.3.400.401 RECORDS OF EMPLOYING UNITS:**

**A.** Each employing unit shall keep true and accurate employment and payroll records which shall include, with reference to the employing unit the name and correct address of such employing unit, and the name and correct address of each branch or division or establishment operated, owned or maintained by such employing unit at different locations in New Mexico, all disbursements for services rendered to the employing unit; and with reference to each and every individual performing services for it, the following information:

(1) the individual’s name, address and social security number;

(2) the dates on which the individual performed services for such employing unit, including beginning and ending dates,

and the state or states in which such services were performed;

(3) the total amount of wages paid to the individual for each separate payroll period, date of payment of said wages, and amounts or remuneration paid to the individual for each separate payroll period other than “wages”, as defined in the Unemployment Compensation Law;

(4) whether, during any payroll period, the individual worked less than full time, and, if so, the hours and dates worked;

(5) the reasons for separation of the individual.

**B.** Each employing unit shall keep, in addition to the records required by Subsection A of 11.3.400.401 NMAC, such records as will establish the ownership and any changes of ownership of the employing unit and the address at which such records are available for inspection or audit by representatives of the department. The records shall show the addresses of the owners of the employing unit or, in the event the employing unit is a corporation or unincorporated organization, such records shall show the addresses of directors, officers, registered agents and any person on whom subpoenas or legal process may be served in New Mexico. In the event the employing unit is a group account, the records shall show the address of the group representative.

**C.** If any remuneration other than money wages is paid to or received by an individual with respect to services performed by his employer, the records shall show the total amount of cash wages and the cash value of any other remuneration.

**D.** All records shall be kept and maintained as to establish clearly the correctness of all reports which the employing unit is required to file with the department and shall be readily accessible to authorized representatives of the department within the geographical boundaries of New Mexico; and in the event such records are not maintained or are not available in New Mexico, the employing unit shall pay to the

department the expenses and costs incurred when a representative of the department is required to go outside the state of New Mexico to inspect or audit such records.

**E.** If an employing unit elects to maintain its payroll records on magnetic media, it shall be the obligation of such employing unit to reproduce such records on a media, readable by the human eye for the purpose of an audit.

**F.** The records prescribed by this rule shall be preserved for a period of at least four years in addition to the current calendar year.

[11.3.400.401 NMAC - Rp,  
11.3.400.401 NMAC, 11/30/2016]

**11.3.400.402 IDENTIFICATION OF EMPLOYEES:**

Each employer shall report an employee's social security account number in making any report required by the department with respect to such employee. If the employee has no such number, the employer shall request the employee show the employer a receipt issued by the social security administration acknowledging that the employee has filed an application for an account number. The receipt shall be retained by the employee and a copy of the receipt shall be retained by the employer. In making any report required by the department with respect to such an employee, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the employee exactly as shown in the receipt.

[11.3.400.402 NMAC - Rp,  
11.3.400.402 NMAC, 11/30/2016]

**11.3.400.403 POSTING OF NOTICES:**

Each employer, including each person or entity which has elected, with the approval of the department, to become an employer, shall post and maintain printed notices to individuals in its employ informing them that they are covered under the provisions of the Unemployment Compensation Law of New Mexico. Such notices shall also include information as to the employees'

rights to benefits and instructions as to the procedure for registering for work and filing claims for benefits. No such notice may be posted or maintained by any person or entity to whom an unemployment insurance account has not been assigned by the department or who has ceased to be an employer. Such notices shall be furnished by the department in such numbers as the department may determine to be necessary and shall be posted and maintained in conspicuous places near the location where the workers' services are performed. The department may furnish other notices, including those containing either information as to employees' rights to benefits or instructions as to the procedure for registering for work and for filing claims for benefits. These notices shall be posted or made available by each employer so that an employee entitled to benefits is informed of his rights to benefits and the means of attaining them.

[11.3.400.403 NMAC - Rp,  
11.3.400.403 NMAC, 11/30/2016]

[11.3.400.403 NMAC - Rp,  
11.3.400.403 NMAC, 11/30/2016]

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

**A. QUARTERLY EMPLOYMENT & WAGE DETAIL REPORT:** An employer's wage and contribution report must be filed electronically on the department's web page on or before the last day of the month immediately following the end of the calendar quarter. If the due date falls on a Saturday, Sunday or legal holiday, the report is due on the next department business day. A wage and contribution report must be filed even though no wages were paid or no contribution or tax is due for the quarter unless the employer's liability has been terminated or suspended pursuant to Section 51-1-18 NMSA 1978. Each wage and contribution report must include only wages, as the term is defined in Subsection T of Section 51-1-42 NMSA 1978, paid during the quarter being reported. Corrections of errors made on previously submitted reports must be electronically submitted as an adjustment on the department's web

page.

**B. SIGNATURE REQUIREMENTS ON WAGE AND CONTRIBUTION REPORTS:** Wage and contribution reports must have an appropriate electronic signature by the owner, partner, corporate officer or a designated representative of the employer. If the employer appoints a designated representative or third party agent who is not an employee, the employer must electronically specify what duties have been assigned to the designated representative or third party agent to perform on the employer's behalf.

**C. WAGE DETAIL REPORTING REQUIREMENTS:** All employers must file their quarterly wage and contribution report electronically, using one of the acceptable formats prescribed by the department. The information provided by the employer as to individual employees shall be on a report form prescribed by the department and shall be entered in the department's records. Reports that contain extraneous information, are incomplete or otherwise submitted or prepared improperly will not be acceptable and will be rejected and become subject to the following penalties:

- (1) if the required report for any calendar quarter is not filed within 10 days after due date, a penalty of fifty dollars (\$50) is to be paid by the employer;
- (2) if the contributions due on such report are not paid in full within 10 days after due date, an additional penalty of five percent but not less than twenty-five dollars (\$25) is to be paid by the employer on any such contributions remaining unpaid;
- (3) if any payment required to be made by the Unemployment Compensation Law (51-1-9 NMSA 1978) is attempted to be made by check which is not paid upon presentment, a penalty of twenty-five dollars (\$25) shall be paid by the employer; and
- (4) in no case shall any penalty as herein

provided or as imposed by this section be assessed for any quarter prior to the six completed calendar quarters immediately preceding the quarter in which the employer shall be determined subject to the Unemployment Compensation Law; and in no case shall a penalty for late reporting or late payment of contribution be imposed if, in the opinion of the secretary, an employer's late reporting, late payment of contribution, or both, was occasioned by circumstances beyond the control of the employer, who in good faith exercised reasonable diligence in an effort to comply with the reporting and contribution payment provisions of the Unemployment Compensation Law.

**D. ESTIMATED WAGE AND CONTRIBUTION REPORTS:** If an employer fails or refuses to make reports in a manner as prescribed in Subsection C of 11.3.401.404 NMAC showing what the employer claims for the amount of wages which it believes to be due, the department's representative shall estimate the amount according to the process described in Subsection E of 11.3.401.404 NMAC. After the estimated wages are calculated, the department shall provide a notice to the employer advising it that the department is estimating the amount of contribution due, provide the estimated amount of contribution due and advise the employer that unless an appeal is initiated within 15 days pursuant to Subsection B of 11.3.500.8 NMAC, the estimated amount shown in the notice shall be the amount of the contribution due for the period stated in the notice. The notice shall also inform the employer that the department may record a lien against the employer's assets. After service of the notice to the employer the department shall cause the warrant of levy and lien to be recorded in same manner as any other warrant issued by the department. If thereafter, the department should receive from the employer reports for the estimated quarters containing different wage amounts, the estimation of the contribution due

shall not be altered, and the employer shall remain liable for the amount assessed.

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

**F. ADMINISTRATIVE ERROR:** At any time, the department may correct any error the department determines has been made even if notifications have been given, estimations made or contributions paid pursuant to the notifications. By way of example and not by limitation, such internal errors may be the result of an estimation that has been made after notice was sent to an incorrect address, sent to a deceased or incapacitated natural employer, estimations otherwise imposed without proper notice to the employer, estimations imposed due to misinformation in a wage claim which precipitated the establishment of an incorrect account, or other incidents of human or computer error or excusable neglect within the department. Estimations may be removed only pursuant to the written authorization of the department. [11.3.400.404 NMAC - Rp, 11.3.400.404 NMAC, 11/30/2016]

**11.3.400.405 QUARTERLY PAYMENT OF CONTRIBUTIONS:** The contributions imposed on any individual or employing unit subject to the Unemployment Compensation Law of New Mexico other than an employer who has elected to become liable for payments in lieu of contributions shall be due and payable for each calendar quarter with respect to wages for employment paid in such quarter without assessment, notice or demand. [11.3.400.405 NMAC - Rp, 11.3.400.405 NMAC, 11/30/2016]

**11.3.400.406 DUE DATE FOR PAYMENT OF CONTRIBUTIONS; NOTICE OF DELINQUENCY; INTEREST AND PENALTIES:**

**A.** All contributions shall become due on and shall be paid on or before the last day of the month immediately following the close of the calendar quarter for which they are payable, and any employer failing to pay any contribution when due shall be delinquent. The department shall serve a notice of delinquency to the employer at the employer's last known address on file with the department. The failure of the department to locate and serve a notice of delinquency, or the failure of the employer to receive any notice of delinquency, shall not affect the employer's liability for any contribution, interest or penalty. Interest and penalties shall be assessed from and after the due date in accordance with the Unemployment Compensation Law of New Mexico.

**B.** Whenever the department finds that the collection of contributions from any particular employer may be jeopardized by delaying the collection thereof until the date otherwise prescribed, the department may advance the due date of such employer's contributions to such date, succeeding the period with respect to which they have accrued, as the department deems advisable, or may in the department's discretion, upon such finding prescribe payment of contributions from such employer monthly rather than quarterly. Monthly contributions shall become due on and shall be paid on or before the 15th day of the month next following the close of the month for which they are payable. Contributions not paid on or before the due date shall become delinquent and interest and penalties shall be assessed from and after the due date.

**C.** The department may, at its discretion, furnish an employer written permission to pay delinquent contributions in installments. Any arrangement for payment in installments must



make provision for the payment of interest on the past due delinquent contribution balances from the due date through the ending date on which such installment is paid. In the event that such employer fails to pay an installment in full when it becomes due, the entire unpaid balance of contributions, interest and penalty will become due. No written permission for the payment of contributions shall preclude collection action pursuant to Section 51-1-36 NMSA 1978 against such employer.

[11.3.400.406 NMAC - Rp,  
11.3.400.406 NMAC, 11/30/2016]

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

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

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

[11.3.400.407 NMAC - Rp,  
11.3.400.407 NMAC, 11/30/2016]

**11.3.400.408 PAYMENT OF CONTRIBUTIONS FOR**

**UNCOMPLETED CALENDAR QUARTERS:**

Contributions shall be payable for any expired part of an uncompleted calendar quarter with respect to wages for employment in such period in any case where an employer, by reason of the removal from the state, discontinuance, sale, or other transfer of the employer's business has ceased to employ individuals in employment. Such contributions shall become due and payable not later than 30 days after the removal, discontinuance, sale or other transfer of the employer's business; provided that where an application for transfer of the employer's account is filed within said 30-day period, it must be accompanied by all quarterly reports and payments as required by 11.3.400.415 NMAC and 11.3.400.416 NMAC. Interest shall be assessed from and after said due date. Penalties shall be assessed in accordance with law.

[11.3.400.408 NMAC - Rp,  
11.3.400.408 NMAC, 11/30/2016]

**11.3.400.409 REPORT TO DETERMINE LIABILITY:**

**A. REGISTRATION:** Each employing unit or employing enterprise engaged in doing business in the state of New Mexico, whether by succession to a business already being operated, by starting a new business, by change in partnership, or otherwise, shall register the business on line. Registration for the business may be filed when the employer has hired its first employee, and:

(1) The employer has paid an individual wages of four hundred fifty (\$450) dollars or more in any calendar quarter in either the current or preceding calendar year or if there was one or more persons (part-time workers included) in employment in each of twenty different calendar weeks during either the current or the preceding calendar year irrespective of whether the same individual was in employment in each day.

(2) In agricultural labor, the employer has paid wages of twenty thousand

(\$20,000) dollars or more to individuals during any calendar quarter in either the current or the preceding calendar year or employed 10 or more individuals in agricultural labor (part-time workers included) in each of 20 different calendar weeks in either the current or preceding calendar year, whether or not the weeks were consecutive and regardless of whether the individuals were employed at the same time.

(3) The employer has paid an individual in domestic service in a private home, local college club or local chapter of a college fraternity or sorority wages of one thousand (\$1,000) dollars in any calendar quarter in the current or preceding calendar year.

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

(1) Every subject employer who shall sell, convey or otherwise dispose of its business, or all or any substantial part of the assets thereof, or who shall cease business for any reason, whether voluntarily or by being in bankruptcy shall, within five days, immediately report such fact, electronically, to the department, stating the name and address of the person, firm or corporation to whom such business, or all or any substantial part of the assets thereof, shall have been sold, conveyed or otherwise transferred.

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

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

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

venturers.

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

[11.3.400.409 NMAC - Rp, 11.3.400.409 NMAC, 11/30/2016]

**11.3.400.410 EXTENSION OF DUE DATE FOR FILING QUARTERLY REPORTS OR PAYMENT OF CONTRIBUTIONS OR PAYMENTS IN LIEU OF CONTRIBUTIONS:**

Upon written application to the department establishing to the department's satisfaction that good cause exists therefore, an extension not to exceed 30 days may be granted with respect to the date when the employer's quarterly wage and contribution report or payment of contributions or payments in lieu of contributions shall become due and be paid. Such application must be filed prior to the regular due date.

[11.3.400.410 NMAC - Rp, 11.3.400.410 NMAC, 11/30/2016]

**11.3.400.411 INTEREST ON UNPAID CONTRIBUTIONS OR PAYMENTS IN LIEU OF CONTRIBUTIONS:**

Contributions or payments in lieu of contributions unpaid on the date on which they are due and payable shall bear interest at the rate of one percent per month from and after such date until payment is made.

[11.3.400.411 NMAC - Rp, 11.3.400.411 NMAC, 11/30/2016]

**11.3.400.412 IMPOSITION OF PENALTIES FOR LATE REPORTS AND LATE PAYMENT OF CONTRIBUTIONS OR PAYMENTS IN LIEU OF CONTRIBUTIONS:**

Penalties shall be imposed and payable in accordance with Subsection C of 11.3.400.404 NMAC for failure to file any quarterly wage and contribution report or failure to pay contributions

or payment in lieu of contributions when due.

[11.3.400.412 NMAC - Rp, 11.3.400.412 NMAC, 11/30/2016]

**11.3.400.413 PROCEDURE FOR RELIEF FROM PENALTIES:**

**A.** An employer aggrieved by the imposition of penalties for late reports or late payment of contributions or payments in lieu of contributions may, file a request with the unemployment division director for relief from the imposition of penalties.

**B.** The unemployment division director shall make a recommendation to the secretary to grant or deny relief from penalties to taxpayers.

[11.3.400.413 NMAC - Rp, 11.3.400.413 NMAC, 11/30/2016]

**11.3.400.414 GROUNDS FOR RELIEF FROM PENALTIES:**

For the purposes of a determination or decision as to relief from the assessment or payment of any penalty for late reporting or late payment of contribution may not be imposed if, in the opinion of the secretary, an employer's late reporting, late payment of contribution, or both, was occasioned by circumstances beyond the control of the employer, who in good faith exercised reasonable diligence in an effort to comply with the reporting and contribution payment provisions of the Unemployment Compensation Law.

[11.3.400.414 NMAC - Rp, 11.3.400.414 NMAC, 11/30/2016]

**11.3.400.415 CONTRIBUTION RATING OF EMPLOYERS:**

This rule shall govern the contribution rating provisions of Section 51-1-11 NMSA 1978.

**A. ELIGIBILITY OF EMPLOYER'S ACCOUNT FOR COMPUTED RATE BASED ON 24 MONTHS EXPERIENCE.** For purposes of the interpretation and application of Subsection F of Section 51-1-11 NMSA 1978, no employer's experience rating account shall be deemed to have been chargeable with

benefits throughout the preceding 24 consecutive calendar month period ending on a computation date as defined in Subsection J of 11.3.400.7 NMAC, unless as of such computation date, the department finds that the employer paid wages in employment during any part of the first calendar quarter of the 24 month period ending on such computation date and that the payment of such wages was not interrupted for eight or more consecutive calendar quarters, or by termination of coverage under Section 51-1-18 NMSA 1978; provided, all quarterly wage and contribution reports received by the department by July 31 following the computation date will be considered in computing the rate for the succeeding calendar year.

**B. CONTRIBUTING EMPLOYERS FOR 24 MONTHS.**

For each calendar year, if, as of the computation date of that year, an employer has been a contributing employer throughout the preceding 24 months, the contribution rate for that employer shall be determined by multiplying the employer's benefit ratio by the reserve factor then multiplying that product by the employer's experience history factor. An employer's benefit ratio is determined by dividing the employer's benefit charges during the immediately preceding fiscal years, up to a maximum of three fiscal years, by the total of the annual payrolls of the same time period, calculated to four decimal places, disregarding any remaining fraction. The reserve factor is the annual numerical factor determined by the department that is necessary to ensure that the unemployment trust fund sustains an adequate reserve. The employer's experience history factor shall be based on the employer's reserve. The employer's reserve shall be calculated as the difference between all of the employer's previous years' contribution payments and all of the employer's previous years' benefit charges, divided by the average of the employer's annual payrolls for the immediately preceding fiscal years, up to a maximum of three fiscal years,

calculated to four decimal places, disregarding any remaining fraction, as set forth in the following table and provided that an employer's contribution rate shall not be less than thirty-three hundredths percent or more than five and four-tenths percent.

If an employer's reserve is:	The employer's experience history factor is:
6.0% and over	0.4000
5.0% - 5.9%	0.5000
4.0% - 4.9%	0.6000
3.0% - 3.9%	0.7000
2.0% - 2.9%	0.8000
1.0% - 1.9%	0.9000
0.0% - 0.9%	0.9500
Under 0.0%	1.0000

**C. CONTRIBUTING EMPLOYERS FOR LESS THAN 24 MONTHS.** For each calendar year, if, as of the computation date of that year, an employer has been a contributing employer for less than 24 months, the contribution rate for that employer shall be the average of the contribution rates for all contributing employers in the employer's industry based on its North American industry classification system (NAICS) sector, but shall not be less than one percent or more than five and four-tenths percent; provided that an individual, type of organization or employing unit that acquires all or part of a employing enterprise that has a rate of contribution less than the average of the contribution rates for all contributing employers in the employer's industry, shall be entitled to the transfer of the contribution rate of the other employing unit to the extent permitted pursuant to Subsection D of 11.3.400.417 NMAC.

**D. EXCESS CLAIMS PREMIUM.** If an employer's contribution rate pursuant to Subsection B of 11.3.400.415 NMAC is calculated to be greater than five and four-tenths percent, notwithstanding the limitation in Subsection B of 11.3.400.415 NMAC, the employer shall be charged an excess claims premium in addition to the contribution rate applicable to the employer; provided that an employer's excess claims premium shall not exceed one percent of the employer's annual payroll. The excess claims premium shall be determined by multiplying the employer's excess claims rate by the employer's annual payroll. An employer's excess claims rate shall be determined by multiplying the difference of the employer's contribution rate, notwithstanding the limitation in Subsection B of 11.3.400.415 NMAC, less five and four-tenths percent by ten percent.

**E. NOTIFICATION OF ANNUAL RATE CONTRIBUTIONS.** The department shall promptly notify each employer of the employer's rate of contributions and excess claims premium as determined for any calendar year on or before January 31st of the year the rate is effective. Such notification shall include the amount determined as the employer's annual payroll, the total of all of the employer's contributions paid on the employer's behalf for all the past years, total benefits charged to the employer for all such years and the employer's experience history factor. For an employer that has been a contributing employer for less than 24 months, the contribution rate for that employer shall be the average of the contribution rates for all contributing employers in the employer's industry as set forth in Subsection C of 11.3.400.415 NMAC. Such determination shall become conclusive and binding upon the employer unless, within 30 days after the service of notice thereof to the employer's last known address on file with the department, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be promptly notified of the decision on the employer's application for review and redetermination, which shall become final unless, within 15 days after the service of notice thereof to the employer's last known address on file with the department, further appeal is initiated pursuant to Subsection B of 11.3.500.8 NMAC. The employer shall not have standing, in any appeal involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer of any benefits paid in accordance with a decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to the decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined.

**F. NOTIFICATION OF QUARTERLY CHARGES.** The department shall provide each contributing employer a written determination of benefits chargeable to the employer within 90 days of the end of each calendar quarter. Such determination shall become conclusive and binding upon the employer unless, within 30 days after the service of the determination to the employer's last known address on file with the department, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be promptly notified of the decision on the employer's application for review and redetermination, which shall become final unless, within 15 days after the service of notice thereof to the employer's last known address on file with the department, further appeal is initiated pursuant to Subsection B of 11.3.500.8 NMAC. The employer shall not have

standing, in any appeal involving the employer's quarterly rate of contributions or contribution liability, to contest the chargeability to the employer of any benefits paid in accordance with a decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to the decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined.

**G. CORRECTION OF ERRORS.** The secretary shall correct any error in the determination of an employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have the same rights to review and redetermination as provided in Subsection E of 11.3.400.415 NMAC. [11.3.400.415 NMAC - Rp, 11.3.400.415 NMAC, 11/30/2016]

**11.3.400.416 BUSINESS TRANSFERS DEFINED;**

**EFFECTIVE DATE:** It is deemed that two or more employing units are parties to or the subject of a business transfer transaction whenever one such unit acquires an employing enterprise from another such unit, either by merger, consolidation or other form of reorganization; by a contractual or other form of voluntary sale or transfer; or by a transfer by order of court. There is a transfer and an acquisition in this sense, not only where there is an outright sale between separate individuals or concerns, but also where individuals form partnerships or corporations; partnerships form into corporations; new partnerships are formed by the addition or withdrawal of members; a

corporation officer or partner acquires the enterprise from the corporation or the partnership; or in any manner that a change is made in the identity or organization of the employing unit. The effective date of such an acquisition and transfer is the date the department determines that the change in ownership or possession and operation is actually consummated as evidenced by a bill of sale, deed to real estate and buildings, a transfer by any other form of written transfer agreement or legally valid instrument, transfer by court order, or by physical or constructive possession. [11.3.400.416 NMAC - Rp, 11.3.400.416 NMAC, 11/30/2016]

**11.3.400.417 PURCHASE OR SALE, EXPERIENCE HISTORY TRANSFERS:**

**A. TOTAL EXPERIENCE HISTORY TRANSFERS:**

(1) **ACQUISITION OF ALL EMPLOYING ENTERPRISES:** 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, interest and penalties.

(2) **NOTIFICATION BY SUCCESSOR:** A successor who has acquired all of the predecessor's employing enterprises shall notify the department of such acquisition by completing an electronic notification for a total experience history transfer on the department's webpage 60

days 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. Information with respect to the predecessor and successor employing enterprises necessary to a department determination to approve or disapprove a total history transfer shall be given as prescribed by the electronic notification on the department's webpage or as requested by the department. Upon completion of the 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) All contributions, interest and penalties due from the predecessor employer must be paid.

(b) If the successor employer fails to complete an electronic notification to the department 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 of the experience history and applicable rate of contribution retroactively to the date of the acquisition and the successor shall pay a penalty of fifty (\$50) dollars.

(c) An electronic notification for a history transfer must be completed on line during the calendar year of the transaction transferring the employing enterprises. Upon a showing of good cause, the department may extend the due date for the completion of the endorsed notification and quarterly wage and contribution reports for an additional 30 days provided that the request for an extension of time is filed in writing on or before the regular due date.

(3) **LIQUIDATION WAGES:** Any wages reported by the predecessor and contributions paid by the predecessor



for the cessation of the predecessor's business after the acquisition date of the business by the successor shall be credited to the successor's account for experience rating purposes.

(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 11.3.500.8 NMAC governing appeals of contribution or tax determinations. Failure to timely appeal a denial of the transfer of a favorable experience transfer without good cause as defined in 11.3.400.7 NMAC 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 retain its account number and a rate in accordance with the provisions of Section 51-1-11 NMSA 1978.

**B. PARTIAL EXPERIENCE HISTORY TRANSFERS:**

(1)

**NOTIFICATION BY SUCCESSOR AND SUBMISSION OF JOINT NOTIFICATION FORM:** The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of the contribution with liability applicable to each enterprise transferred, has maintained and

preserved payroll records that, together with records of contribution liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or the secretary's designee.

(2)

The successor shall notify the department of such acquisition by completing an electronic notification for a partial experience history transfer on the department's webpage 60 days 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. The notification shall be endorsed by the predecessor. The notification shall provide a schedule of the name and social security number of and the wages paid to and the contributions paid for all employees for the three and one-half year period preceding the computation date through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The notification shall be supported by the predecessor's permanent employment records, which shall be available for audit by the department. The notification shall be reviewed by the department and, upon approval the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation, by the predecessor's entire payroll. Upon a showing of good cause as defined in 11.3.400.7 NMAC, the department may extend the due date for the filing of the endorsed notification and quarterly wage and contribution reports for an additional 30 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 to approve or disapprove a partial history transfer shall be given as prescribed by the notification or as requested by the department.

(3)

**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 11.3.500.8 NMAC governing appeals of contribution or tax determinations. Failure to timely appeal a denial of the partial history transfer without good cause as defined in 11.3.400.7 NMAC will deprive the successor business of the opportunity for the transfer of the partial history experience.

**C. COMMON OWNERSHIP EXPERIENCE HISTORY TRANSFER:**

(1)

If the transaction involves only a merger, consolidation or other form of reorganization without a substantial change in the ownership and controlling interest of the business entity, as determined by the secretary, and both the predecessor and the successor are under common ownership, a party to a merger, consolidation or other form of reorganization shall not be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization.

(2)

The experience history attributable to the transferred business shall also be transferred to and combined with the experience history attributable to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer.

**D. DETERMINATION OF CONTRIBUTION RATES AFTER TOTAL OR PARTIAL EXPERIENCE HISTORY TRANSFER:**

(1) If, on

the effective date of the transfer, the successor employer has a contribution rating for the calendar year there will be no change in rate determined for the successor's account as a result of the transfer.

(2) If, on the effective date of the transfer, the successor employer does not have a contribution rating for the calendar year, the rate shall be computed from the successor's prior history combined with the acquired total or partial history of the predecessor.

(3) If, on the effective date of the transfer, the successor employer has not been a contributing employer throughout the preceding 24 months, the contribution rate for the successor employer shall be:

(a) the rate of the predecessor or combined predecessors 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 in the case of a partial experience transfer.

(4) If, on the effective date of the transfer, the successor employer has not been a contributing employer throughout the preceding 24 months, and the successor employer acquires all or part of a employing enterprise that has a rate of contribution less than the average of the contribution rates for all contributing employers in the employer's industry, shall be entitled to the transfer of the contribution rate of the predecessor employing enterprise.

(5) 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 in the case of a partial experience transfer.

**E. CHARGING OF BENEFITS AFTER TRANSFER:** Benefits paid subsequent to the effective date of a partial, total or common ownership experience history transfer shall be charged to

the successor's account if the base period wages were transferred to the successor.

[11.3.400.417 NMAC - Rp, 11.3.400.417 NMAC, 11/30/2016]

**11.3.400.418 TIME FOR CORRECTION OF ERRONEOUS RATE DETERMINATIONS:**

**A.** Where an employer's rate of contribution for any calendar year has been incorrectly determined, the error or omission shall be corrected and the rate adjusted accordingly by the department on its own initiative with notification to the employer at its last known address, within the following periods:

(1) on or before June 30 of the calendar year in which the erroneous rate determination was issued if the error was in the determination of benefits chargeable to the employer's experience rating account;

(2) at any time within the calendar year in which the erroneous rate determination was issued if the error or omission was due to the employer's misrepresentation or nondisclosure of a material fact;

(3) at any time during the calendar year in which the erroneous rate determination was issued and any time within the next calendar year if the error or omission was due wholly or in part to a rate computation.

**B.** Upon issuance of a corrected rate of contribution, the employer shall have the right to a review and redetermination as provided in Subsection L of Section 51-1-11 NMSA 1978.

[11.3.400.418 NMAC - Rp, 11.3.400.418 NMAC, 11/30/2016]

**11.3.400.419 CHARGING OF BENEFITS:** Whenever a claimant files a new claim for benefits and is found by the department to have sufficient base period wages to entitle the claimant to benefits if otherwise eligible, the department shall issue a "notice to employer of claim determination" on a form prescribed

by the department, to each base period employer unless that employer was also the claimant's last employer and has been sent notice pursuant to 11.3.300.308 NMAC. The notice to each employer will give the name and social security account number of the claimant, the claim date and the amount of wages paid by that employer in each quarter of the base period.

**A. NOTICE TO EMPLOYER OF CLAIM DETERMINATION -- RESPONSE REQUIRED:** Whenever a claimant files an initial claim for benefits or an additional claim, the department shall immediately transmit to the claimant's last known employer, at the address of the employer as registered with the department, if so registered, and, if not registered, to the address provided by the claimant, a dated notice of the filing of the claim and a fact-finding questionnaire. The employer shall provide the department with full and complete information in response to the inquiry. The employer shall transmit a response directly to the department within 10 calendar days from the date of the transmittal of the notice of claim. Unless excused by the department, the response must be an electronic transmittal.

**B. PRIOR DETERMINATION OF ELIGIBILITY FINAL:** If a prior, final determination has been made by the department that the claimant did not voluntarily leave claimant's employment with the employer for a cause not attributable to the employer, or that the claimant was not discharged for misconduct connected with claimant's work, or that the employer is no longer an interested party to proceedings on the claim because of failure to respond within the time allowed on the "notice to employer of claim for benefits" issued at the time of the claimant's separation, that determination will remain final and binding for purposes of making a determination in response to the "notice to employer of claim determination" on the chargeability of the employer's account for benefits payable to the claimant.

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

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

**D. CONCURRENT EMPLOYMENT WITH TWO OR MORE EMPLOYERS:** Where an individual works concurrently for two or more employers and becomes unemployed from one or more, but one or more of the concurrent employers continues to furnish that individual substantially the same amount of work, benefits shall not be charged to that employer or those employers who continue to furnish the claimant substantially the same amount of employment during such period of unemployment as long as the individual is receiving benefits based on base period earnings, in whole or in part, from the former concurrent employers. Those employers who continue to furnish the claimant work must respond to the "notice to employer of claim determination" within 10 days from the date shown on the notice setting forth the number of hours per week the claimant worked during the current and two preceding quarters.

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

**F. NOTICE OF DEPARTMENT'S**

**DETERMINATION:** Upon receipt of the employer's response to the "notice to employer of claim determination" within 10 days, the department shall make a determination with respect to relief from the charging of benefits, and shall promptly notify the employer if it is determined that the employer's account will be charged for benefits paid. The determination shall become final unless the employer files an application for appeal, setting forth the reasons therefore, within 15 days from the date shown on the determination.

**G. LIMITATION ON APPEALS:** Notwithstanding the provisions of Subsection F of 11.3.400.419 NMAC, the employer shall not have standing, in any appeal to contest the chargeability to the employer of any benefits paid in accordance with a decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to the decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined.

[11.3.400.419 NMAC - Rp, 11.3.400.419 NMAC, 11/30/2016]

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

**A.** This rule shall govern the department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as "the arrangement".

**B.** Submission and approval of coverage elections under the arrangement.

- (1) Any employing unit may file an election, on a form provided by the division, to cover under the law of a single participating jurisdiction all of the services performed for the employer by any individual who customarily

works for the employer in more than one participating jurisdiction.

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

- (a) any part of the individual's services is performed;
- (b) the individual resides; or
- (c) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(3) The agency of the elected jurisdiction shall initially approve or disapprove the election.

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

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

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

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

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

(9) In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.

C. Effective period of elections.

(1) Commencement.

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

(b) If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(2) Termination.

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

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

(c) Whenever an election hereunder

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

D. Reports and notices by the electing unit.

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

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

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

E. Approval of reciprocal coverage elections. The authority to approve or disapprove reciprocal coverage elections in accordance with this rule shall be exercised by the secretary or the secretary's designee.

[11.3.400.420 NMAC - Rp, 11.3.400.420 NMAC, 11/30/2016]

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

A. CHARGING OF BENEFITS: Any benefits or any portion thereof, paid on the

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

**B. DUE DATES OF WAGE AND CONTRIBUTION REPORTS AND PAYMENTS IN LIEU OF CONTRIBUTIONS:**

Each employer who has elected to become liable for payments in lieu of contributions shall submit a wage and contribution report electronically to the department each calendar quarter with respect to wages paid in such quarter. Said wage and contribution report shall be submitted on or before the end of the month following the close of the calendar quarter to which the wage and contribution report applies. The wages so reported shall not be used for computation of rates as provided for employers subject to contributions.

**C. SUBMISSION OF WAGE AND CONTRIBUTION REPORTS FOR GROUP ACCOUNTS:**

The quarterly wage and contribution report required of each group member of a group account shall be transmitted electronically by the group representative. The payments in lieu of contributions required of each group member shall be transmitted by the group representative, together with all amounts owing by all the group members, within 30 days after transmission by the department of a statement showing the payments in lieu of contributions owing. Each report and any payments required of each employer or group member not transmitted within the time specified will be delinquent and penalties



and interest as provided by the Unemployment Compensation Law shall be assessed from and after the delinquent date.

**D. EXTENSION OF TIME TO SUBMIT REPORTS:** Upon written application, transmitted prior to the due date, by an employer, group member, or group account representative establishing to the satisfaction of the department that good cause exists, excluding any dilatory act, negligence or lack of funds on the part of the employer, an extension, not to exceed 30 days, may be granted by the department with respect to the due date of the wage and contribution report or payment.

**E. TERMINATION OF RIGHT TO MAKE PAYMENTS IN LIEU OF CONTRIBUTIONS:** If, after due notice, any employer who has elected to become liable for payments in lieu of contributions remains delinquent for payments or interest or penalty, the department shall transmit a determination to said employer of pending termination of the organization's election to make payments in lieu of contributions for the next calendar year. If payment is not forthcoming within 30 days from the date of said notice, the department shall transmit a final determination to such employer that election has been terminated for the next calendar year.

**F. REQUIREMENTS FOR SURETY BOND:** At the discretion of the department, termination of an organization's election to make payments in lieu of contributions shall continue effective for any succeeding calendar year unless the employer provides a surety bond or other surety acceptable to the department and underwritten by a corporate surety authorized to transact business in New Mexico; or an agreement of cash collateral assignment, executed with a state or national bank or federally insured savings association authorized to do business in New Mexico, as trustee, in a form prescribed by the department. Interest, if any, accumulating on the cash collateral assignment shall accrue to the employer. Said surety or cash bond shall be in the amount

of not more than two and seven tenths percent of the taxable wages paid for employment subject to the Unemployment Compensation Law by the employer in the four quarter period immediately preceding the date of notice of termination was issued and shall be released by the department only when no further delinquency for payment in lieu of contributions of the employer exists.

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

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

**H. ADDITIONS OF GROUP MEMBERS:** Any nonprofit organization liable for payments in lieu of contributions which becomes subject to the Unemployment

Compensation Law on or after January 1, 1972, may, with the approval of the department, be added to an existing group account if the department receives an application not later than 30 days prior to the beginning of the calendar year for which the application is to be effective.

**I. ACQUISITION OF GROUP MEMBERS:** Any nonprofit organization liable for payments in lieu of contributions which acquired the organization, trade or business, or substantially all the assets thereof, of a group member who because of the transaction no longer employs workers in employment will be a group member of the group account to which the predecessor belonged provided the department receives an application as called for in Subsection H of 11.3.400.421 NMAC not later than 30 days after the date of the transaction.

**J. WITHDRAWAL OF GROUP MEMBERS:** A member may withdraw or be removed from a group account only at the end of a calendar year provided written application for withdrawal or removal is received by the department not later than 30 days prior to the first day of the following calendar year. Such withdrawal or removal of a member from a group account shall not be effective until approved by the department. No group member may withdraw or be removed from a group account unless it has been a member of such group account for at least two calendar years as of the effective date of the withdrawal or removal; except that a member may withdraw or be removed from a group at any time if the group member:

- (1) has permanently ceased to employ workers in employment; or
- (2) has ceased to be an employer exempt under Section 3306 (c) (8) of the federal Unemployment Tax Act; or
- (3) has, in accordance with Paragraph (2) of Subsection A of Section 51-1-13 NMSA 1978, terminated its election to be liable for payments in lieu of

contributions; or

(4) has for a period of two successive quarters been delinquent in its payment of assessments under the group plan for benefits chargeable to its account. [11.3.400.421 NMAC - Rp, 11.3.400.421 NMAC, 11/30/2016]

**11.3.400.422 INDIAN TRIBES: A. ELECTION OF TREATMENT:**

(1) An Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe (“electing entity”) shall make its election to be a contributing employer or reimbursable employer on or before December 1, for previously registered Indian tribes, and 30 days after subjectivity is determined for newly subject Indian tribes, except for the year 2001, Indian tribes may make the election any time between July 1, 2001, and December 1, 2001. If the electing entity fails to make an affirmative election in writing in the manner provided in 11.3.400.422 NMAC, the electing entity shall be deemed to have elected status as a contributing employer.

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

**B. MASTER CONTRIBUTORY ACCOUNTS:**

(1) Effective July 1, 2001, master contributory accounts for the Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe previously established with the department are discontinued. If the Indian tribe, tribal unit or a subdivision, subsidiary or business

enterprise wholly owned by a tribe elects to be a reimbursable employer, it may apply for group account treatment as provided in 11.3.400.421 NMAC.

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

**C. ASSIGNMENT OF ACCOUNT NUMBERS:**

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

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

[11.3.400.422 NMAC - Rp, 11.3.400.422 NMAC, 11/30/2016]

**11.3.400.423 PARTNERSHIPS:**

A separate employer account number and experience rating shall be assigned to each partnership of a group of two or more partnerships composed of identical partners with identical interests, if all of the following conditions are met:

- A. each separate partnership joins in a request that individual reporting is appropriate;
- B. a separate written partnership agreement exists for each partnership;
- C. the accounting records for each partnership are separately maintained; and
- D. there is no commingling of the employment of the two or more partnerships.

[11.3.400.423 NMAC - Rp,

11.3.400.423 NMAC, 11/30/2016]

**11.3.400.424 CHARGING OF BENEFITS PAID DUE TO FEDERAL DISASTER:**

Each contributing employer’s account shall not be subject to potential pro rata benefit charges during the period wherein a claimant’s eligibility for unemployment benefits is directly attributable to unavailability of work due to a federally certified disaster which results in the suspension or termination of operations by such employer. Any nonprofit organization or governmental unit electing to make payments in lieu of contributions shall not be relieved of charges for benefits paid to an individual whose eligibility for unemployment benefits is directly attributable to unavailability of work due to a federally certified disaster.

[11.3.400.424 NMAC - Rp, 11.3.400.424 NMAC, 11/30/2016]

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

**A. Finality of decision:** The department shall give written notice to any employer, employing unit or claimant of every determination made by the department which could alter or affect the employer’s or employing unit’s tax liability or the claimant’s monetary eligibility under the law. Such determination shall be deemed to be the final decision of the department, unless an appeal is initiated pursuant to Subsection B of 11.3.500.8 NMAC.

**B. Stay pending appeal:** Legal action, including the issuance of 10 day notices and warrants of lien and levy, shall not be taken on accounts that have an appeal pending within the department.

[11.3.400.425 NMAC - Rp, 11.3.400.425 NMAC, 11/30/2016]

**11.3.400.426 APPLICATION OF UNDERPAYMENTS:**

In the event an employing unit fails to submit payment in an amount sufficient to satisfy the total amount of outstanding debt for any current or past-due contributions, interest or penalty, the amount of the

underpayment shall be applied in the following order: first, to any contributions and excess claims premiums due, second, to any interest due and third, to any penalties due. [11.3.400.426 NMAC - Rp, 11.3.400.426 NMAC, 11/30/2016]

**11.3.400.427 ADEQUATE RESERVE DETERMINATION:**

The department shall ensure that the fund sustains an adequate reserve.

**A.** An adequate reserve shall be determined to mean that the funds in the fund available for benefits equal the total amount of funds needed to pay between 18 and 24 months of benefits at the average of the five highest years of benefits paid in the last 25 years.

**B.** For the purpose of sustaining an adequate reserve, the department shall determine a reserve factor to be used when calculating an employer’s contribution rate based upon a formula that will set the reserve factor in proportion to the difference between the amount of funds available for benefits in the fund, as of the computation date, and the adequate reserve, within the following guidelines:

- (1) 1.0000 if, as of the computation date, there is an adequate reserve;
- (2) between 0.5000 and 0.9999 if, as of the computation date, there is greater than an adequate reserve; and
- (3) between 1.0001 and 4.0000 if, as of the computation date, there is less than an adequate reserve.

**C.** The New Mexico adequate reserve multiple (NMARM) is a measure of fund adequacy used in determining the reserve factor. The NMARM is equal to the reserve ratio divided by the average benefit cost rate. The reserve ratio is the trust fund balance, as of June 30, divided by calendar year total wages. The average benefit cost rate is the average of the state’s five highest benefit cost rates, during the preceding 25 years. The benefit cost rate is calendar year benefit payments divided by the sum of total wages for the same period.

**D.** The formula for setting the reserve factor shall be determined as follows:

- (1) If  $NMARM \leq 0.5$  then reserve factor = 4.
  - (2) If  $0.5 < NMARM < 1.5$  then reserve factor =  $11/2 - 3 \times NMAR$
  - (3) If  $1.5 \leq NMARM \leq 2$  then reserve factor = 1.
  - (4) If  $2 < NMARM < 3.150$  then reserve factor =  $43/23 - 10/23 \times NMARM$ .
  - (5) If  $NMARM \geq 3.150$  then reserve factor = 0.5.
- [11.3.400.427 NMAC - Rp, 11.3.400.427 NMAC, 11/30/2016]

**HISTORY OF 11.3.400 NMAC:** Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives Under ESD 74-1, Unemployment Compensation Law of New Mexico and Rules and Regulations of the Commission, filed 10-1-74; Regulation 401, Records of Employing Units, amended and filed 5-04-90; Regulation 402, Identification of Employees, amended and filed 5-25-90; Regulation 403, Posting of Notices, amended and filed 5-25-90; Regulation 404, Tax Reports by Employing Units, amended and filed 5-25-90, Regulation 405, Quarterly Payment of Contributions, amended and filed 5-25-90; Regulation 406, Due Date for Payment of Contributions Notice of Delinquency; Interest and Penalties, amended and filed 5-25-90; Regulation 407, First Payment of Contributions for New Employers and Employers Electing Coverage, amended and filed 6-14-90; Regulation 408, Payment of Contributions for Uncompleted Calendar Quarters amended and filed 6-14-90; Regulation 409, Report to Determine Liability, amended and filed 6-14-90; Regulation 409A, Report of Change in Status, amended and filed 6-14-90; Regulation 410, Extension of Due Date for Filing Quarterly Reports or Payment of

Contributions or Payments in Lieu of Contributions, amended and filed 6-14-90; Regulation 411, Interest on Unpaid Contributions or Payments in Lieu of Contributions, amended and filed 6-14-90; Regulation 412, Imposition of Penalties for Late Reports and Late Payment of Contributions or Payments in lieu of Contributions, amended and filed 8-17-90; Regulation 413, Procedure for Relief from Penalties, amended and filed 8-17-90; Regulation 414, Grounds for Relief from Penalties, amended and filed 8-17-90; Regulation 415, Experience Rating of Employers, amended and filed 9-20-94; Regulation 416, Business Transfers Defined; Effective Date, amended and filed 8-17-90; Regulation 417, Experience History Transfers, amended and filed 8-17-90; Regulation 418, Time for Correction of Erroneous Rate Determinations, amended and filed 10-9-90; Regulation 420, Employer Elections to Cover Multi-State Workers, amended and filed 10-9-90; Regulation 423, Partnerships, filed 10-9-90; Charging of Benefits Paid Due to Federal Disaster, filed 2-14-01.

**History of Repealed Material:** 11.3.400 NMAC - Tax Administration, filed 7-15-1998, repealed effective 11-30-2016.

**End Of Adopted Rules**

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## Submittal Deadlines and Publication Dates

### Volume XXVII, Issues 1-24

Volume XXVII	Submittal Deadline	Publication Date
Issue 1	January 4	January 15
Issue 2	January 19	January 29
Issue 3	February 1	February 12
Issue 4	February 15	February 29
Issue 5	March 1	March 15
Issue 6	March 16	March 31
Issue 7	April 1	April 15
Issue 8	April 18	April 30
Issue 9	May 2	May 13
Issue 10	May 16	May 31
Issue 11	June 1	June 15
Issue 12	June 16	June 30
Issue 13	July 1	July 15
Issue 14	July 18	July 29
Issue 15	August 1	August 15
Issue 16	August 16	August 31
Issue 17	September 1	September 15
Issue 18	September 16	September 30
Issue 19	October 3	October 14
Issue 20	October 17	October 31
Issue 21	November 1	November 15
Issue 22	November 16	November 30
Issue 24	December 16	December 30

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Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	April 27	May 16
Issue 10	May 18	May 30
Issue 11	June 1	June 13
Issue 12	June 15	June 27
Issue 13	June 29	July 11
Issue 14	July 13	July 25
Issue 15	July 27	August 15
Issue 16	August 17	August 29
Issue 17	August 31	September 12
Issue 18	September 14	September 26
Issue 19	September 28	October 17
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