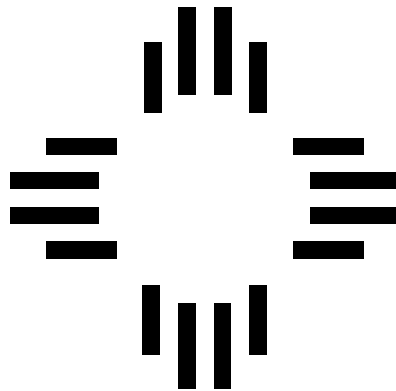


New Mexico Register

Volume XIII, Issue Number 4
February 28, 2002



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

The Commission of Public Records
Administrative Law Division
2002

COPYRIGHT © 2002
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XIII, Number 4

February 28, 2002

Table of Contents

Notices of Rulemaking and Proposed Rules

Construction Industries Commission	
Notice of Regular Meeting	177
Dental Health Care, Board of	
Legal Notice	177
Environment Department	
Notice of Comments For Intended Use Plan	177
Public Records, Commission of	
Notice of Regular Meeting	177
Public Regulation Commission	
Notice of Closing of Docket and Vacating of Hearing on Proposed Rulemaking and Procedural	
Order - Docket No. 02-010-IN	178
Notice of Closing of Docket and Vacating of Hearing on Proposed Rulemaking and Procedural	
Order - Docket No. 01-313-IN	178

Adopted Rules and Regulations

Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Finance, Board of			
* N	2.61.6 NMAC	Bond Project Disbursements	179
Game and Fish, Department of			
* A	19.30.6 NMAC	Predator Management	181
* A	19.31.8 NMAC	Big Game	181
Land Office, State			
R	19 NMAC 3.SLO 10	Relating to Easements and Rights of Way	182
* N	19.2.10 NMAC	Easements and Rights of Way	182
* Rn	19.2.21 NMAC	Land Exchanges	187
Psychologist Examiners, Board of			
* A	16.22.5 NMAC	Application Procedures and Requirements for Licensure as a Psychologist	187
Public Regulation Commission			
* A	13.14.1 NMAC	General Provisions	187
* A	13.14.2 NMAC	Licensing and Reporting Requirements	187
* A	13.14.6 NMAC	Owner’s Leasehold Owner’s and Contract Purchaser’s Policies	188

*	A	13.14.7 NMAC	Loan, Leasehold Loan and Construction Loan Policies	188
*	A	13.14.8 NMAC	Endorsements	188
*	A	13.14.9 NMAC	General Rate Provisions	189
*	A	13.14.10 NMAC	Endorsement Rates	190
*	A	13.14.16 NMAC	Agent's Experience Report	190
*	A	13.14.18 NMAC	Forms	192

Regulation and Licensing Department

Construction Industries Division

*	A	14.7.2 NMAC	1997 New Mexico Building Code	195
*	Rn/A	19.15.40 NMAC	New Mexico Liquefied Petroleum Gas Standards	202

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

The New Mexico Register
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00, except the first subscription from each New Mexico state agency may be ordered at \$85.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO CONSTRUCTION INDUSTRIES COMMISSION

Notice is hereby given that the Construction Industries Commission will hold a regular meeting on Friday, March 15, 2002 at 9:30 a.m., at the Socorro City Council Chambers, 111 School of Mines Road, NW, Socorro New Mexico. The Commission will consider pending agenda items and discuss such other business as may require formal action by the Commission. Anyone who requires special accommodations is requested to notify the Commission at 725 St. Michael's Drive, Santa Fe, New Mexico 87501 of such needs at least ten days prior to the meeting.

NEW MEXICO BOARD OF DENTAL HEALTH CARE

Legal Notice

Notice is hereby given that the New Mexico Board of Dental Health Care will convene a Rule Hearing to renumber to conform to the current NMAC requirements and amend:

Title 16, Chapter 5, Part 5

Dentists, Fees

Title 16, Chapter 5, Part 15

Dentists, Anesthesia
Administration

Title 16, Chapter 5, Part 33

Dental Assistants,
Requirements for
Certification

Title 16, Chapter 5, Part 39

Dental Assistants, Practice &
Supervision

This Hearing will be held at the St. Joseph's Northeast Heights Hospital, 4801 Montgomery NE, Conference Room A, Albuquerque, NM, Friday, April 12, 2002 at 8:30 a.m.

Following the Rule Hearing the Dental Hygienists Committee will convene a regular. The New Mexico Board of Dental Health Care will convene a regular meeting following the Dental Hygienists Committee Meeting on April 12, 2002, beginning with Executive Session. The public portion of the meeting is anticipated to begin about 11:00 and end by 5:00 p.m.

Copies of the proposed rules are available on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-7125.

Anyone wishing to present their views on

the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by March 29, 2002 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

NEW MEXICO ENVIRONMENT DEPARTMENT *NOTICE OF COMMENTS FOR INTENDED USE PLAN*

The New Mexico Environment Department is accepting public comment regarding:

1) Placement of projects to priority list for Federal Fiscal years 2001-2006 for the Clean Water State Revolving Loan Fund Program also known as the Wastewater Facility Construction Loan Program.

2) Adoption of the New Mexico Clean Water State Revolving Loan Fund Program Intended Use Plan for Federal Fiscal year 2002, October 2001 through September 2002. The New Mexico Wastewater Facility Construction Loan Act, as amended, provides low interest loan funds for the planning, design and construction of wastewater facilities to prevent or abate water pollution. Any municipality, county, Indian Tribe or sanitation district may apply for a loan to the New Mexico Environment Department, Construction Programs Bureau, as agent for the Water Quality Control Commission, which is the designated water pollution control agency within New Mexico.

In order to receive a CWSRF loan, an applicant's project must be on the approved priority list. The purpose of the Intended Use Plan is to identify proposed annual intended uses of the funding amounts available to the

wastewater loan program. Approximately \$24 million in federal and state funds are currently available for loans.

Haywood R. Martin
State of New Mexico
Environment Department
Construction Programs Bureau
P.O. Box 26110
Santa Fe, NM 87502

Questions regarding the Intended Use Plan or Priority List may be directed to Ms. Ramona Rael, Financial Administrator at (505) 827-2808 or Ms. Valerie Trujillo, Assistant Program Administrator at (505) 827-2958. A copy of the priority list may also be obtained by calling the above referenced number.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, March 5, 2002, at 9:00 A.M. The meeting will be held at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Kathy Mattison at 476-7902 by February 26, 2002. Public documents including the agenda and minutes can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The following record retention and disposition schedules will be presented to the Commission of Public Records for consideration and adoption:

Repeal

- 1 NMAC 3.2.93.630, ERRDS, Human Services Department
- 1 NMAC 3.2.93.669, ERRDS, Health Policy Commission
- 1 NMAC 3.2.92.230, JRRDS, Judicial Records Retention and Disposition Schedules, District Court
- 1 NMAC 3.2.94.950, LGRRDS, New Mexico Municipal Courts

New

- 1.18.630 NMAC, ERRDS, Human Services Department
- 1.18.669 NMAC, ERRDS, Health Policy Commission
- 1.17.230 NMAC, JRRDS, Judicial Records Retention and Disposition Schedules, District Court
- 1.19.9 NMAC, LGRRDS, New Mexico Municipal Courts

Amend

- 1.15.4 NMAC, GRRDS, General Financial
- 1.18.370 NMAC, ERRDS, Secretary of State
- 1.18.430 NMAC, ERRDS, Public Regulation Commission
- 1.18.665 NMAC, ERRDS, Department of Health
- 1.14.2.10 NMAC, Microphotography
- 1.13.2 NMAC, Fee Schedule

Renumber and Amend

<u>New NMAC</u>	<u>Old NMAC</u>	<u>Part Name</u>
1.18.449 NMAC	1 NMAC 3.2.93.449	ERRDS, Board of Nursing
1.18.631 NMAC	1 NMAC 3.2.93.631	ERRDS, Department of Labor

Renumber (adoption of new structure, style, and format):

<u>New NMAC</u>	<u>Old NMAC</u>	<u>Part Name</u>
1.15.9 NMAC	1 NMAC 3.2.90.41	GRRDS, General Hospital and Medical Center Records
1.18.350 NMAC	1 NMAC 3.2.93.350	ERRDS, General Services Department
1.18.420 NMAC	1 NMAC 3.2.93.420	ERRDS, Regulation and Licensing Department
1.18.508 NMAC	1 NMAC 3.2.93.508	ERRDS, Livestock Board
1.19.10 NMAC	1 NMAC 3.2.94.750	LGRRDS, Middle Rio Grande Conservancy District

FOUR GIFT AGREEMENTS: The Joseph J. Mullins Collection
 Joe and Diana Stein Collection
 Bart Durham Collection
 Sara Melton Collection

**NEW MEXICO
 PUBLIC REGULATION
 COMMISSION
 INSURANCE DIVISION**

**IN THE MATTER OF ADOPTING THE
 ALTA SHORT FORM RESIDENTIAL
 POLICY
 DOCKET NO. 02-010-IN**

**NOTICE OF CLOSING OF
 DOCKET AND VACATING OF HEAR-
 ING ON PROPOSED RULEMAKING
 AND PROCEDURAL ORDER**

A hearing was scheduled in this

docket for February 28, 2002. The hearing is now vacated and the docket is closed.

ORDER

IT IS THEREFORE ORDERED that this Notice of Closing of Docket and Vacating of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that staff of the Superintendent of Insurance's Office shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*, both on or before February 14, 2002.

DONE, this 24th day of

January, 2002.

NEW MEXICO PUBLIC REGULATION
 COMMISSION
 INSURANCE DIVISION

ERIC P. SERNA, Superintendent of Insurance

**NEW MEXICO
 PUBLIC REGULATION
 COMMISSION
 INSURANCE DIVISION**

**IN THE MATTER OF THE AMEND-
 MENT OF TITLE INSURANCE RULES
 DOCKET NO. 01-313-IN**

**NOTICE OF CLOSING OF DOCK-
 ET AND VACATING OF HEARING ON
 PROPOSED RULEMAKING AND
 PROCEDURAL ORDER**

A hearing was held in this docket on January 22, 2002 and the matter was continued until February 28, 2002. The hearing scheduled for February 28, 2002 is now vacated and the docket is closed.

ORDER

IT IS THEREFORE ORDERED that this Notice of Closing of Docket and Vacating of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that staff of the Superintendent of Insurance's Office shall cause a copy of this Notice to be published once in the *Albuquerque Journal* and once in the *New Mexico Register*, both on or before February 14, 2002.

DONE, this 24th day of January 2002.

NEW MEXICO PUBLIC REGULATION
 COMMISSION
 INSURANCE DIVISION

ERIC P. SERNA, Superintendent of Insurance

**End of Notices and Proposed
 Rules Section**

Adopted Rules and Regulations

NEW MEXICO BOARD OF FINANCE

**TITLE 2 PUBLIC FINANCE
CHAPTER 61 STATE INDEBTED-
NESS AND SECURITIES
PART 6 BOND PROJECT
DISBURSEMENTS**

2.61.6.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM 87501.
[2.61.6.1 NMAC - N, 02-28-02]

2.61.6.2 SCOPE: State agencies and higher education institutions with respect to draw down of bond proceeds from Severance Tax Bonds, Supplemental Severance Tax Bonds, or General Obligation Bonds.
[2.61.6.2 NMAC - N, 02-28-02]

2.61.6.3 STATUTORY AUTHORITY: Section 6-1-1 (E) NMSA 1978 provides for the state Board of Finance to have general supervision of the fiscal affairs of the state and securities belonging to or in custody of the state, and that the Board may make rules and regulations for carrying out these provisions.
[2.61.6.3 NMAC - N, 02-28-02]

2.61.6.4 DURATION: Permanent.
[2.61.6.4 NMAC - N, 02-28-02]

2.61.6.5 EFFECTIVE DATE: February 28, 2002, unless a later date is cited at the end of a section.
[2.61.6.5 NMAC - N, 02-28-02]

2.61.6.6 OBJECTIVE: This rule provides general guidance regarding the financial and legal requirements for draw down of bond proceeds.
[2.61.6.6 NMAC - N, 02-28-02]

2.61.6.7 DEFINITIONS:

A. "Agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the State. It also includes the purchasing division of the general services department and the state purchasing agent, but does not include local public bodies.

B. "Board" means state Board of Finance.

C. "Draw Requests" means Agency request for bond proceeds on a form approved from time to time by Board

staff.
[2.61.6.7 NMAC - N, 02-28-02]

2.61.6.8 INTERPRETION OF AUTHORIZING LANGUAGE

A. In accordance with New Mexico law, bond proceed expenditures shall not be made for purposes other than those specified in an appropriation. It is crucial to determine whether the purpose for a Draw Request falls within an appropriation's permitted use. The following provides general direction and clarification in the interpretation of authorizing language:

(1) Straight-forward language-some appropriation language is relatively unambiguous, either because it is quite specific or quite general, and it should not be difficult to determine whether the Draw Request falls within the appropriation language. The following examples use both specific and general language:

(a) "to purchase a van" – the specificity would not permit the purchase of a bus or truck. Using the appropriation to prepay rent on a leased vehicle would not be permitted.

(b) "for a (jail, engineering study, specific type of equipment, etc.)" – "for a" permits the broadest interpretation of the items that could be covered. The words act as a substitute for a particular verb or verbs that might raise interpretive questions or otherwise limit the use of funds. For example, "for a jail" could include purchasing an existing building, purchasing real estate, the planning and designing, constructing, equipping, furnishing and all other things of capital nature incident to completing the jail.

(2) Standard appropriation language – appropriation language uses certain verbs routinely to anticipate how appropriations will be applied. In order for Agencies to be able to make draw requests with certainty based on frequently used verbs or combinations thereof, the following are the Board's interpretations of frequently used verbs in authorizing language:

(a) acquire – obtain something already in existence; does not mean to construct, build or otherwise create the thing to be acquired.

(b) build – construct a structure or space including fixtures and other built-ins, but not including furnishings or moveable equipment; may include the design and planning process but does not include acquisition of underlying land; used interchangeably with "construct".

(c) construct – see "build".

(d) design – planning process including feasibility studies, architectural

drawings and plans, engineering, archaeological and environmental surveys or clearances, zoning, and all other steps incident to creating a plan for a final product.

(e) develop – establish the process for future implementation of a project; similar to "design" however less tangible and more conceptual.

(f) equip – supply tools, furnishing and other implements; used interchangeably with "furnish" (however the nouns "equipment" and "furniture" have different meanings, the former referring to mechanical, technological or recreational items, while the latter is generally limited to objects necessary to make a room comfortable).

(g) expand – increase size or capacity.

(h) furnish – see "equip".

(i) improve – enhance the quality or function of something; used interchangeably with "remodel", "renovate" and "upgrade".

(j) information technology – includes hardware, software, wiring, cooling (where necessary) and related costs, but does not include remodeling, space dividers or other furniture.

(k) install – bring into service, including necessary labor and parts directly related to the installation, but does not include the cost of the item actually being installed.

(l) prepare – make ready for a future purpose, use or activity.

(m) purchase – see "acquire".

(n) remodel – see "improve".

(o) renovate – see "improve".

(p) repair – return to usefulness.

(q) replace – substitute with identical or similar item.

(r) upgrade – see "improve".

B. Special Meanings in Road/Street Context – Unless specifically limited by the legislature, "to improve a road" includes anything that will make the existing road better and is deemed appropriate in the discretion of the Agency responsible for the project, and could include acquisition of rights-of-way. However, the State Highway and Transportation Department has taken the position that "to construct a road" does not include planning, designing, right-of-way activities and acquisition, environmental documentation, environmental clearances, and other pre-construction project development tasks. Preliminary activities such as those would only be included if the legislature specified for "planning and designing."

C. Training of government employees – if training is purchased from the vendor or other third party in connection

with the acquisition of any permitted property, which training is necessary to the initial use of the property, the appropriation may be used for such training costs. However, no part of the appropriation shall be used to pay for the salaries or wages of government employees during training, or travel costs for government employees to attend training.

D. Litany – when multiple verbs are listed in the appropriation, assume that they are used deliberately and to the exclusion of those not listed. When “and” is used in a list, the appropriation must be applied to all the purposes listed, unless the appropriation act provides that when the amount appropriated is not enough to pay for all the purposes listed and joined by “and”, the funds may be expended on fewer than all of them. When “or” is used, the appropriation may be applied to any or all of the purposes listed.

E. Unusual or special appropriation language – if the appropriation language is not clear, the following interpretation guidelines may be helpful

(1) technical term – determine whether a technical term or term of art has an established meaning within a particular field, industry or context, such as the following examples:

(a) “software” – look to computer dictionary, etc.;

(b) accounting term – if the term is commonly thought of as an accounting term, apply generally accepted accounting principles (GAAP) and government accounting standards board (GASB);

(c) tax term – if the term is commonly thought of as a tax term, consult the Internal Revenue Code for meaning.

(2) Legislative intent – occasionally an Agency will submit a written request to the legislature or a known group will have lobbied for a particular appropriation. If so, consideration may be given to such information, but only where it is clear what the legislature is responding to in granting the appropriation.

(3) Uniform Statute and Rule Construction Act - this Act provides general guidelines for interpretation including among others:

(a) principles governing the computation of time, as well as miscellaneous specific definitions (though generally not applicable to public finance);

(b) give effect to known objective and purpose; give effect to entire text;

(c) general words following particulars are presumed to be restricted to the meaning of the particulars;

(d) legislature had in mind nothing other than that enumerated so do not expand the meaning of an unambiguous term or phrase;

(e) ordinary words are given ordinary meaning where no evidence of legislative intent exists to do otherwise.

F. Errors in appropriation language - if the entity, location or object erroneously referenced in the appropriation actually exists, then the funds cannot be applied otherwise, regardless of a suspected different legislative intent. If the entity, location or object erroneously referenced in the appropriation is non-existent, then the funds can be applied to the appropriate cause, if there is sufficient evidence that was the intended use.

G. Other considerations – the interpretations must make sense and not violate applicable law.

(1) Avoid unconstitutional results:

(a) anti-donation – the appropriation cannot be given to a non-governmental entity; the item to be purchased or constructed must be owned by a governmental entity;

(b) control of state – no appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state.

(c) balanced budget requirement – precludes appropriations for operating expenses (i.e. salaries) that should instead be incorporated into the state budget.

(2) Consider the appropriation in terms of the current context/situation of a project.

(3) Favor an interpretation that would make full use of the appropriation and avoid unachievable results.

(4) Assess the sufficiency of funds to support the interpretation (however, if an appropriation for a project is not sufficient to complete all the purposes specified, the appropriation may be expended for any portion of the purposes specified in the appropriation, if the appropriation act so states).

(5) Avoid interpretations that may jeopardize any tax-exempt bonds issued to finance the appropriation:

(a) capital expenditure – appropriations should be used for the acquisition, construction, or improvement of land or property of a character subject to the allowance for depreciation as permitted by the IRS;

(b) private use – if the item acquired or created will be used principally by one or a few private sector entities (including a non-profit organization) this should be brought to the attention of the Board, unless previously discussed;

(c) reimbursement and refinancing – if the funds are to be used to reimburse an expense paid prior to the issuance of the bonds, or to pay off a loan used to pay for

such expense, this should be brought to the attention of the Board, unless previously discussed. Generally the look back period for reimbursement is 60 days prior to the date a bill is approved by the Governor (severance tax bonds) or approved by the voters (general obligation bonds).

H. Interpretive memoranda – in order to develop consistency in interpretations, the Board will document specific interpretive decisions that arise. The Interpretive memoranda will be provided to agencies making draw requests based on interpreting language, and may be relied on for future interpretations of the same or similar terms.

[2.61.6.8 NMAC - N, 02-28-02]

2.61.6.9 PAYMENT OF CAPITAL PROJECT EXPENSES, DRAW REQUEST PROCEDURES

A. The recipient of bond proceeds is the governmental entity that will carry-out the completion of the project. In many cases, the Agency named to receive the appropriation will also be the entity responsible for the project. In other cases, the named Agency will be an intermediate agency that is expected to make a grant to a local government entity to carry out the completion of the project. Either an intermediate Agency may make a Draw Request to the Board on behalf of a local government entity as recipient, or an Agency itself as recipient may make the request directly to the Board.

(1) Documentation to support Draw Requests from Agency:

(a) one Draw Request form for each project (1 original and 2 copies) per draw period, unless specified on the form that a draw has previously been made on the project during the same draw period;

(b) proof of payment - notarized certification from an authorized signatory that expenditures are valid or actual receipts.

(c) authorization agreement for wire transfer (if first-time payee by wire transfer);

(d) wire transfer information.

(2) Intermediate Agencies typically submitting Draw Requests to the Board on behalf of local entity recipients: Department of Environment, State Highway and Transportation Department, Office of Indian Affairs, Local Government, State Department of Public Education Department and State Agency on Aging:

(a) proof of payment - a notarized certification from an authorized signatory that expenditures are valid or actual receipts;

(b) authorization agreement for wire transfer (if first-time payee by wire transfer);

(c) wire transfer information.

B. Frequency – Draw Requests will be processed on the 10th and 20th day of each month or the next business day if the 10th and/or 20th falls on a weekend or holiday (the “Draw Request Deadline”). Draw Requests submitted on or before the Draw Request Deadline will result in funds available 56 business days after the Draw Request Deadline.

C. The minimum Draw Request amount per project shall be \$1,500 unless it is the final Draw Request. [2.61.6.9 NMAC - N, 02-28-02]

2.61.6.10 ART IN PUBLIC PLACES (AIPP) ACT

A. A portion of appropriations for capital expenditures shall be set aside for the acquisition or commissioning of works of art to be used in, upon or around public buildings as determined as follows:

(1) “Appropriations for capital expenditures” include appropriations from severance tax bonds, general obligation bonds, or supplemental severance tax bonds, both taxable and tax-exempt.

(2) Application of the AIPP Act is automatic and need not be directed in the individual appropriation acts, though the legislature may specifically declare that the AIPP Act shall not apply.

(3) “Public buildings” include buildings under the control and management of the Property Control Division of the General Services Department; Department of Game and Fish; the Energy, Minerals and Natural Resources Department; state Highway and Transportation Department; State Fair Commission; Supreme Court; Commissioner of Public Lands, Office of Cultural Affairs; governing boards of the state educational institutions and statutorily created post-secondary education institutions; state department of public Education Department; and the legislature.

(4) “Public buildings” also includes all other buildings constructed or renovated with funds appropriated by the legislature, such as local government projects and those owned by Indian Nations, tribes or pueblos funded by state bond proceeds.

(5) “Public buildings” does **NOT** include auxiliary buildings such as maintenance plants, correctional facilities, warehouses or temporary structures. If the amount set aside relates to construction or renovation to an excluded building (such as a maintenance plant, correctional facility, warehouse or temporary structure), the amount is accounted for separately and is to be used by the Office of Cultural Affairs to acquire art for existing public buildings.

(6) Under the AIPP Act, all Agencies shall set aside the lesser of

\$200,000 or 1 percent of the amount appropriated for new construction or major renovation (exceeding \$100,000) to use for art in, upon or around the building being constructed or renovated.

B. The Board’s role in administering the AIPP Act is as follows:

(1) After each bond issue, the Board submits a list of approved projects to the Arts Division of the Office of Cultural Affairs, which administers the AIPP fund. The Arts Division determines which projects the AIPP Act applies to and advises the Board accordingly.

Based on that determination, the Board sets aside the requisite amount from each applicable project in a separate AIPP pooled fund for each bond issue.

(2) When the Arts Division of Office of Cultural Affairs is ready to purchase or commission art, the office submits a Draw Request to the Board which then makes the disbursement out of the AIPP fund.

C. Frequency – Draw Requests will be processed on the 10th and 20th day of each month or the next business day if the 10th and/or 20th falls on a weekend or holiday (the “Draw Request Deadline”). Draw Requests submitted on or before the Draw Request Deadline will result in funds available 6 business days after the Draw Request Deadline.

[2.61.6.10 NMAC - N, 02-28-02]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.6 NMAC, section 8.

19.30.6.8 PROCEDURES FOR CONDUCTING PREVENTIVE COUGAR CONTROL IN GAME MANAGEMENT UNIT 30:

A. The New Mexico Department of Game and Fish will conduct preventive cougar control ~~for sheep ranches lying within Game Management Unit 30 which, by Department records, have shown 4 or more verified depredation complaints from January 1, 1983 to January 24, 1985.]~~ within Game Management Unit 30. The purpose for the program will be to protect mule deer and domestic sheep from cougar predation. [Contact will be maintained with qualifying ranches] Contact will be established with ranches within Game Management Unit 30 to determine if they desire to enter into an agreement to conduct such work.

B. The total number of cougar to be taken from Game Management Unit 30, including cooperating ranches during the duration of the agreement, shall be

up to ~~14~~ 20 cougar per year. Continuous monitoring of this control program will be maintained by the Department to assure that the local cougar population is not jeopardized. The program will continue through March 31, ~~1992~~ 2008, at which time the results will be analyzed and a decision made of the effectiveness of the program.

C. In addition to the preventive program, the New Mexico Department of Game and Fish will continue to handle all verified cases of depredation occurring in Game Management Unit 30 for all ranches throughout the year.

[1-13-96, 5-14-99; 19.30.6.8 NMAC – Rn, 19 NMAC 30.6.8, 2-14-01; A, 02-28-02]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.8 NMAC, sections 23.

19.31.8.23 COUGAR (2002-2003):

A. Cougar season within each Cougar Zone shall be October 1 through March 31, or until the cougar harvest objective has been met within the specific Cougar Zone, whichever occurs first. ~~[Exception]~~ Exceptions: Cougar season in Game Management Units 29, 30, and 34 and in the bighorn sheep ranges of Zones G, H, K, and L (ie, Ladron, Manzano, Peloncillo, Little and Big Hatchets, Animas, Alamo Hueco, Saliz, Mogollon, Organ, and San Andres Mountains) shall be April 1 through March 31 ~~and~~. Cougars taken in those bighorn sheep ranges shall not count against the quota for that zone. These bighorn sheep ranges include Mesa Sarca and the entire Ladron Mountains to the south side of the Rio Salado in Game Management Unit (GMU) 13 except that portion on the Sevilleta National Wildlife Refuge; that portion of the Manzano Mountains in GMU 14 from Comanche Canyon south to US Highway 60 and from the western base of the mountains east to the ridge comprised of Capilla, Osha and Manzano peaks and all of Sand, Priest and Abo canyons; all of GMU’s 22A and 22B; that portion of GMU 23 that is south of the Apache and Gila National Forest boundary and north of State Highway 78; that portion of GMU 24 that is west of State Highway 15; that portion of GMU 19 beginning at the intersection of US Highway 70 and Interstate 25 (I-25) running south along I-25 to its intersection with Interstate 10 (I-10), thence south along I-10 to its intersection with the Texas/New Mexico State line, thence east along the State line to its intersection with NM Road 213, thence north

along NM Road 213, which in turn becomes White Sands Missile Range (WSMR) range road 1 to its intersections with US Highway 70, thence east along US Highway 70 to its intersection with WSMR range road 7, thence north along WSMR range road 7 to its intersection with WSMR range road 306 (Hembrillo canyon Rd.), thence west along WSMR range road 306 to its intersection with the western boundary of WSMR, thence south along the WSMR boundary to its intersection with US Highway 70; thence west along US Highway 70 to its intersection with I-25.

(1) The Sandia Ranger District of the Cibola National Forest portion of Zone F shall be open for hunting with bow only.

(2) Cougar seasons on private property-Statewide: Cougar season on private land shall be April 1 through March 31 (season bag limits still apply). Private landowners (if legally licensed) and their employees (if legally licensed) may hunt on the owner's private property only and cougar taken shall not count against the quota for that zone.

B. The harvest objective for each Cougar Zone is indicated below:

- (1) Zone A GMU's 2 and 7, (14 cougars).
- (2) Zone B GMU's 5, 50, and 51, (20 cougars).
- (3) Zone C GMU's 43, 44, 45, 46, 48, 49, 53, 54, and 55, (38 cougars).
- (4) Zone D GMU's 41, 42, 47, 56, 57, and 58, (14 cougars).
- (5) Zone E GMU's 9 and 10, (16 cougars).
- (6) Zone F GMU's 6 and 8, (16 cougars).
- (7) Zone G GMU's 13, 14, and 17, (17 cougars).
- (8) Zone H GMU's 19, 20, 28, and 29, (3 cougars).
- (9) Zone I GMU's 18, 30, 34, 36, 37, and 38, (20 cougars).
- (10) Zone J GMU's 15, 16, 21, and 25, (38 cougars).
- (11) Zone K GMU's 22, 23, and 24, (22 cougars).
- (12) Zone L GMU's 26 and 27, (No Quota).
- (13) Zone M GMU's 31, 32, 33, 39, and 40, (5 cougars).
- (14) Zone N GMU's 4 and 52, (3 cougars).
- (15) Zone O GMU 12, (3 cougars)

C. Bag limits shall be as indicated below:

(1) One Cougar, except any female accompanied by a spotted kitten(s), and except any spotted kitten.

(2) A second cougar, except any female accompanied by a spotted kitten(s), and except any spotted kitten, may be taken in any of the bighorn sheep ranges outlined in section A and in Game Management Units 29, 30, and 34.

D. Hunters shall purchase a cougar license at least two days prior to hunting cougar.

E. All cougar taken shall be tagged with both the tag from the hunting license and the pelt tag furnished free of charge from the Department. A hunter who takes a cougar must present the skull for tooth removal and pelt for tagging to a Department representative within five days of taking the animal or before taking the pelt out of New Mexico, whichever comes first. The pelt tag shall remain attached to the pelt until the pelt is processed. Immediately following the pelt tagging the Department employee shall call the Division of Wildlife with the information regarding the take of cougar.

F. When the number of cougars equaling the cougar harvest objective for a given cougar zone has been met, that zone will close 72 hours thereafter. Hunters shall call the toll-free telephone number, provided by the Department, before hunting to determine which Cougar

Zones are open.

G. The Director, at his discretion, may adjust or cancel portions of any cougar hunt to address significant changes in population or harvest objectives. [4-1-95, A, 8-15-95; R 3-14-98; Re-pr, 3-15-99; 19.31.8.23 NMAC - Rn & A, 19 NMAC 31.8.23, 3-14-2001; A, 12-28-01; 02-14-02; A, 02-28-02]

NEW MEXICO STATE LAND OFFICE

Notice of Repealed Rule

Ray Powell, New Mexico Commissioner of Public Lands, hereby gives notice to repeal State Land Office Rule 19 NMAC 3.SLO 10, Relating to Easements and Rights of Way, effective February 28, 2002, and is hereby replaced with 19.2.10 NMAC Easements and Rights of Way effective February 28, 2002.

NEW MEXICO STATE LAND OFFICE

TITLE 19 N A T U R A L RESOURCES & WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 10 EASEMENTS AND RIGHTS OF WAY

19.2.10.1 ISSUING AGENCY:

Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.

[19.2.10.1 NMAC - Rp 19 NMAC 3.SLO 10.1, 02/28/02]

19.2.10.2 SCOPE: This rule covers all easements and rights of way granted over, upon, through or across trust lands for pipelines, public highways, railroads, tramways, telegraph, fiber optic, telephone and power lines, irrigation works, mining, logging and for other purposes, except easements or rights of way granted in a lease, or salt water disposal easements covered by 19.2.11 NMAC, or water easements covered by 19.2.12 NMAC.

[19.2.10.2 NMAC - Rp 19 NMAC 3.SLO 10.2, 02/28/02]

19.2.10.3 STATUTORY AUTHORITY: N.M. Const., Art. XIII; NMSA 1978 Sections 19-1-1 and 19-7-57. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[19.2.10.3 NMAC - Rp 19 NMAC 3.SLO 10.3, 02/28/02]

19.2.10.4 DURATION: Permanent, unless otherwise provided in a specific section of this rule.

[19.2.10.4 NMAC - Rp 19 NMAC 3.SLO 10.4, 02/28/02]

19.2.10.5 EFFECTIVE DATE: February 28, 2002.

[19.2.10.5 NMAC - Rp 19 NMAC 3.SLO 10.5, 02/28/02]

19.2.10.6 OBJECTIVE: The objective of this rule is to provide for the orderly and lawful administration and the appropriate granting of easements and rights of way on trust lands.

[19.2.10.6 NMAC - Rp 19 NMAC 3.SLO 10.6, 02/28/02]

19.2.10.7 DEFINITIONS:
A. "commissioner" means the New Mexico commissioner of public lands, and his appointees under Section 19-1-7 NMSA 1978, acting within the scope of their authority. The commissioner may delegate to state land office staff the performance of functions required of the commissioner under this rule.

B. "easement" means a right or privilege granted by the commissioner, to use a defined area of trust lands for a prescribed purpose and time, which right can be terminated as provided in this rule.

C. "right of way" means a right or privilege granted by the commissioner, to pass over, upon, through or across

a defined area of trust lands for a prescribed purpose and time, which right can be terminated as provided in this rule.

D. "fair market value" means the fair market value of an easement or right of way determined by an appraisal or by an appraisal study acceptable to the commissioner using such methodology as the commissioner deems most appropriate, which fair market value may be set forth in a price schedule adopted by the commissioner.

E. "fee schedule" means a schedule adopted by the commissioner showing fees and costs that must be paid for the performance of certain administrative functions identified in this rule. A fee schedule is subject to change from time to time without notice, and shall be available upon request.

F. "price schedule" means one or more schedules adopted by the commissioner as part of this rule or another rule showing the consideration due for the acquisition of an easement or right of way, which schedules shall be reviewed periodically by the commissioner and revised by him, if necessary, to reflect changes in the fair market value of easements and rights of way. The schedules may adopt varying considerations to account for the different uses, sizes and locations of easements and rights of way.

G. "purchase contract lands" means trust lands being purchased under a contract.

H. "state land office" means the New Mexico state land office.

I. "trust" means the trust created by the New Mexico Enabling Act and administered by the commissioner.

J. "trust lands" means those lands, their natural products and all rights, privileges, or assets derived from them, which are under the care, custody and control of the commissioner.

[19.2.10.7 NMAC – Rp 19 NMAC 3.SLO 10.7, 02/28/02]

19.2.10.8 NO RIGHTS TO BE OBTAINED BY PRESCRIPTION:

Easements or rights of way on trust lands may be acquired only by application and grant made in compliance with this rule and applicable laws. No easement, right of way or other interest in trust lands may be acquired by prescription, or pursuant to any other legal doctrine, except as provided by statute. The consideration for any easement or right of way granted or renewed under this rule, including those granted to municipal or county governments or agencies of the state or federal governments, shall be the fair market value thereof.

[19.2.10.8 NMAC – Rp 19 NMAC 3.SLO 10.9 02/28/02]

19.2.10.9 TRESPASS:

A. Any use of trust lands for easement or right of way purposes prior to the grant of an easement or right of way as provided by this rule shall constitute an unauthorized use of such lands; provided, however, that in extenuating circumstances and for good cause shown, the commissioner may, upon request, approve an easement or right of way use prior to initiation or completion of the grant of an easement or right of way. In any such case where prior approval is granted verbally, a letter confirming the approval shall be sent by the commissioner to the requesting party no later than the next business day following the date of verbal approval. In each such case of prior approval, the normal application, approval and grant procedures must then be promptly initiated and completed.

B. Upon notification or determination that an unauthorized use exists, the commissioner shall initiate criminal or civil trespass sanctions, or both, against the unauthorized user; provided, however, that prior to the initiation of such action, the commissioner may attempt to remedy the trespass nonjudicially by such means as he deems best including, but not limited to, by: a) offering the unauthorized user the opportunity to terminate the unauthorized use, restore the lands to their condition prior to the unauthorized use and pay the pro-rated fair market value of the unauthorized use through the date of termination; or b) offering to ratify the unauthorized use upon receipt of the required consideration plus the applicable trespass penalty set forth in this rule. The commissioner shall not initiate or otherwise pursue criminal or civil trespass sanctions against an unauthorized user if that unauthorized user accepts and complies with any nonjudicial remedy offered by the commissioner to remedy the unauthorized use.

C. All time limitations imposed upon an unauthorized user by the commissioner when offering non-judicial remedies shall be reasonable, but in no case shall any such limit be less than 10 days nor more than 60 days.

D. Trespass Penalties:

(1) For easements and rights of way where consideration is determined by appraisal, the unauthorized user must pay the following appropriate trespass penalty in addition to the applicable appraised value of the easement or right of way:

(a) For the first occurrence of an unauthorized use, 100% of the applicable appraised value;

(b) For the second occurrence, 500% of the applicable appraised value;

(c) For the third occurrence, 1000% of the applicable appraised value;

(d) For the fourth and subsequent occurrences, 1000% of the applicable appraised value and the grant of easement or right of way is limited to a maximum 5-year term at the applicable appraised value for a 35-year term;

(2) For easements and rights of way where consideration is determined by a price schedule, the unauthorized user must pay the following appropriate trespass penalty in addition to the applicable adjusted base cost of the easement or right of way:

(a) For the first occurrence of unauthorized use, 100% of the applicable unadjusted base cost;

(b) For the second occurrence, 500% of the applicable unadjusted base cost;

(c) For the third occurrence, 1000% of the applicable unadjusted base cost;

(d) For the fourth and subsequent occurrences, 1000% of the applicable unadjusted base cost and the grant of easement or right of way is limited to a maximum 5-year term at the applicable adjusted base cost for a 35-year term;

(3) Any occurrence of trespass preceded by 5 years of non-occurrence by the party in trespass will be treated as a first occurrence.

(4) Applicable trespass penalties will be reduced by 50% if the trespass is self-reported before the commissioner learns of it from another source.

(5) The trespass penalties described above apply only to unauthorized uses that commence on or after February 28, 2002. The trespass penalty for an unauthorized use that commenced prior to that date is 100% of the applicable adjusted base cost or the applicable appraised value and is in addition to the applicable consideration for obtaining a right of way or easement for the use in trespass.

[19.2.10.9 NMAC – Rp 19 NMAC 3.SLO 10.10, 02/28/02]

19.2.10.10 LANDS SUBJECT TO APPLICATION:

Subject to the discretion of the commissioner and applicable law, all trust lands listed on the state land office surface tract books are subject to application for easements and rights of way. An applicant must review state land office records to determine which rights, if any, have been conveyed to or contracted for by third parties which would limit or prohibit the commissioner's issuance of additional interests. As to lands under purchase contract, see 19.2.10.28 NMAC.

[19.2.10.10 NMAC – Rp 19 NMAC 3.SLO 10.11, 02/28/02]

19.2.10.11 SURVEY: Anyone desiring to apply for an easement or right of

way covering trust lands shall, prior to entry for surveying activities, file with the commissioner a written notice of intent to conduct a survey of the proposed location of such easement or right of way.

A. Such written notice, which may be in letter form, shall adequately describe the proposed project, including the purpose, general location and projected construction time.

B. The written notice shall contain the following agreement: "The undersigned applicant indemnifies and holds harmless the commissioner, his agents and employees, and any authorized lessees of the State of New Mexico, against any and all liability for loss of life, personal injury and property damage occurring due to survey activities caused by the applicant, or by employees, contractors or subcontractors of the applicant." In lieu of such agreement, the applicant may submit a surety bond in an amount acceptable to the commissioner.

C. Upon receipt of the notice, the commissioner shall first determine whether the requested survey is, in fact, trust lands, and if the notice and agreement are acceptable. If accepted, the applicant and any surface lessees, will be notified, and the applicant will be informed of any conditions upon which the approval is granted.

[19.2.10.11 NMAC – Rp 19 NMAC 3.SLO 10.12, 02/28/02]

19.2.10.12 SURVEY PLAT:

A. Unless waived by the commissioner pursuant to 19.2.10.13 NMAC, each application for an easement or right of way shall include a survey plat which describes the location of the proposed easement or right of way. The survey plat shall be based upon an actual survey on the ground and shall include a plat prepared in accordance with the Minimum Standards for Surveying in New Mexico as set out by the New Mexico Board of Registration for Professional Engineers and Surveyors, by a professional surveyor who is registered in New Mexico or exempt from registration under the provisions of the Engineering and Surveying Practice Act, Sections 61-23-1 to -32 NMSA 1978, or its successor provisions. The survey plat shall be properly certified showing the surveyor's state of registration and registration number. The survey plat shall show the centerline of the proposed easement or right of way or, if there is no centerline, then the area of the proposed easement or right of way. The survey plat shall identify every point where the proposed easement or right of way enters or leaves state trust land, crosses a section line, fence, road, pipeline, telephone line, irrigation works, or any other visible boundary, use, or easement. The survey plat shall

show the location of all improvements in the close proximity of the easement or right of way. The survey plat shall show ties to section and quarter section corners, and measurements shall be to the nearest tenth of a foot with bearings expressed to the nearest minute. In no case shall the smallest unit of angular measurement be more than one minute. Acreage shall be computed to the nearest one hundredth of an acre and the survey plat shall show the number of acres, and the number of rods, included in the proposed easement or right of way in each legal subdivision of 40 acres, more or less.

B. When the requirement to submit a survey plat in accordance with Subsection A of 19.2.10.12 has been waived pursuant to 19.2.10.13 NMAC, then the applicant must provide to the commissioner a survey plat (prepared by the applicant, or his designated agent) which is drawn to scale showing the location of the easement or right of way and indicating the approximate number of acres and rods to be taken, as well as the legal description (in aliquot parts or lots) of the lands to be burdened by the proposed easement or right of way in the form required by Subsection A of 19.2.10.12 NMAC.

[19.2.10.12 NMAC – Rp 19 NMAC 3.SLO 10.18, 02/28/02]

19.2.10.13 APPLICATION FORM:

Written application for any grant of an easement or right of way shall be made upon forms prescribed and furnished by the commissioner. Such application shall be made under oath, and contain the following:

A. the application fee set out in the then current fee schedule;

B. the appraisal fee, if any, set out in the then current fee schedule, which fee may, in the discretion of the commissioner, be waived where the applicant is a governmental body which is prohibited by law from paying fees; and,

C. a legal description of the trust lands to be burdened by the proposed easement or right of way, together with a survey plat as provided under 19.2.10.12 NMAC; provided, however, that the requirement to submit a survey plat in accordance with 19.2.10.12 NMAC may be waived, in the discretion of the commissioner, upon a showing of good cause or undue hardship. All requests for waivers, setting forth the basis of the request, must be submitted in writing to the commissioner. In the event a waiver is granted, the applicant shall comply with the requirements set forth in Subsection B of 19.2.10.12 NMAC.

[19.2.10.13 NMAC – Rp 19 NMAC 3.SLO 10.13, 02/28/02]

19.2.10.14 TENURE: Easements and rights of way granted under this rule shall be granted for a term which the commissioner, in his discretion, deems in the best interests of the trust. Under no circumstances will the commissioner grant an easement or right of way for a perpetual term or as a fee simple grant.

[19.2.10.14 NMAC – Rp 19 NMAC 3.SLO 10.14, 02/28/02]

19.2.10.15 CONSIDERATION:

A. Payment for the grant of an easement or right of way shall be in an amount determined by the commissioner through negotiation taking into account the circumstances and damage to remaining lands or, if an applicable price schedule has been adopted, in the appropriate amount set forth in the then current price schedule. Unless a credit is allowed by this rule, payment shall not be less than the fair market value of the interest to be granted. Payment is required from all federal, state, county, municipal and other governmental agencies, as well as quasi-governmental bodies or organizations, the same as if they were private parties.

B. For gathering pipelines, salt water disposal pipelines and other pipelines not used for main transmission, the commissioner may authorize a credit of up to 30% of the fair market value of the interest to be granted if, after a written showing by the applicant, the commissioner, in his sole discretion, determines that the grant of an easement or right of way, with a credit, will enhance oil and gas production from trust lands and that the royalties resulting from the enhanced oil and gas production will far exceed any benefits derived from receiving fair market value from the grant of easement or right of way. If such a credit is authorized, the grantee shall pay the fair market value less the amount of the credit.

[19.2.10.15 NMAC – Rp 19 NMAC 3.SLO 10.15, 02/28/02]

19.2.10.16 EASEMENT OR RIGHT OF WAY DIMENSIONS:

The commissioner shall determine the minimum dimensions of easements and rights of way, which determinations may be changed from time to time or waived in his discretion.

[19.2.10.16 NMAC – N, 02/28/02]

19.2.10.17 ACCESS PERMITS:

The rights granted by the commissioner in any right of way or easement shall not include any right of access over or right to use trust lands not burdened by the right of way or easement. If a right of way or easement is not large enough to permit vehicular or other access necessary for the mainte-

nance, repair, or improvement of the right of way or easement, or for other permitted activities within the right of way or easement, access in such cases must be obtained by applying for and receiving a temporary access permit from the commissioner using such form or forms, and subject to the payment of such fees and costs, as the commissioner deems in the best interests of the trust and promulgates from time to time. Temporary access permits may also be issued to prospective applicants for rights of way or easements to allow them to conduct pre-application assessments.

[19.2.10.17 NMAC – N, 02/28/02]

19.2.10.18 DAMAGE SURETY:

A. The holder of an easement or right of way is required to compensate the state or its lessee, patentee or purchase contract holder for any damage done to improvements or other property belonging to such person which are lawfully upon the trust lands burdened by the easement or right of way. Before an easement or right of way may be issued, the applicant shall file with the commissioner a bond or other surety in an amount determined by the commissioner to be sufficient to cover such damages; provided, however, that the commissioner, in the exercise of his discretion, may waive this requirement if the applicant agrees to furnish to the commissioner, upon request, the names and addresses of its construction contractors, and if at least one of the following additional conditions is met:

(1) each lessee, patentee or purchase contract holder of the trust lands burdened by the easement or right of way provides a written waiver of this surety bond requirement; or,

(2) the applicant is a governmental agency which is prohibited by law from posting a surety bond and lawfully assumes sole and complete contractual liability for any damages arising from or in connection with its survey and related uses; or,

(3) the applicant is a governmental agency which is not immune from suit or is otherwise required by law to pay such damages, and is thereby its own insurer; or,

(4) the commissioner, in his discretion, is satisfied that each lessee, patentee or contract holder will be afforded adequate protection other than through the posting of a bond or other surety by the applicant.

B. With the approval of the commissioner, a \$25,000.00 bond, or one in any other amount that is determined by the commissioner from time to time to be in the best interests of the trust, or a different surety acceptable to the commissioner, may be used for more than one easement or right of way which the grantee has executed with the commissioner.

[19.2.10.18 NMAC – Rp 19 NMAC 3.SLO 10.17, 02/28/02]

19.2.10.19 CONSTRUCTION

REPORTS: The holder of an easement or right of way shall notify the commissioner immediately in the event any historic or pre-historic ruin or monument, or any object of historical, archeological or scientific value is discovered upon or within the easement or right of way and shall refrain from further disturbance of such area until the commissioner has consented in writing and notified such other authorities as the commissioner deems it in the best interests of the trust to notify.

[19.2.10.19 NMAC – Rp 19 NMAC 3.SLO 10.19, 02/28/02]

19.2.10.20 AFFIDAVIT OF

COMPLETION: Upon the completion of construction of any easement or right of way, the holder of the easement or right of way shall, within 60 days after completion of construction, file with the commissioner an affidavit of completion. Failure to file such affidavit in accordance with this section shall subject the easement or right of way to termination in accordance with the provisions of this rule.

[19.2.10.20 NMAC – Rp 19 NMAC 3.SLO 10.20, 02/28/02]

19.2.10.21 CONFLICT OF USE:

Unless otherwise authorized in writing by the commissioner, an easement or right of way shall not be used for any other or additional purposes or by any other or additional parties except those expressly identified in the grant of easement or right of way. Unless expressly stated otherwise in the grant of easement or right of way, the commissioner reserves the right to grant easements or rights of way to third parties over, under, upon, through, across or parallel to an existing easement or right of way; provided, however, that the commissioner shall not approve such subsequent easements or rights of way if, in his discretion, such co-use would present a safety hazard or otherwise unreasonably interfere with the existing easement or right of way. When a subsequent easement or right of way is permitted, the commissioner will require the subsequent grantee to post a bond or other surety to insure payment of damages, if any, which are done to the prior grantee's improvements and installations unless the prior grantee waives this requirement.

[19.2.10.21 NMAC – Rp 19 NMAC 3.SLO 10.21, 02/28/02]

19.2.10.22 AMENDMENTS:

Any holder of an existing easement or right of way desiring to change the use, or widen or otherwise alter the easement or right of

way shall make application to do so by following the same procedure as is used in making an application for a new easement or right of way. Depending on the scope of the proposed change to the easement or right of way, the commissioner may waive certain application requirements, such as the survey plat or the application fee.

[19.2.10.22 NMAC – Rp 19 NMAC 3.SLO 10.22, 02/28/02]

19.2.10.23 ASSIGNMENT –

RELINQUISHMENT: An easement or right of way may be assigned to third parties or relinquished to the state with the prior written approval of the commissioner and upon such terms and conditions as he may prescribe, and payment of the fee set out in the then current fee schedule. The commissioner may waive the relinquishment fee when relinquishment is to accommodate a request or demand of the commissioner.

[19.2.10.23 NMAC – Rp 19 NMAC 3.SLO 10.23, 02/28/02]

19.2.10.24 RENEWAL OF

EASEMENT OR RIGHT OF WAY: Prior to the expiration date of any easement or right of way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or status of the original easement or right of way, the applicant may file with the application a statement under oath setting out this fact, and the commissioner, in his discretion, may extend the grant for an additional term upon payment of such additional consideration as the commissioner determines is appropriate; provided, however, that in no case shall such consideration be less than the fair market value of the interest granted unless a credit is allowed by this rule.

[19.2.10.24 NMAC – Rp 19 NMAC 3.SLO 10.24, 02/28/02]

19.2.10.25 TERMINATION OF

EASEMENT OR RIGHT OF WAY: Any easement or right of way granted by the commissioner on trust land may be terminated in whole or in part for failure to comply with any term or condition of the grant or any applicable laws or regulations. Upon determination by the commissioner that an easement or right of way is subject to termination pursuant to the terms or conditions of the grant or applicable laws or regulations, the commissioner shall give the grantee a written 30-day notice at the address shown most recently in the records of the state land office, and if the grantee fails to remedy the problems set out in the notice to the satisfaction of the commissioner, then the commissioner shall issue an appropriate instrument terminating the easement or right of

way, which instrument shall be placed in the public records of the state land office with a copy to the former grantee. [19.2.10.25 NMAC – Rp 19 NMAC 3.SLO 10.25, 02/28/02]

19.2.10.26 ABANDONMENT: Abandonment of an easement or right of way by a grantee shall consist of the non-use of a granted easement or right of way for the purposes authorized in the granting instrument for a period of one year. Upon discovering evidence of abandonment, the commissioner shall notify the grantee by written notice sent by regular mail to the grantee’s last known address as shown in the records of the state land office, giving the grantee 60 days to prove that abandonment did not occur, all to the commissioner’s satisfaction. Failure to do so shall result in the termination of the easement or right of way due to the failure of a condition subsequent. Any non-use of a portion of an easement or right of way for a period of one year shall, at the commissioner’s discretion, be deemed an abandonment of that portion so used and subject to termination. [19.2.10.26 NMAC – N, 02/28/02]

19.2.10.27 RECLAMATION AND RESTORATION: Any person who enters upon trust lands for purposes of surveying or constructing an easement or right of way shall take all steps necessary to preserve and protect the natural environmental conditions of the land, including reclamation of disturbed areas by leveling or terracing and reasonable attempts at revegetation. Revegetation shall include the establishment of suitable grasses and forbs in accordance with SLO Rule 1.069.C.7(b). The grantee of any right of way or easement shall consult with the commissioner’s designee regarding reclamation prior to undertaking reclamation and shall make reasonable attempts at restoration. [19.2.10.27 NMAC – Rp 19 NMAC 3.SLO 10.26, 02/28/02]

19.2.10.28 EASEMENTS OR RIGHTS OF WAY OVER PURCHASE CONTRACT LANDS:
A. The commissioner may, on the basis of the state’s legal title and subject to the terms and conditions of the applicable purchase contract, approve and record easements and rights of way over, upon, through or across purchase contract lands on the following terms and conditions:
(1) submission of an application by the easement or right of way applicant on the form prescribed by the commissioner accompanied by an original or certified copy of the easement or right of way executed between the applicant and the purchase contract holder; and,

(2) payment of the administrative fee set out in the then current fee schedule for the approval and recording of the easement or right of way; and,

(3) submission of a legal description of the property to be burdened by the easement or right of way, together with a survey plat as provided in 19.2.10.12 NMAC.

B. The commissioner shall reject any application and initiate necessary legal proceedings to prevent the construction of any easement or right of way or the use of any easement or right of way that will diminish or impair the state’s legal title to the purchase contract lands. [19.2.10.28 NMAC – Rp 19 NMAC 3.SLO 10.27, 02/28/02]

19.2.10.29 I N F O R M A L RECONSIDERATION: Any party aggrieved by a decision related to the payment of amounts due for any easement or right of way granted or applied for under this rule, may request an informal reconsideration of such decision by written request made to the commissioner. Such request shall describe the decision for which reconsideration is requested, state the grounds for reconsideration and the relief sought, and be submitted to the commissioner within 15 days after the date of the decision for which reconsideration is requested. Any such request will be reviewed and decided by the commissioner in an expeditious manner, with or without an oral presentation by the aggrieved party. The right to request informal reconsideration shall be in addition to, and not in lieu of, any right of appeal or contest available to the aggrieved party, and the filing of a request for informal reconsideration shall not extend any deadline for initiating an appeal or contest proceeding. [19.2.10.29 NMAC – N, 02/28/02]

19.2.10.30 PRICE SCHEDULE: TELECOMMUNICATION EASEMENTS AND RIGHTS OF WAY:

A. Unadjusted Base Cost per rod (16.5 linear feet)

(1) Urban 1: by appraisal.
(2) Urban 2: \$12.50 for the first conduit, buried line or overhead line; \$8.50 for each additional conduit, buried line or overhead line.

(3) Rural: \$3.75 for the first conduit, buried line or overhead line; \$2.00 for each additional conduit, buried line or overhead line.

B. First Base Cost Adjustment: Term. Multiply the unadjusted base cost determined under Subsection A of 19.2.10.30 NMAC by the appropriate factor for the term of the easement or right of way.

(1) Term of 5 years or less: factor

= 0.3791

- (2) Term of 6 to 10 years: factor = 0.6145
- (3) Term of 11 to 15 years: factor = 0.7606
- (4) Term of 16 to 20 years: factor = 0.8514
- (5) Term of 21 to 25 years: factor = 0.9077
- (6) Term of 26 to 30 years: factor = 0.9427
- (7) Term of 31 to 34 years: factor = 0.9644
- (8) Term of 35 years or more: factor = 1.0.

C. Second Base Cost Adjustment: Width. Add 1% to the term-adjusted base cost for each foot more than the standard 10 foot width; subtract 1% from the term-adjusted base cost for each foot less than the standard 10 foot width.

D. Booster Site and Directly Associated Facilities. For each booster site or other directly associated facility, add \$1.00 per square foot of the site to the cost of the easement or right of way. If the term of the associated easement or right of way is less than 35 years, then the booster site cost is modified by the applicable term factor set forth in Subsection B of 19.2.10.30 NMAC. Any other improvements, equipment or facilities not directly necessary to the permitted use (such as towers, buildings, storage areas and the like) must be authorized under a state land office business lease.

E. Amendment to Existing Easement or Right of Way. Pricing for changes to an existing easement or right of way will be subject to negotiation.

F. Geographic Locations. As used in this section, the geographic locations shall have the following meanings.

(1) “Urban 1” means Albuquerque, Farmington, Hobbs, Las Cruces, Rio Rancho, Roswell, Santa Fe, and all other incorporated communities with a population of 40,000 or more.

(2) “Urban 2” means Alamogordo, Artesia, Belen, Carlsbad, Clayton, Clovis, Deming, Espanola, Gallup, Grants, Las Vegas, Lordsburg, Los Alamos, Lovington, Moriarity, Portales, Raton, Santa Rosa, Silver City, Socorro, Truth or Consequences, Tucumcari, and all other incorporated communities with a population of 5,000 or more, but less than 40,000.

(3) “Rural” means unincorporated areas and incorporated communities with a population of less than 5,000.

G. Duration. This section, 19.2.10.30 NMAC, shall remain in effect until February 28, 2005.

(1) No later than 180 days prior to the termination of this section, the state land office shall commence a review of the costs established in this price schedule. Any changes to, or extension of, the price schedule shall be supported by an appraisal conducted by a certified appraiser.

(2) If this section is no longer in

effect, payment for all easements and rights of way covered by this price schedule, and applied for after the termination date of this section, shall be determined by negotiation as provided in this rule.

[19.2.10.30 NMAC – N, 02/28/02]

HISTORY OF 19.2.10 NMAC:

Pre-NMAC History:

Material in this Rule was derived from that previously filed with the State Records Center and Archives under:

CPL 69-5, Rules And Regulations Concerning The Sale, Lease, And Other Disposition Of State Trust Lands, filed 09/02/69; CPL 71-2, filed 12/16/71; CPL 77-1, filed 01/07/77;

Rule 10, Relating To Easements And Rights Of Way, filed 03/11/81;

SLO Rule 10, Relating To Easements And Rights Of Way, filed 01/20/84;

SLO Rule 10, Relating To Easements And Rights Of Way, filed 08/07/85;

History of Repealed Material:

19 NMAC 3.SLO 10, Relating To Easements And Rights Of Way - Repealed, 02/28/02.

NEW MEXICO STATE LAND OFFICE

Notice of Renumbered Rule

Ray Powell, New Mexico Commissioner of Public Lands, hereby gives notice to renumber 19.2.10 NMAC Land Exchanges to 19.2.21 NMAC Land Exchanges effective February 28, 2002.

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.5.13 NMAC

16.22.5.13 APPLICATION PROCEDURE FOR APPLICANTS HOLDING ASPPB CERTIFICATION OF PROFESSIONAL QUALIFICATION OR NATIONAL REGISTER HEALTH SERVICE PROVIDER IN PSYCHOLOGY CREDENTIAL

A. Eligibility. A licensee in good standing for a minimum of five years in another jurisdiction is eligible for licensure pursuant to NMSA 1978, Section 61-9-10 if the applicant:

(1) holds a current Certification of Professional Qualification (CPQ) awarded by the Association of State and Provincial Psychology Boards, completes the application procedure required by the Board, and passes the ethical standards portion of the oral examination administered by the Board. To qualify for CPQ, the applicant shall, at a minimum, be a licensee in good standing in another jurisdiction for at least five (5) years, shall have no disciplinary actions within five (5) years immediately preceding the award of the CPQ, and shall have no prior license suspensions or revocations in any jurisdiction in which the applicant is or has been licensed; or,

(2) holds a current National Register Health Service Provider in Psychology (HSPP) Credential at the Doctoral Level pursuant to Section 16.22.4.8 (A) (1) (2) for a minimum of five (5) continuous years immediately preceding the date of application, completes the application procedure required by the Board, and passes the ethical standards portion of the oral examination administered by the Board. In addition, the applicant shall have passed the examination for professional practice in psychology with a minimum score required for licensure as set forth in NMSA 1978, Section 61-9-11 (A) (6). The applicant shall have no disciplinary actions within five (5) years immediately preceding the date of application and shall have no prior license suspensions or revocations in any jurisdiction in which the applicant is or has been licensed.

B. Application Procedure. The applicant shall submit the following by the deadline established by the Board for receipt of application to take the oral examination:

(1) A verified or certified copy of the applicant's CPQ or National Register HSPP Credential or other evidence satisfactory to the Board that the applicant holds a CPQ or National Register HSPP Credential.

(2) A complete application on a form provided by the Board; and,

(3) The non-refundable application fee established by the Board.

C. Examination. The applicant shall take and pass the ethical standards portion of the oral examination administered by the Board pursuant to Section 16.22.7.8 (C) (4) of the Board rules.

D. Applicability of Other Provisions. The provisions of NMSA 1978, Section 61-9-13 of the Act shall apply to applications filed under this section. A psychologist licensed pursuant to this section is subject to all requirements and obligations applicable to licensees under the Act and Board rules.

[16.22.5.13 NMAC – N, 3/15/02]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 13.14.1.18 NMAC.

13.14.1.18 DEFINITIONS "L":

As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act:

A. leasehold policy. A Leasehold Owner's Policy or a Leasehold Loan Policy.

B. leasehold loan policy. NM Form 2, Loan Policy and NM Form 21, Leasehold Loan Endorsement.

C. leasehold owner's policy. NM Form 1, Owner's Policy and NM Form 20, Leasehold Owner's Endorsement.

D. ledger means a chronological record of dated debits and credits maintained either in a bookkeeping ledger book or a readily retrievable magnetic medium from which the balance of funds for each particular escrow can be calculated at any given time.

[B]E. liability (amount) means the stated amount of liability on Schedule A of the policy, binder or commitment or, in the case of a pending disbursement clause, the amount which has been disbursed as stated in the policy.

[6-16-86...4-1-94; 13.14.1.18 NMAC - Rn, 13 NMAC 14.1.18, 5-15-00; 13.14.1.18 NMAC – A, 1-1-01; A, 3-1-02]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 13.14.2.14 NMAC.

13.14.2.14 AGENT'S EXPERIENCE REPORT:

A. Each title insurance agent, including agents which are independent or direct operations of insurers, shall report income and expenses annually on both county-by-county and summary-of-all-counties bases using the agent's experience report forms and instructions set forth in 13.14.16 NMAC, Agent's Experience Report. Agent's experience reports containing experience for calendar year 1992 and subsequent years shall be audited by an independent certified public accountant (CPA). The Superintendent shall annually fix the date and location for the filing of each agent's experience report for the calendar year and shall notify each agent of the same at least sixty (60) days prior to the filing deadline; provided, however, that in no event shall an agent be required to file its

experience report prior to May 15th of the year following the end of the calendar year being reported.

B. The CPA shall complete Schedule K - Independent Auditors Report (13.14.16.28 NMAC) and Schedule L - Independent Auditor's Escrow Services Compliance Report (13.14.16.31 NMAC), which shall be submitted with the agent experience report. The independent audit CPA requirements of this rule do not apply for any calendar year reporting period in which the agency writes less than ~~one~~two hundred ~~fifty~~thousand dollars (~~\$100,000~~250,000) premium; provided, however, that where two or more agencies are under common ownership or control, no waiver shall apply to any of such agencies where any one of them writes ~~one~~two hundred ~~fifty~~thousand dollars (~~\$100,000~~250,000) or more premium per calendar year reporting period.

C. If the independent audit CPA requirements of this rule do not apply, the agent or agency shall file with the Superintendent a copy of its Federal Income Tax return and any other financial statements that are directly related to the preparation of the Agent's Experience Report along with its agent experience report for that calendar year. An agent shall not be excused from filing its Federal Income Tax return and other financial statements with the Superintendent because it has received an extension for filing its tax return or has failed to complete or file its tax return. [6-16-86...4-3-95, 7-1-97; 13.14.2.14 NMAC - Rn, 13 NMAC 14.3.13.3 & A, 5-15-00; 13.14.2.14 NMAC - A, 1-1-01; A, 3-1-02]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 13.14.6.8 and 13.14.6.9 NMAC.

13.14.6.8 OWNER'S POLICIES:

A. Owner's Policies shall be written to protect the estate or interest in land held by the Insured (e.g., fee simple, easement, etc.). Except as otherwise provided herein, all Owner's Policies shall be issued for the amount of the current sales price of the land and any existing improvements appurtenant thereto, plus, at the option of the insured, the cost of improvements immediately contemplated to be erected thereupon.

B. If no sale is being made, at time of issuance of policy, all Owners' Policies shall be issued for an amount equal to the value of the land and any existing improvements appurtenant

thereto, with the same option concerning immediately contemplated improvements.

C. In either instance, an Owner's Policy insuring such contemplated improvements shall contain a Pending Improvements clause or endorsement. In the event the Owner's Policy is issued at the time of payoff of a real estate contract and recording of a warranty deed, the Owner's Policy shall be issued for the amount of the contract price, except if the Purchaser requests, and provides evidence of value, then it may be issued for the amount equal to the value of the land and any existing improvements appurtenant thereto.

D. An Owner's Policy may be endorsed to reflect the current value of the estate insured (upon payment of the current Basic Premium according to the Schedule less the amount previously paid for said policy) if the Insurer's Underwriting standards are met; provided, however, that the effective date of the policy shall remain unchanged and no affirmative coverages or down dates shall be added to the policy. Owner's Policies may insure multiple tracts acquired from different parties at the same or different times.

E. NM Form 55, Named Insured Endorsement, shall be attached to all Owner's Policies issued after August 15, 2001 and shall be provided to all insureds requesting the endorsement on Owner's Policies previously issued without the endorsement. [6-16-86...3-1-91; 13.14.6.8 NMAC - Rn, 13 NMAC 14.6.8, 5-15-00; 13.14.6.8 NMAC - A, 8-1-01; A, 3-1-02]

13.14.6.9 LEASEHOLD OWNER'S POLICIES:

A. Leasehold Owner's Policies shall be issued to insure leasehold estates and in the amount, at the option of the Insured, of either (1) the total amount of the rentals payable under the lease contract, or (2) the value of the land and any existing improvements, or (3) the value of the land and any existing improvements and the cost of the improvements immediately contemplated to be erected thereupon. In the latter case, the leasehold policy must contain a Pending Improvements clause or endorsement.

B. Unless otherwise specifically stated, a Leasehold Owner's Policy shall contain the same standard exceptions, be subject to the same premium rates and be subject to deletion of the same standard exceptions in the same manner as an Owner's Policy.

C. ~~[At the option of the Insurer, a]~~ Leasehold Owner's Endorsement ~~[may]~~shall be attached to an Owner's Policy to ~~[modify it to]~~create a Leasehold Owner's Policy. A Leasehold

Owner's Policy may be converted to a standard Owner's Policy by the issuance of an Owner's Leasehold Conversion Endorsement NM Form 31 if the owner of the leasehold interest acquires the fee title interest within three (3) years of the effective date of the leasehold Owner's Policy.

D. In addition to the Owner's Leasehold Conversion Endorsement NM Form, the issuing Insurer or title insurance agent shall issue a Multipurpose Endorsement, NM Form 11, reflecting the change of the estate insured and adding or deleting exceptions, and otherwise modifying the policy to accurately reflect the condition of title of the estate insured. The premium for such conversion shall be as prescribed by 13.14.9.38 NMAC, and no additional premium shall be charged for either endorsement.

E. NM Form 55, Named Insured Endorsement, shall be attached to all Leasehold Owner's Policies issued after August 15, 2001 and shall be provided to all insureds requesting the endorsement on Leasehold Owner's Policies previously issued without the endorsement.

[6-16-86, 3-1-89; 13.14.6.9 NMAC - Rn, 13 NMAC 14.6.9, 5-15-00; 13.14.6.8 NMAC - A, 8-1-01; A, 3-1-02]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 13.14.7.9 NMAC.

13.14.7.9 LEASEHOLD LOAN POLICIES:

Unless otherwise specifically stated, a Leasehold Loan Policy shall contain the same standard exceptions, be subject to the same premium rates and be subject to deletion of the same standard exceptions in the same manner as a standard Loan Policy. ~~[At the option of the Insurer, a]~~ Leasehold Loan Endorsement ~~[may]~~shall be attached to a Loan Policy to ~~[modify it to]~~create a Leasehold Loan Policy.

[6-16-86; 13.14.7.9 NMAC - Rn, 13 NMAC 14.7.9, 5-15-00; A, 3-1-02]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 13.14.8.9 and 13.14.8.16 NMAC.

13.14.8.9 USE OF LEASEHOLD ENDORSEMENTS:

The Leasehold Owner's and Leasehold Loan Endorsements ~~[may]~~shall be attached to Owner's Policies and Loan Policies to insure leasehold estates ~~[as an alternative to the printing or use of Leasehold Owner's Policies and~~

~~Leasehold Loan Policies. This regulation grants and shall provide the same options to the Insurer and agent as are provided in 13.14.8.8 NMAC. [6-16-86; 13.14.8.9 NMAC - Rn, 13 NMAC 14.8.9, 5-15-00; A, 3-1-02]~~

13.14.8.16 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:

A. Upon being furnished with a satisfactory survey, and where the underwriter determines the risk to be acceptable[;]:

(1) NM Form 50, [~~the~~] Restrictions, Encroachments and Minerals Endorsement, [~~NM Form 50;~~] may be attached only to a loan policy but shall not be issued where the intended use of the property is 1-4 Family Residential;

(2) NM Form 56, Restrictions, Encroachments and Minerals Endorsement- Unimproved Land, may be attached only to an owner's policy covering unimproved land; and

(3) NM Form 57, Restrictions, Encroachments and Minerals Endorsement- Improved Land, may be attached only to an owner's policy covering improved land.

B. [~~This~~]Each endorsement is to be issued only in conjunction with or following:

(1) the issuance of survey coverage, as authorized by 13.14.6.14 or 13.14.7.13 NMAC; [~~and only in conjunction with or following]~~

(2) the modification of Standard Exception 7[;]; and

(3) the mention in a special exception of any applicable patent and acts authorizing the issuance thereof, as authorized by paragraph 7 of subsection A of 13.14.5.9 NMAC.

C. The coverage relating to minerals provided under paragraph 3(b) of NM Form 50, paragraph 2 of NM Form 56, or paragraph 2(b) of NM Form 57, as appropriate [~~the endorsement~~] shall not be issued where minerals have been severed, unless there has been a waiver of the right of entry or surface usage of the mineral reservation.

D. The coverage provided by any part of [~~the~~]each endorsement may be deleted [~~(+)~~]but may not be increased by:

(1) crossing out the part on the form of endorsement[;]; [~~(+)~~ by]

(2) retyping the form leaving out the part[;]; or [~~(+)~~ by]

(3) special endorsement. [~~Coverage under the endorsement may not be increased by any such change.~~]

E. [~~This~~]Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authori-

zation of the underwriter for a period of not less than two years following [~~the~~] issuance of the endorsement. [~~This endorsement shall not be issued where the intended use of the property is 1-4 Family Residential.~~] [6-1-98; 13.14.8.16 NMAC - Rn, 13 NMAC 14.8.16, 5-15-00; A, 3-1-02]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 13.14.9.18, 13.14.9.35, and 13.14.9.40 NMAC.

13.14.9.18 PREMIUM RATES FOR ORIGINAL OWNER'S POLICIES: The following schedule of premium rates for original owner's policies shall be in effect from [~~August~~]March 1, [~~2001~~]2002 until modified by the Superintendent:

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	[485]196	24,000	[305]322	38,000	[405]428
11,000	[494]205	25,000	[312]330	39,000	[412]435
12,000	[201]212	26,000	[319]337	40,000	[419]443
13,000	[210]222	27,000	[327]348	41,000	[425]449
14,000	[219]231	28,000	[334]353	42,000	[433]458
15,000	[228]241	29,000	[341]360	43,000	[440]465
16,000	[236]249	30,000	[348]368	44,000	[447]472
17,000	[245]259	31,000	[355]375	45,000	[454]480
18,000	[253]267	32,000	[363]384	46,000	[461]487
19,000	[261]276	33,000	[369]390	47,000	[469]496
20,000	[270]285	34,000	[376]397	48,000	[476]503
21,000	[278]294	35,000	[383]405	49,000	[482]509
22,000	[287]303	36,000	[390]412	50,000	[489]517
23,000	[296]313	37,000	[398]421		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission add	Agent retention percentage	Additional rate per \$1000 to be collected on policy amounts in excess of \$10 million (solely for underwriter)	Total Charged to Consumer
over \$50 to \$100	\$ [5.94]6.28	78-80%		\$ [5.94]6.28
over \$100 to \$500	\$ [4.68]4.95	78-80%		\$ [4.68]4.95
over \$500 to \$2,000	\$ [3.68]3.89	78-80%		\$ [3.68]3.89
over \$2,000 to \$5,000	\$ [2.95]3.12	75%		\$ [2.95]3.12
over \$5,000 to \$10,000	\$ [2.46]2.60	70%		\$ [2.46]2.60
Over \$10,000 to \$25,000	\$ [2.10]2.22	65%	\$ 0.25	\$ [2.35]2.47
over \$25,000 to \$50,000	\$ [1.84]1.94	60%	\$ 0.25	\$ [2.09]2.19
over \$50,000	\$ [1.47]1.55	50%	\$ 0.25	\$ [1.72]1.80

[6-16-86...4-3-95; A, 5-1-99; 13.14.9.18 NMAC - Rn, 13 NMAC 14.9.8.11 & A, 5-15-00; A, 5-31-00; A, 8-1-00; A, 3-1-02]

13.14.9.35 REISSUE OWNER'S OR LEASEHOLD RATES: The applicable discount to be used when computing a Reissue Owner's, Leasehold, or Contract Purchaser's Policy shall be determined using the schedule below. If more insurance is desired or required under the reissue policy than was written in the original policy, the difference must be computed at the Basic Premium Rates in the applicable bracket or brackets in the same manner as excess liability is computed in 13.14.9.30 NMAC. See 13.14.6.18 NMAC for qualifications for reissue rates on Owner's and Leasehold Policies. If two or more previous policies insuring different properties are presented to the title agent or insurer for a reissue

discount on the purchase of a policy containing the same properties as shown in said previous policies the discount will be computed as follows: Title agent or insurer shall base the discount on the date of issue of the oldest previous policy and upon a liability amount equal to the sum of the liability amounts of the previous policies. If the previous policies contain more or less property than is insured under the previous policies, 13.14.9.37 NMAC applies. In no event shall the premium collected be less than the regular minimum promulgated rate for an Owner's Policy.

AGE IN YEARS OF PREVIOUS OWNER'S POLICY	PERCENTAGE [DISCOUNT FROM] OF BASIC PREMIUM RATES
3 years or more	[40]90
2 years or more but less than 3 years	[15]85
more than 1 year but less than 2 years	[20]80
1 year or less	[25]75

[6-16-86..4-3-95; 6-1-98; 13.14.9.35 NMAC – Rn, 13 NMAC 14.9.12.1, 5-15-00; A, 3-1-02]

13.14.9.40 INSURING CONSTRUCTION LOANS:

A. Construction Loan Policy Rates. A Construction Loan Policy may be issued pursuant to 13.14.7.18 NMAC for a premium of thirty dollars (\$30.00) plus one (1) dollar per thousand calculated upon the face amount of the construction mortgage.

B. Extension Endorsement Rates. A Construction Loan Policy may be extended beyond its initial two (2) year term pursuant to 13.14.7.18 NMAC for an additional premium of [~~thirty two dollars (\$32.00)~~]twenty-five dollars (\$25.00) per six (6) month endorsement.

C. No Subsequent Credit on Substitution Loan. The issuance of a Construction Loan Policy may not be used as a basis for claiming a credit or discount on a Substitution Loan pursuant to 13.14.9.36 NMAC.

D. Endorsement "A" Rates. An "A" Endorsement may be issued at the same time as and attached to a Construction Loan Policy pursuant to 13.14.7.14 NMAC for an additional extra hazard risk premium of five dollars (\$5.00) per thousand of the face amount of the policy. At the time of each subsequent disbursement and upon a date down of the title having been made to the date thereof, an additional Endorsement "A" may be issued pursuant to 13.14.7.17 NMAC at an additional premium of [~~thirty two dollars (\$32.00)~~]twenty-five dollars (\$25.00) per endorsement.

E. Endorsement "D" Rates. A "D" Endorsement may be issued at the same time as and attached to a Construction Loan Policy pursuant to 13.14.7.14 NMAC for an additional premium of [~~thirty two dollars (\$32.00)~~]twenty-five dollars (\$25.00). A reasonable fee, in addition to the premium provided herein, may be charged for any inspection necessary to determine the priority of the lien insured; such fee is not premium.

F. Standard Loan Policy with Pending Disbursements Clause Rates. A construction lender may be issued a standard Loan Policy containing the pending disbursements clause pursuant to 13.14.7.19 NMAC at ninety (90%) percent of the Basic Premium Rates according to the Schedule as of the date of the policy, or at the simultaneous issue rate under 13.14.9.30 NMAC or the subsequent issue rate under 13.14.9.36 NMAC if applicable. No additional premium shall be charged to insert or attach the required pending disbursement language when the same is done simultaneously with the issuance of the policy; if it is done subsequent to the issuance of the policy at the request of the lender, an additional premium of [~~thirty two dollars (\$32.00)~~]twenty-five dollars (\$25.00) dollars shall be collected.

G. Mechanics' and Materialmen's Lien Coverage in Standard Loan Policy (evidence of priority requirement not met). The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted from a standard Loan Policy insuring a construction loan pursuant to 13.14.7.14 NMAC. The premium for deletion of the exception shall be [~~thirty two dollars (\$32.00)~~]twenty-five dollars (\$25.00) when the insurer's underwriting requirements for evidence of priority have been met or five dollars (\$5.00) per thousand of the face amount of the policy if said requirements have not been met as provided in 13.14.7.14 NMAC.

[6-16-86..4-1-94; 6-1-97; 6-1-98; 13.14.9.40 NMAC – Rn, 13 NMAC 14.9.13, 5-15-00; A, 3-1-02]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 13.14.10.40 NMAC.

13.14.10.40 NAMED INSURED ENDORSEMENT: When a Named Insured endorsement, NM Form 55, is issued on or after August 15, 2001 or requested at the time an Owner's Policy or Leasehold Owner's Policy is issued on or after August 15, 2001, there shall be no charge for the endorsement. When a

Named Insured endorsement, NM Form 55, is issued or requested after an Owner's Policy or Leasehold Owner's Policy has been issued prior to August 15, 2001, the premium charge for issuance of the endorsement shall be twenty-five dollars (\$25.00).

[13.14.10.40 NMAC – N, 8-1-01; A, 3-1-02]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 13.14.16.9, 13.14.16.13, 13.14.16.20, 13.14.16.26, 13.14.16.27, and 13.14.16.28 NMAC.

13.14.16.9 NMAC, SCHEDULE A GENERAL INSTRUCTIONS, is amended to add a new subsection G.

G. Depreciation. Title agents shall expense depreciation by the straight-line method. Title agents shall include depreciation relating to real property on Schedule A, Line B-3 in accordance with the instructions in subsection B of 13.14.16.13 NMAC but shall include depreciation relating to office equipment on Schedule A, Line B-9 in accordance with the instructions in subsection H of 13.14.16.13 NMAC.

13.14.16.13 NMAC, SCHEDULE A, LINES B-2 THROUGH B-31, is amended to add a sentence to subsection T.

T. Schedule A, Line B-21, Business Start Up Expense/Profit. Include cost of starting a new title agency in a different county, i.e., purchase price of existing company or cost to build title plant and if in business for only part of the year indicate your first business day at bottom of Schedule A as provided. Amortize capitalized business start-up expenses over a five-year period in accordance with Internal Revenue Code (IRC) regulations.

13.14.16.20 NMAC, SCHEDULE C - IDENTIFICATION OF OTHER INCOME, is amended to change the heading and Item B of the form.

(See Schedule C - pg 191)

NEW MEXICO TITLE INSURANCE AGENT'S EXPERIENCE REPORT
Calendar Year Ending December 31, 20__

SCHEDULE C – IDENTIFICATION OF OTHER INCOME

Description of Income Item	Title	Closing and Escrow	Abstract	Other Non-Title Operations
A Closing Fees				
B Abstracting and Title Report Income				

13.14.16.26 NMAC, SCHEDULE I - RECONCILIATION, is amended to change the heading and Items 4e, 4f, and 6f of the form and to add space at the bottom of the form for noting the explanation for "other" adjustments.

NEW MEXICO TITLE INSURANCE AGENT'S EXPERIENCE REPORT
Calendar Year Ending December 31, [49]20__

- 4. Adjustments for book income
 - e. [~~Interest expense~~] Excluded expenses per Schedule A _____
 - f. Other (provide explanation below) _____

- 6. Book/tax adjustments
 - f. Other (provide explanation below) _____

Note explanation for "other" adjustments:

4f.

6f.

13.14.16.27 NMAC, SCHEDULE J - SUMMARY OF AGENTS TRANSACTIONS WITH ANY AFFILIATES, is amended to change the heading and to add space at the bottom of the form (but before the Instructions) for disclosures of Schedule J transactions.

NEW MEXICO TITLE INSURANCE AGENT'S EXPERIENCE REPORT
Calendar Year Ending December 31, [49]20__

SCHEDULE J – DETAILS OF OWNERS AND AFFILIATES
ALL AGENTS ARE REQUIRED TO COMPLETE COLUMNS (1) AND (2) OF THIS SCHEDULE

Note disclosures for Schedule J transactions:

13.14.16.28 NMAC, SCHEDULE K – INDEPENDENT AUDITOR'S REPORT, is amended to change the heading, the first paragraph and the last 2 paragraphs of the form, to add a sentence to the form before the last paragraph, and to make certain stylistic changes.

NEW MEXICO TITLE INSURANCE AGENT'S EXPERIENCE REPORT
Calendar Year Ending December 31, [49]20__

We (I) have audited the accompanying Schedules A, B, C, D, E, F, H, I, and J of the New Mexico Title Insurance [~~Agency~~]Agent's Experience Report [~~Regulatory Basis~~] of the (insert_name of agency or insurer) [:- _____] (a _____ corporation) for the year ended December 31, [49]20__. These schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these schedules based on our audit.

In our opinion, the schedules referred to above present fairly, in all material respects, the information required by the New Mexico Department of Insurance [:-] of the (insert_name of agency or insurer) [:- _____] for the year ended December 31, [49]20__, on the basis of the accounting practices described above.

A copy of our most recent Peer Review Report is attached and incorporated in this report by reference.

This report is intended solely for the information and use of the board of directors and management of the (insert name of agency or insurer)[:-_____] and for filing with the New Mexico Department of Insurance and should not be used for any other purpose.

**NEW MEXICO
PUBLIC REGULATION COMMISSION**

This is an amendment to 13.14.18.13, 13.14.18.17, 13.14.18.18, 13.14.18.33, 13.14.18.34, 13.14.18.44, 69, and 13.14.18.70 NMAC.

13.14.18.13 NMAC, APPROVED FORMS, is amended to delete NM Form 4 and NM Form 5 from, and to add NM Form 56 and NM Form 57 to, the list.

4	10-17-92	Leasehold Owner's Policy-	13.14.18.17
5	10-17-92	Leasehold Loan Policy-	13.14.18.18

56	Form 9.1	Restrictions, Encroachments, & Minerals Endorsement- Unimproved Land	13.14.18.69
57	Form 9.2	Restrictions, Encroachments, & Minerals Endorsement- Improved Land	13.14.18.70

13.14.18.17 NMAC, NM FORM 4: LEASEHOLD OWNER'S POLICY, is repealed.

13.14.18.18 NMAC, NM FORM 5: LEASEHOLD LOAN POLICY, is repealed.

13.14.18.33 NMAC, NM FORM 20: LEASEHOLD OWNER'S ENDORSEMENT, is repealed and replaced with the following form:

Leasehold Owner's Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 20]

1. As used in this endorsement, the following terms shall mean:

a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.

b. "Lease": the lease agreement described in Schedule A.

c. "Leasehold Estate": the right of possession for the Lease Term.

d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. "Personal Property": chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land without causing appreciable damage to themselves or to the land to which they are affixed.

f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by this policy.

g. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during

the Lease Term.

2. The provisions of subsection (b) of Section 7 of the Conditions and Stipulations shall not apply to any Leasehold Estate covered by this policy.

3. Valuation of Estate or Interest Insured. If, in computing loss or damage, it becomes necessary to value the estates or interests of the insured as the result of a covered matter that results in an Eviction, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

4. Additional items of loss covered by this endorsement: If the insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by this policy.

a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.

b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate is obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages that the insured is obligated to pay to lessees or sublessees on account of

the breach of any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.

f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, landscaping costs and fees, costs and interest on loans for the acquisition and construction.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____

13.14.18.34 NMAC, NM FORM 21: LEASEHOLD LOAN POLICY ENDORSEMENT, is repealed and replaced with the following form:

Leasehold Loan Policy Endorsement Attached to Policy No. _____ Issued By Blank Title Insurance Company [NM Form 21]

1. As used in this endorsement, the following terms shall mean:

a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.

b. "Lease": the lease agreement described in Schedule A.

c. "Leasehold Estate": the right of possession for the Lease Term.

d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. "Personal Property": chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land without causing appreciable damage to themselves or to the land to which they are affixed.

f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by this policy.

g. "Tenant": the tenant under the Lease and, after acquisition of all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of Section 2(a) of the Conditions and Stipulations of this policy, the insured claimant.

h. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured. If, in computing loss or damage, it becomes necessary to value the estates or interests insured by this policy as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement: If the insured acquires all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of Section 2(a) of the Conditions and Stipulations of this policy and thereafter is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the

estates or interests insured by this policy.

a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.

b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold.

e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.

f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____

13.14.18.44 NMAC, NM FORM 31: OWNER'S LEASEHOLD CONVERSION ENDORSEMENT, is amended to add the following phrases to the second and eighth paragraphs of the form respectively.

Section 1 of the Conditions and Stipulations is hereby amended by deleting therefrom subparagraph (h), if such subparagraph appears in the policy.

If the policy contains Section 14, Valuation of Estate or Interest Insured, and Section 15, Miscellaneous Items of Loss, then such sections are hereby deleted and Sections 16, 17, 18 and 19 are hereby renumbered 14, 15, 16 and 17 respectively.

13.14.18.69 NM FORM 56: RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENT FOR UNIMPROVED LAND:

Restrictions, Encroachments, and Minerals Endorsement for Unimproved Land

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM FORM 56; ALTA Form 9.1]

The Company insures the insured against loss or damage sustained by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:

(a) Present violations on the land of any enforceable covenants, conditions or restrictions.

(b) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter or right of forfeiture because of violations on the land of any enforceable covenants, conditions or restrictions.

(c) Any encroachment onto the land of existing improvements located on adjoining land.

(d) Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.

2. Damage to buildings constructed on the land after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraph 1(a), the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____

13.14.18.70 NM FORM 57: RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENT FOR IMPROVED LAND:

Restrictions, Encroachments, and Minerals Endorsement for Improved Land

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM FORM 57; ALTA Form 9.2]

The Company insures the insured against loss or damage sustained by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:

(a) Present violations on the land of any enforceable covenants, conditions or restrictions, or any existing improvements

on the land which violate any building setback lines shown on a plat of subdivision recorded or filed in the public records.

(b) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter or right of forfeiture because of violations on the land of any enforceable covenants, conditions or restrictions.

(c) Any encroachment of existing improvements located on the land onto adjoining land, or any encroachment onto the land of existing improvements located on adjoining land.

(d) Any encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.

(e) Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.

2. Damage to existing buildings:

(a) Which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;

(b) Resulting from the future exercise of any right existing at Date of Policy to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

3. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment, other than fences, landscaping or driveways, excepted in Schedule B.

4. Any final court order or judgment denying the right to maintain any existing building on the land because of any violation of covenants, conditions or restrictions or buildings setback lines shown on a plat of subdivision recorded or filed in the public records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions

or limitations contained in an instrument creating a lease.

As used in paragraph 1(a) and 4, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

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

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY
BY: _____

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

This is an amendment to 14.7.2.20 NMAC and 14.7.2.34 NMAC:

14.7.2.20 CHAPTER 11. ACCESSIBILITY. [Internal numbering system corresponds with the Uniform Building Code and is included to facilitate the use of this Code.] Delete 1997 Uniform Building Code tables and provisions for this entire Chapter, and substitute the following.

A. SECTION 1101 SCOPE.

(1) 1101.1 General. Buildings or portions of buildings shall be accessible to persons with and without disabilities as required by this chapter. See Appendix Chapter 11 for requirements governing the provision of accessible site facilities, additions, alterations, change of occupancy, historical preservation, children's facilities, judicial, legislative and regulatory facilities, detention and correctional facilities, and automated teller machines.

(2) 1101.2 Standards of Quality. The standard listed below labeled an "Adopted Standard" is part of this Code. Accessible Design. Adopted Standard is ICC/ANSI A117.1-1998, "Accessible and Usable Buildings and Facilities".

(3) 1101.3 Design. The design and construction of accessible buildings and

building elements shall be in accordance with this chapter and ICC/ANSI A117.1-1998. For a building to be considered accessible, it shall be designed and constructed to the minimum provisions of this chapter and ICC/ANSI A117.1-1998. EXCEPTION: Where full compliance with this chapter is impractical due to unique characteristics of the terrain, the building official may grant modifications in accordance with Section 104.2.7, provided that any portion of the building or structure that can be made accessible shall be made accessible to the greatest extent practical.

B. SECTION 1102 - DEFINITIONS: For the purpose of this chapter, certain terms are defined as follows:

(1) "ACCESSIBLE" describes a site, building, facility or portion thereof that complies with this chapter and that can be approached, entered and used by persons with disabilities.

(2) "ACCESSIBLE MEANS OF EGRESS" is an accessible route usable by people with disabilities, that leads to a public way.

(3) "ACCESSIBLE ROUTE" is a continuous unobstructed path connecting all accessible elements and spaces in an accessible building or facility. Interior routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior routes may include parking, access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

(4) "ADAPTABILITY" is the capability of non-structural alterations or additions to certain building spaces and elements, such as kitchen counters, sinks and grab bars, to accommodate the needs of persons with and without disabilities, or to accommodate the needs of persons with different types or degrees of disability.

(5) "AREA OF REFUGE" is an area with direct access to an exit or an elevator where persons unable to use stairs can remain temporarily in safety to await instructions or assistance during emergency evacuation.

(6) "ASSEMBLY AREA" is a public or common use area accommodating a group of individuals for recreational, educational, political, social, or amusement purposes, or for the consumption of food or drink.

(7) "COMMON-USE AREAS" are rooms, spaces, or elements inside or outside a building that are made available for use by occupants or visitors to the building.

(8) "DWELLING UNIT—TYPE A" is a dwelling unit that is designed and constructed for accessibility in accordance with ICC/ANSI A117.1-1998.

(9) "DWELLING UNIT—TYPE

B" is a dwelling unit that is designed and constructed for accessibility in accordance with ICC/ANSI A117.1-1998.

(10) "ELEMENT" is an architectural or mechanical component of a building, facility, space or site.

(11) "FACILITY" is all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways or parking lots located on a site.

(12) "GROUND FLOOR" is any occupiable floor less than one (1) story above or below grade with direct access to grade. A building or facility always has at least one (1) ground floor and may have more than one (1) ground floor as where a split-level entrance has been provided or where a building is built into a hillside.

(13) "GROUND FLOOR DWELLING UNIT" is a dwelling unit with a primary entrance and habitable space at grade.

(14) "ICC/ANSI A117.1" is American National Standard A117.1-1998, published by the Council of American Building Officials.

(15) "MULTISTORY DWELLING UNIT" is a dwelling unit with habitable or bathroom space located on more than one (1) story.

(16) "OCCUPIABLE" is a room or enclosed space designed for human occupancy.

(17) "PERSON WITH DISABILITY" is an individual who has an impairment, including a mobility, sensory or cognitive impairment, that results in a functional limitation in access to and use of a building or facility.

(18) "PRIMARY ENTRANCE" is a principal entrance through which most people enter the building. A building may have more than one (1) primary entrance.

(19) "PRIMARY FUNCTION" is a major activity for which the facility was intended. Areas that contain primary function include, but are not limited to, the customer services lobby of a bank, the dining areas of a cafeteria, the meeting rooms in a conference center, as well as offices and all other work areas in which the activities of the public accommodation or other private entities using the facility are carried out.

(20) "PROFESSIONAL OFFICE OF A HEALTH CARE PROVIDER" means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility housing the "professional office of a health care provider" only includes floor levels housing at least one (1) health care provider, or any floor level designed or

intended for use by at least one (1) health care provider.

(21) "PUBLIC-USE AREAS" are rooms or spaces that are made available to the general public.

(22) "SERVICE ENTRANCE" is an entrance intended primarily for delivery of goods or services.

(23) "SITE" is a parcel of land bounded by a property line or a designated portion of a public right-of-way.

(24) "SLEEPING ACCOMMODATIONS" are rooms intended for sleeping purposes.

C. SECTION 1103 BUILDING ACCESSIBILITY. B [Internal numbering system corresponds with the Uniform Building Code and is included to facilitate the use of the code.]

(1) 1103.1 Where Required.

(a) 1103.1.1 General.

Accessibility shall be provided to and within all areas of temporary or permanent buildings and facilities, or portions thereof, for all occupancy classifications except as modified by this chapter. See also Appendix Chapter 11, which is part of this chapter. EXCEPTIONS: 1. Utility, service or security spaces. Floors or portions of floors not customarily occupied, including, but not limited to, elevator pits; observation galleries used primarily for security purposes; prison guard towers; fire towers; life guard stands; score boards; elevator penthouses; non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, or freight elevators; piping and equipment catwalks; and machinery, mechanical and electrical equipment rooms. 2. Temporary structures, sites and equipment directly associated with the construction process such as construction site trailers, scaffolding, bridging or material hoists are not required to be accessible. This exception does not include walkways or pedestrian protection required by Chapter 33. 3. Individual work areas. Individual employee workstations are not required to be accessible but shall be located on an accessible route. 4. Series of employee work areas. Where there are a series of built-in individual workstations of the same type, they shall be on an accessible route. Of such workstations ten (10) percent, but not less than one (1), shall be accessible. 5. One- and two-family dwellings. One- and two-family dwellings and accessory structures, and their associated sites and facilities, that are not publicly funded, are not required to be accessible.

(b) 1103.1.2 Group A Occupancies. Group A Occupancies shall be accessible as provided in this chapter.

(c) 1103.1.3 Group B Occupancies. Group B Occupancies shall be accessible as provided in this chapter.

(d) 1103.1.4 Group E Occupancies. Group E Occupancies shall be accessible as provided in this chapter.

(e) 1103.1.5 Group F Occupancies. Group F Occupancies shall be accessible as provided in this chapter.

(f) 1103.1.6 Group H Occupancies. Group H Occupancies shall be accessible as provided in this chapter.

(g) 1103.1.7 Group I Occupancies. Group I Occupancies shall be accessible in public-use, common-use and employee-use areas, and shall have accessible patient rooms, cells, and treatment or examination rooms as follows: 1. In Group I, Division 1.1 patient-care units within hospitals that specialize in treating conditions that affect mobility, all patient rooms, including associated toilet rooms and bathrooms. 2. In Group I, Division 1.1 patient-care units within hospitals that do not specialize in treating conditions that affect mobility, at least one (1) in every ten (10) patient rooms, or fraction thereof, including associated toilet rooms and bathrooms. 3. In Group I, Divisions 1.1 and 2 nursing homes and long-term care facilities, at least one (1) in every two (2) patient rooms, or fraction thereof, including associated toilet rooms and bathrooms. 4. In Group I, Division 3 mental health occupancies, at least one (1) in every ten (10) patient rooms, or fraction thereof, including associated toilet rooms and bathrooms. 5. In Group I, Division 3 jail, prison and similar occupancies, at least one (1) in every twenty (20) rooms or cells, or fraction thereof, including associated toilet rooms and bathrooms. See Appendix Chapter 11, Section 1118. 6. In Group I Occupancies, all treatment and examination rooms shall be accessible.

(h) 1103.1.7.1 Entry. In Group I, Divisions 1.1 and 2 Occupancies, at least one (1) accessible entry shall be protected from the weather by means of a canopy or roof overhang. Every such entry shall include an accessible passenger-loading zone.

(i) 1103.1.7.2 Wheelchair turning space. An accessible wheelchair turning space shall be provided within the room and shall not overlap or extend beneath the bed.

(j) 1103.1.7.3 Beds. Beds within accessible sleeping accommodations shall provide an accessible clear floor space on both sides of a bed. The clear floor space shall be positioned for parallel approach to the side of the bed. EXCEPTION: In Group I, Division 3 Occupancies access shall only be required to one (1) side of the bed.

(k) 1103.1.8 Group M Occupancies. Group M Occupancies shall be accessible as provided in this chapter.

(l) 1103.1.9 Group R Occupancies.

(m) 1103.1.9.1 General. Group R Occupancies shall be accessible as provided in this chapter. Public- and common-use areas and facilities, which are available to the general public or for the use of residents or guests of Group R Occupancy accessible dwelling units shall be accessible. EXCEPTIONS: 1. Common- or public-use facilities serving Group R, Division 1 Apartments not required to contain either Type A or Type B dwelling units. 2. Group R, Division 3 lodging houses containing not more than five (5) rooms for rent or hire that are also occupied as the residence of the proprietor. 3. Congregate residences with (10) ten or fewer occupants need not be accessible.

(n) 1103.1.9.2 Hotels, lodging houses and congregate residences. In hotels, lodging houses and congregate residence occupancies, accessible guest rooms shall be provided in accordance with Table 1103.1.9A. All associated spaces or facilities for the use of accessible guest rooms, such as sleeping accommodations; bathing, shower and toilet facilities; living, dining and kitchen areas; kitchenettes, wet bars, patios, balconies, terraces; or other similar spaces or facilities shall be accessible.

(o) 1103.1.9.2.1 Guest room doors and doorways. Entrance and passage doors and passage doorways into and within all guest rooms shall provide a clear width of 32 inches (815 mm) minimum.

(p) 1103.1.9.2.2 Dispersion. Accessible guest rooms shall be dispersed among the various classes of guest rooms.

(q) 1103.1.9.2.3 Roll-in showers. Roll-in showers shall be provided with permanently mounted fold-up accessible shower compartment seats.

(r) 1103.1.9.2.4 Visual alarms, notification devices and telephones. In addition to the accessible guest rooms required above, guest rooms for persons with hearing impairments shall be provided in accordance with Table 1103.1.9B. Guest rooms for persons with hearing impairments shall be provided with visible and audible alarm-indicating appliances, activated by both the in-room smoke detector and the building fire protective signaling system. Such rooms shall have an electrical outlet installed within 48 inches (1220 mm) of the telephone connection. When a telephone is permanently installed, it shall be a volume-controlled telephone. Such rooms shall have devices separate from the visible alarm system which provide visible notification of incoming telephone calls and door bell actuation.

(s) 1103.1.9.2.5 Accessible beds. In accessible sleeping accommodations with four (4) or more beds, accessible beds shall be provided in accordance with Table

1103.1.9C. Accessible beds in accessible rooms shall have a clear accessible approach on one side. Two beds may share a single approach.

(t) 1103.1.9.3 Multi-unit dwellings. In Group R, Division 1 Occupancy apartments containing four (4) or more dwelling units in a single structure, every dwelling unit shall be a Type B dwelling unit. In Group R, Division 1 apartment occupancies containing more than twenty (20) dwelling units, at least two (2) percent, but not less than one (1), of the dwelling units shall be Type A dwelling units equally dispersed about the site. For publicly funded projects five (5) percent, but not less than one (1), of the dwelling units shall be Type A dwelling units equally dispersed about the site. Total dwelling units on a site shall be considered to determine the number of accessible dwelling units. Type A and B dwelling units shall comply with ICC/ANSI A117.1-1998. Dwelling units required to be Type B dwelling units are permitted to be designed and constructed as Type A dwelling units. EXCEPTIONS: 1. Where no elevator service is provided in a building, Type B dwelling units need not be provided on floors other than the ground floor. 2. Where no elevator service is provided in a building and the ground floor does not contain dwelling units, only those dwelling units located on the first floor of either Group R, Division 1 apartment occupancies or Group R, Division 3 Occupancies need comply with the requirements of this Section. 3. A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one (1) floor, the floor provided with elevator service shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor. 4. The number of Type B dwelling units provided in multiple non-elevator buildings on a single site may be reduced to a percentage of the ground floor units that is equal to the percentage of the entire site having grades, prior to development, that are ten (10) percent or less; but in no case shall the number of Type B units be less than twenty (20) percent of the ground floor dwelling units on the entire site. 5. The required number of Type B dwelling units shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base flood elevation resulting in: 1.1 A difference in elevation between the minimum required floor elevation at the primary entrances and all vehicular and pedestrian arrival points within 50 feet (15,240 mm)

exceeding 30 inches (762 mm). 5.2 A slope exceeding ten (10) percent between the minimum required floor elevation at the primary entrances and all vehicular and pedestrian arrival points within 50 feet (15,240 mm). Where no such arrival points are within 50 feet (15,240 mm) of the primary entrances, the closest arrival point shall be used.

(u) 1103.1.10 Group S Occupancies. Group S Occupancies shall be accessible as provided in this chapter.

(v) 1103.1.11 Group U Occupancies. Group U, Division 1 Occupancies shall be accessible as follows: 1. Private garages and carports that contain accessible parking. 2. In Group U, Division 1 agricultural buildings, access need be provided only to paved work areas and areas open to the general public.

(2) 1103.2 Design and Construction.

(a) 1103.2.1 General. When accessibility is required by this chapter, it shall be designed and constructed in accordance with this chapter and ICC/ANSI A117.1-1998.

(b) 1103.2.2 Accessible route. When a building, or portion of a building, is required to be accessible, an accessible route shall be provided to all portions of the building, to accessible building entrances, connecting accessible elements and spaces, accessible pedestrian walkways and the public way. EXCEPTION: An accessible route is not required to floor levels less than 3,000 square feet (278.7 m²) located either above or below the accessible level in buildings or facilities that are less than three (3) stories unless the floor contains the offices of a health-care provider or the building is a transportation facility, an airport, a Group M Occupancy with five (5) or more tenants, or the facility is owned or leased by a government agency. When floor levels are required to be connected by an accessible route, and an interior path of travel is provided between the levels, an interior accessible route between the levels shall be provided. When only one (1) accessible route is provided, it shall not pass through kitchens, storage rooms, toilet rooms, bathrooms, closets or other similar spaces. EXCEPTION: A single accessible route may pass through a kitchen or storage room in a Type A dwelling unit. When more than one (1) building or facility is located on a site, accessible routes shall be provided connecting accessible buildings and accessible site facilities. The accessible route of travel shall, to the maximum extent feasible, coincide with the route for the general public connecting accessible building entrances, accessible site facilities and the accessible site entrances. EXCEPTIONS: 1. For

Group R, Division 1 apartment occupancies, when the slope of the finished grade between accessible buildings and facilities exceeds one (1) unit vertical in twelve (12) units horizontal (8.33% slope), or when physical barriers of the site prevent the installation of an accessible route, a vehicular route with parking at each accessible building or facility may be provided in place of an accessible route. 2. An accessible route is not required between accessible facilities that have as the only means of access between them a vehicular way not provided for pedestrian access.

(c) 1103.2.3 Accessible entrances. Each building and structure, each separate tenancy, and each accessible space within a building or structure, shall be provided with at least one (1) primary entrance, but no less than fifty (50) percent of entrances shall comply with the accessible route provisions of ICC/ANSI A117.1-1998. At least fifty (50) percent of all entrances shall be accessible. EXCEPTIONS: 1. Entrances used exclusively for loading and service unless they are the only entrance. 2. Entrances to spaces not required to be accessible as provided for in Section 1103. When a building or facility has entrances that normally serve accessible parking facilities, transportation facilities, passenger loading zones, taxi stands, public streets and sidewalks, or accessible interior vertical access, the nearest entrance serving each such function shall comply with the accessible route provisions of ICC/ANSI A117.1-1998. If access is provided for pedestrians from a pedestrian tunnel or elevated walkway, one (1) entrance to the building from each tunnel or walkway must be accessible. The primary entrance to either a Type A or Type B dwelling unit shall be located on an accessible route from public or common areas. The primary entrance to the dwelling unit shall not be to a bedroom.

(d) 1103.2.3.1 Other entrances. In buildings owned or leased by a public entity, all entrances not required to be accessible, having a walking surface within six (6) inches or less of the adjacent grade, shall be accessible to the adjacent grade.

(e) 1103.2.4 Signs. Signs shall identify required accessible elements, spaces and routes in this chapter complying with this Section and ICC/ANSI A117.1-1998. EXCEPTION: Building directories and all temporary signs.

(f) 1103.2.4.1 Tactile and visual signs. Signs that are both tactile and visual shall be provided at all permanent rooms and spaces. Signs that designate permanent rooms or spaces including, but not limited to, restrooms, areas of refuge, elevator doorway and doors to stairways shall have raised upper-case characters accompanied

by Braille and a pictogram of the International Symbol of Accessibility if required. Pictograms do not have to be raised.

(g) 1103.2.4.2 International symbol of accessibility. The following elements and spaces of accessible facilities shall be identified by the pictograms of the International Symbol of Accessibility and are not required to be tactile but shall comply with the visual requirements: 1. Accessible parking spaces, except where the total parking spaces provided are five (5) or less. 2. Accessible areas of refuge. 3. Accessible passenger loading zones. 4. Accessible toilet and bathing facilities when not all are accessible. EXCEPTION: Toilet and bathing facilities within dwelling units, patient rooms and guest rooms. 5. Accessible entrance where not all entrances or doors are accessible. EXCEPTION: Entrances to individual dwelling units and guest rooms. 6. Accessible checkout aisles. Accessible checkout aisle signage shall be marked with a sign above the checkout aisle in the same location as the checkout aisle number or type of checkout information.

(h) 1103.2.4.3 Other symbols of accessibility. The following accessible elements shall be identified by pictogram symbols of accessibility and are not required to be tactile: 1. Text telephones (TTY). Symbol type shall be TTY. 2. Volume-controlled telephones. Symbol type shall be telephone handset with radiating sound waves. 3. Ticket office or window where assistive listening systems are provided. Symbol type shall be Access for Hearing Loss.

(i) 1103.2.4.4 Directional signage. Directional signage indicating the route to the nearest like accessible element shall be provided at the following locations. These directional signs shall include the pictograms of the International Symbol of Accessibility and shall be in compliance with visual sign requirements. Signs shall also be tactile if indicated: 1. Inaccessible building entrances. 2. Inaccessible public toilets and bathing facilities. 3. Elevators not serving an accessible route. 4. At each separate-sex toilet and bathing room indicating the location of the nearest unisex toilet and bathing room. Provide tactile per Section 1103.2.4.1. 5. At exits and elevators serving a required accessible space, but not providing an approved accessible means of egress. Signs shall be installed indicating the location of accessible means of egress. 6. Directional signage indicating the location of the nearest public TTY shall be provided at banks of public pay telephones not containing a public TTY.

(j) 1103.2.4.5 Other signs. Some signs are not required to be tactile. In assembly areas, a sign including the

International Symbols of Accessibility and Access for Hearing Loss, notifying the general public of the availability of assistive listening systems and accessible seating, shall be provided at ticket offices or similar locations. These signs are not required to be tactile but shall comply with visual requirements. Each door to an exit stairway shall state EXIT. Provide tactile per Section 1103.2.4.1. Van access parking space shall have an additional sign mounted below the International Symbol of Access identifying the space as "Van Accessible." This sign is not required to be tactile.

D. SECTION 1104 EGRESS AND AREAS OF REFUGE.

(1) 1104.1 Means of Egress.

(a) 1104.1.1 General. All required accessible spaces shall be provided with not less than one (1) accessible means of egress. When more than one (1) exit or exit-access door is required from any accessible space, each accessible portion of the space shall be served by not less than two (2) accessible means of egress. The maximum travel distance from any accessible space to an area of refuge shall not exceed the travel distance set forth in Chapter 10. Each accessible means of egress shall be continuous from each required accessible occupied area to a public way and shall include accessible routes, ramps, and exit stairs, elevators, horizontal exits or smoke barriers.

(b) 1104.1.2 Stairways. When an exit stairway is part of an accessible means of egress, the stairway shall have a clear width of not less than 48 inches (1219 mm) between handrails. The stairway shall either incorporate an area of refuge within an enlarged story-level landing or shall be accessed from an area of refuge complying with Section 1104.2 or a horizontal exit. EXCEPTIONS: 1. Exit stairways serving a single dwelling unit or guest room. 2. Exit stairways serving buildings protected throughout by an approved automatic sprinkler system. 3. The clear width of 48 inches (1219 mm) between handrails is not required for exit stairways accessed from a horizontal exit. 4. Areas of refuge are not required in open parking garages.

(c) 1104.1.3 Elevators. When an accessible floor is four (4) or more stories above or below the level of exit discharge serving that floor, at least one (1) elevator shall serve as one (1) required accessible means of egress. EXCEPTION: In fully sprinklered buildings, the elevator need not be provided to floors provided with a horizontal exit and located at or above the level of exit discharge. When an elevator is part of an accessible means of egress, standby power shall be provided. The elevator shall be accessed from either an area of refuge complying with Section 1104.2 or a hori-

zontal exit. EXCEPTIONS: 1. Elevators are not required to be accessed by an area of refuge or a horizontal exit in buildings protected throughout by an approved automatic sprinkler system. 2. Areas of refuge are not required in open parking garages.

(d) 1104.1.4 Platform lifts. Platform (wheelchair) lifts shall not serve as part of an accessible means of egress. EXCEPTION: Within a dwelling unit

(2) 1104.2 Areas of refuge.

(a) 1104.2.1 Access. Required areas of refuge shall be accessible from the space served by an accessible means of egress. Required areas of refuge shall have direct access to a stairway or an elevator complying with Section 1104.1.

(b) 1104.2.2 Pressurization. When an elevator lobby is used as an area of refuge, the elevator shaft and lobby shall be pressurized in accordance with the requirements of Section 905. EXCEPTION: When elevators are in an area of refuge formed by a horizontal exit or smoke barrier.

(c) 1104.2.3 Size. Each area of refuge shall be sized to accommodate two (2) accessible wheelchair spaces and one (1) additional space for each two hundred (200) occupants, or portion thereof over four hundred (400), based on the occupant load of the area of refuge and areas served by the area of refuge. Wheelchair spaces shall not reduce the required exit width or interfere with access to or use of fire department hose connections and valves. Access to required wheelchair spaces in an area of refuge shall not be obstructed by more than one (1) adjoining wheelchair space.

(d) 1104.2.4 Construction. Each area of refuge shall be separated from the remainder of the story by a smoke barrier having at least a one-hour fire-resistance rating. Smoke barriers shall extend to the roof or floor deck above. Doors in the smoke barrier shall be tightfitting smoke- and draft-control assemblies having a fire protection rating of not less than twenty (20) minutes. Doors shall be self-closing or automatic closing by smoke detection. An approved damper designed to resist the passage of smoke shall be provided at each point a duct penetrates the smoke barrier. EXCEPTION: Areas of refuge located within a stairway enclosure.

(e) 1104.2.5 Two-way communication. Areas of refuge shall be provided with an accessible two-way communication system between the area of refuge and the fireman's alarm panel or other central control point at or near the primary entrance. If the central control point is not constantly attended, the area of refuge shall also have controlled access to a public telephone system. Location of the central control point shall be approved by the fire department.

(f) 1104.2.6 Instructions. In areas of refuge that have a two-way emergency communication system, instructions on the use of the area under emergency conditions shall be posted adjoining the communications system. The instructions shall include: 1. Directions to find other exits, 2. Advice that persons able to use the exit stairway do so as soon as possible, unless they are assisting others, 3. Information on planned availability of assistance in the use of stairs or supervised operation of elevators and how to summon such assistance, and 4. Directions for use of the emergency communications system.

(g) 1104.2.7 Identification. Each area of refuge shall be identified by a sign stating AREA OF REFUGE and the International Symbol of Accessibility. The sign shall be located at each door providing access to the area of refuge. The sign shall be illuminated as required for exit signs when exit sign illumination is required. Tactile signage shall be located at each door to an area of refuge.

E. SECTION 1105 - FACILITY ACCESSIBILITY.

(1) 1105.1 General. When buildings or portions of buildings are required to be accessible, building facilities shall be accessible as provided in this Section. Building facilities or elements required by this Section to be accessible shall be designed and constructed in accordance with ICC/ANSI A117.1-1998.

(2) 1105.2 Bathing and toilet facilities. Bathing and toilet facilities shall be accessible as provided in this Section. EXCEPTIONS: ~~[4. A toilet or bathing facility for a single occupant, accessed only through a private office and not for common or public use, may be adaptable in accordance with ICC/ANSI A117.1-1998, Type A Dwelling Unit provisions, including both a parallel and forward approach to the toilet.]~~ For all occupancy types, a toilet room provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) need not be accessible, but shall meet the adaptability definition of 14.7.2.20.B NMAC. Where multiple single-user permanent or portable toilet or bathing units are clustered at a single location, at least five (5) percent, but not less than one (1) toilet unit or bathing unit at each cluster, shall be accessible.

(a) 1105.2.1 Bathing facilities. When bathing facilities are provided, at least one (1) of each type of fixture or element shall be accessible. In recreational facilities, where separate-sex-bathing facilities are provided, an accessible unisex bathing room shall be provided. EXCEPTION: Where each separate-sex bathing facility has only one (1) shower fixture, uni-

sex bathing facilities need not be provided.

(b) 1105.2.2 Toilet facilities. Toilet facilities located within accessible dwelling units, guest rooms and congregate residences shall comply with ICC/ANSI A117.1-1998. In other occupancies, each toilet room shall be accessible. At least one (1) of each type of fixture or element in each accessible toilet room shall be accessible. When toilet stalls are provided in a toilet room, at least one (1) toilet stall shall be wheelchair accessible. When six (6) or more toilet stalls are provided in a toilet room, at least one (1) ambulatory accessible toilet stall shall be provided in addition to the wheelchair accessible toilet stall. When ten (10) or more fixtures of any type are provided, at least two (2) of that type shall be wheelchair accessible. Where urinals are provided, at least one (1) urinal shall be accessible. In Groups A and M Occupancies, an accessible unisex toilet room shall be provided where an aggregate of six (6) or more male and female water closets are required. In buildings of mixed occupancy, only those water closets required for the Group A or M Occupancy shall be used to determine the unisex toilet room requirement.

(c) 1105.2.3 Lavatories, mirrors and towel fixtures. At least one (1) accessible lavatory shall be provided within toilet facilities. When mirrors, towel fixtures, and other toilet and bathroom accessories are provided, at least one (1) of each shall be accessible.

(d) 1105.2.4 Unisex bathing and toilet rooms.

(e) 1105.2.4.1 General. Unisex bathing and toilet rooms shall comply with this Section and ICC/ANSI A117.1-1998.

(f) 1105.2.4.2 Location. Unisex toilet and bathing rooms shall be located on an accessible route. The accessible route from any separate-sex toilet room to a unisex toilet room shall be on the same floor as the separate-sex toilet room and be located in the same area. Additionally, in passenger transportation facilities and airports, the accessible route from separate-sex toilet facilities to a unisex toilet room shall not pass through security checkpoints.

(g) 1105.2.4.3 Privacy. Doors to unisex toilet and bathing rooms shall be securable from within the room.

(h) 1105.2.4.4 Required fixtures.

(i) 1105.2.4.4.1 Unisex toilet rooms. Unisex toilet rooms shall include only one (1) water closet and only one (1) lavatory. Where a bathing facility is provided within a unisex toilet room, only one (1) shower shall be provided. EXCEPTION: A separate-sex toilet room containing not more than two (2) water closets without urinals, or containing only one (1) water clos-

et and one (1) urinal may be considered a unisex toilet room when provided with an entry-door privacy lock and signage complying with Section 1103.2.4.1 which indicates use as a separate-sex facility and a unisex facility.

(j) 1105.2.4.4.2 Unisex bathing rooms. Unisex bathing rooms shall include only one (1) shower fixture. Unisex bathing rooms shall also include one (1) water closet and one (1) lavatory. Where storage facilities are provided for separate-sex bathing facilities, accessible storage facilities shall be provided for unisex bathing rooms.

(3) 1105.3 Elevators and stairway and platform lifts. Elevators on an accessible route shall be accessible. All new passenger elevators shall be accessible. EXCEPTIONS: 1. Private elevators serving only one (1) dwelling unit. 2. Where more than one (1) elevator is provided in the building, elevators used exclusively for movement of freight, such as dumb waiters, or for building maintenance or construction. Elevators required to be accessible shall be designed and constructed to be full passenger elevators complying with ICC/ANSI A117.1-1998. EXCEPTION: Limited use/limited application elevators may be used to access spaces or areas which have five (5) or fewer occupants. Stairways in buildings, or portions of buildings, required to be accessible shall be designed and constructed to comply with ICC/ANSI A117.1-1998. Platform lifts shall not be part of a required accessible route. Platform lifts may be used under one of the following conditions subject to approval by the building official: 1. To provide access to incidental occupiable spaces and rooms that are not open to the general public and that house less than five (5) persons including, but not limited to, the equipment control rooms and projection booths. 2. To provide access where existing site constraints or other constraints make use of a ramp or elevator infeasible. All platform lifts shall be capable of independent operation.

(4) 1105.4 Other Building Facilities.

(a) 1105.4.1 Drinking fountains. On any floor where drinking fountains are provided, at least fifty (50) percent, but not less than one (1) fountain, shall be accessible.

(b) 1105.4.2 Fixed or built-in seating or tables. When fixed or built-in seating or tables are provided, at least ten (10) percent, but not less than one (1), shall be accessible. In dining and drinking establishments, such seating or tables shall be distributed throughout the facility.

(c) 1105.4.3 Storage. When storage facilities such as cabinets, shelves, closets, lockers and drawers are provided in

required accessible or adaptable spaces, at least one (1) of each type provided shall contain storage space complying with ICC/ANSI A117.1-1998.

(d) 1105.4.4 Customer service facilities.

(e) 1105.4.4.1 Dressing and fitting rooms. When dressing or fitting rooms are provided for use by the general public, patients, customers or employees, at least five (5) percent, but not less than one (1), in each group of rooms serving distinct and different functions shall be accessible.

(f) 1105.4.4.2 Counters and windows. Where customer sales and service counters or windows are provided a portion of the counter or at least one (1) window shall be accessible.

(g) 1105.4.4.3 Checkout aisles. Accessible checkout aisles shall be installed in accordance with Table 1105.4.4.3. EXCEPTION: In new construction, where the selling space is under five thousand (5,000) square feet, only one (1) checkout aisle is required to be accessible. Traffic control devices, security devices and turnstiles located in accessible checkout aisles or lanes shall be accessible. At least one (1) of each checkout aisle serving a different function shall be made accessible. Checkout aisles shall be 36 inches (915 mm) wide minimum. Accessible signage shall be provided. Accessible checkout aisle signage shall be marked with a sign above the checkout aisle in the same location as the checkout aisle number or type of checkout identification.

(h) 1105.4.4.4 Shelving and display. When shelving or display fixtures or spaces are provided, they shall be provided in accordance with this Section and ICC/ANSI A117.1-1998. Self-service shelves or display units in mercantile occupancies and shelving in stack areas of libraries shall be located on an accessible route. Such shelving and display units shall not be required to comply with accessible reach ranges. Spaces for vending machines and other equipment shall be accessible and located on an accessible route.

(i) 1105.4.4.5 Food service lines. Where self-service shelves are provided in dining and drinking establishments, at least fifty (50) percent of each type shall be accessible.

(j) 1105.4.5 Controls, operating mechanisms and hardware. Controls, operating mechanisms and hardware intended for operation by the occupant, including switches that control lighting and ventilation and electrical convenience outlets, in accessible spaces, along accessible routes or as parts of accessible elements shall be accessible.

(k) 1105.4.5.1 Operable windows. Where operable windows are provided

ed in accessible rooms within Group 1, Divisions 1.2 and 2 and R Occupancies, at least one (1) window in each room shall be accessible. In accessible rooms, each operable window required in accordance with Sections 310.4, 1202.2, and 1203.3 for emergency escape and rescue or for ventilation shall be accessible. EXCEPTIONS: 1. Accessible windows are not required in bathrooms or kitchens. 2. Accessible windows are not required in Type B dwelling units.

(l) 1105.4.6 Alarms. Alarm systems, when provided, shall include both audible and visible alarms. The alarm devices shall be located in hotel guest rooms as required by Section 1103.1.9.2, accessible public- and common-use areas, including toilet rooms and bathing facilities, hallways, and lobbies. EXCEPTION: Alarm systems in Group I, Divisions 1.1 and 2 Occupancies may be modified to suit standard health-care design practice.

(m) 1105.4.7 Telephones. Where public telephones, public closed-circuit telephones, or other interior and exterior public telephones are provided, accessible public telephones shall be provided in accordance with this Section and ICC/ANSI A117.1-1998.

(n) 1105.4.7.1 Wheelchair accessible telephones. At each floor, if public telephones are provided, at least one (1) shall be accessible. Where two (2) or more telephones are clustered into a telephone bank on a floor, at least one (1) telephone in each bank shall be accessible and at least one (1) telephone per floor shall be designed to allow accessible forward reach.

(o) 1105.4.7.2 Volume-controlled telephones. When public telephones are provided on a floor, each wheelchair accessible telephone and twenty-five (25) percent of all telephones, but no less than one (1) telephone, shall be volume-controlled. Volume-controlled telephones shall be dispersed among all types of public telephones, including closed circuit telephones. Accessible signage shall be provided.

(p) 1105.4.7.3 Text telephones. Where an interior bank of public telephones consists of three (3) or more telephones, at least one (1) telephone shall provide for a portable TTY that shall include a power outlet and a shelf 10 inches (244 mm) wide by 12 inches (305 mm) deep, complying with ICC/ANSI A117.1-1998. Where four (4) or more public telephones are provided at a building site, and at least one (1) is in an interior location, at least one (1) interior telephone shall be a TTY telephone. Where interior public pay phones are provided in transportation facilities; assembly and similar areas including stadiums and arenas; convention centers; hotels with convention facilities; or covered malls; or in or adjacent

to hospital emergency, recovery, or waiting rooms; at least one (1) interior TTY telephone shall be provided. Accessible signage shall be provided indicating TTY. Directional signs indicating the location of the nearest public TTY shall be provided at banks of public pay telephones not containing a public TTY.

(q) 1105.4.8 Kitchens. Kitchens, kitchenettes, or wet bars in common use or public use shall be designed in accordance with ICC/ANSI A117.1-1998. At least fifty (50) percent of shelf space in cabinets and appliances shall be within accessible reach ranges.

(r) 1105.4.9 Recreational facilities. Where recreational facilities are provided serving accessible dwelling units, twenty-five (25) percent, but not less than one (1) of each type in each group of such facilities shall be accessible. All recreational facilities of each type on a site shall be considered to determine the total number of each type that are required to be accessible. Swimming pools shall be accessible by transfer tier, hydraulic chair, ramp or other means. Hot tubs and spas shall be accessible only to the edge of the facility. EXCEPTION: Common- or public-use facilities accessory to Group R Occupancy buildings not required to contain either Type A or Type B dwelling units in accordance with Section 1103.1.9.3.

(s) 1105.4.10 Assembly areas. Assembly areas, including stadiums, theaters, auditoriums and similar occupancies, shall be accessible in accordance with this Section.

(t) 1105.4.10.1 Services. All services shall be provided. Services and facilities provided in areas not required to be accessible shall be equally provided on an accessible level and shall be accessible. Equally provided services and facilities shall not be restricted for use only by persons with disabilities.

(u) 1105.4.10.2 Wheelchair spaces. In theaters, bleachers, grandstands and other fixed-seating assembly occupancies, accessible wheelchair spaces shall be provided in accordance with Table 1105.4.10A. At least one (1) seat for a companion shall be provided beside each wheelchair space. Removable seats shall be permitted in the wheelchair positions.

(v) 1105.4.10.3 Wheelchair space clusters. Accessible wheelchair spaces may be grouped in wheelchair space clusters in accordance with Table 1105.4.10B. Dispersion of wheelchair space clusters shall be based on equal availability of sight-lines, facilities, services and of accessible routes. In multi-level assembly seating areas, dispersion shall be equal and shall include no less than the main level and two (2) additional levels if there are

three (3) or more levels. Wheelchair space clusters shall be separated by a minimum of five (5) intervening rows or by a minimum of ten (10) intervening seats. EXCEPTIONS: 1. In assembly seating areas where sight-lines require more than one (1) step for a rise in elevation between rows, the minimum required number of wheelchair space clusters in that area shall be one-half (1/2) of that required by Table 1105.4.10B. 2. In assembly areas of dining and drinking establishments that are located within non-elevator buildings, when the area of mezzanine seating is not more than twenty-five (25) percent of the total seating, an accessible route to the mezzanine is not required, provided the same services are provided in an accessible space. An accessible route shall connect wheelchair seating locations with performance areas, including stages, raised platforms, arena floors, dressing rooms, locker rooms, and other spaces used by performers or speakers. Raised platforms in banquet rooms shall have 2 inch (50.8 mm) high edge protection.

(w) 1105.4.10.4 Assistive listening systems. Assistive listening systems complying with ICC/ANSI A117.1-1998 shall be installed in stadiums, theaters, auditoriums, lecture halls and similar areas when these areas have fixed seats and where audible communications are integral to the use of the space as follows: 1. Areas with an occupant load of fifty (50) or more. 2. Areas where an audio-amplification system is installed. Receivers for assistive-listening systems shall be provided at a rate of four (4) percent of the total number of seats, but in no case less than two (2) receivers. Stadiums, theaters, auditoriums, lecture halls and similar areas not equipped with an audio-amplification system or having an occupant load of less than fifty (50) shall have a permanently installed assistive-listening system, or shall have electrical outlets or other supplementary wiring necessary to support a portable assistive-listening system. Signage shall be installed to notify patrons of the availability of the listening system.

(x) 1105.4.11 Self-service storage facilities. Self-service storage facilities shall provide accessible individual self-storage spaces in accordance with Table 1105.4.9.

(y) 1105.4.11.1 Dispersion. Accessible individual self-service storage spaces shall be dispersed throughout the various classes of spaces provided. Where more classes of spaces are provided than the number of required accessible spaces, the number of accessible spaces shall not be required to exceed that required by Table 1105.4.11. Accessible spaces are permitted to be dispersed in a single building of a multi-building facility.

(5) 1105.5 Rail transit platforms. Rail transit platform edges bordering a drop-off and not protected by platform screens or guardrails shall be provided with detectable warnings in accordance with ICC/ANSI A117.1-1998.

F. SECTION 1106—TYPE B DWELLING UNITS. ICC/ANSI A117.1-1998 is now being used for Type B dwelling units.

Table 1103.1.9A

ACCESSIBLE GUEST ROOMS

TOTAL NUMBER OF GUEST ROOMS PROVIDED	MINIMUM REQUIRED NUMBER OF ACCESSIBLE ROOMS WITH ROLL-IN SHOWERS	TOTAL NUMBER OF REQUIRED ACCESSIBLE ROOMS
1 to 25	0	1
26 to 50	0	2
51 to 75	1	4
76 to 100	1	5
101 to 150	2	7
151 to 200	2	8
201 to 300	3	10
301 to 400	4	12
401 to 500	4	13
501 to 1000	1% of total	3% of total
1001 and over	10 plus 1 for each 100 over 1000	30 plus 2 for each 100 over 1000

For publicly funded projects, the total number of accessible rooms shall be 5% or fraction thereof. Of these accessible rooms, 1% or fraction thereof shall be provided with roll-in showers.

TABLE 1103.1.9B

NUMBER OF ROOMS FOR PERSONS WITH HEARING IMPAIRMENTS

TOTAL NUMBER OF ROOMS	MINIMUM REQUIRED NUMBER
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1000	2% of total rooms
Over 1000	20 plus 1 for every 100 rooms, or fraction thereof, over 1000

TABLE 1103.1.9C

ACCESSIBLE BEDS

TOTAL NUMBER OF BEDS IN A GUEST ROOM	MINIMUM REQUIRED NUMBER OF ACCESSIBLE BEDS
4-25	1
26-50	2
51-75	4
76-100	5
101-150	7
151-200	8
201-300	10
301-400	12
401-500	13
501-1000	3% of total beds
Over 1000	20 plus 1 for every 100 rooms, or fraction thereof, over 1000

TABLE 1105.4.4.3

REQUIRED CHECKOUT AISLES

TOTAL NUMBER OF CHECKOUT AISLES	MINIMUM NUMBER OF ACCESSIBLE CHECKOUT AISLES
1-4	1
5-8	2
9-15	3
Over 15	3 plus 20% of additional aisles over 15

TABLE 1105.4.10A

ACCESSIBLE WHEELCHAIR SPACES

CAPACITY OF SEATING IN ASSEMBLY AREAS	MINIMUM REQUIRED NUMBER OF WHEELCHAIR SPACES
4-50	2
51-300	4
301-500	6
Over 500	6 plus 1 for each 100 over 500, or fraction thereof

TABLE 1105.4.10B

WHEELCHAIR SPACE CLUSTERS

CAPACITY OF SEATING IN ASSEMBLY AREAS	MINIMUM REQUIRED NUMBER OF WHEELCHAIR SPACE CLUSTERS
Up to 300	1
301 to 600	2
601 to 900	3
901 to 1500	4
1501 to 2100	5
2101 to 3000	6
Over 3000	6 plus 1 additional cluster for each 1000 seats or portion thereof

TABLE 1105.4.11

ACCESSIBLE SELF-SERVICE STORAGE FACILITIES

TOTAL SPACES IN FACILITY	MINIMUM NUMBER OF REQUIRED ACCESSIBLE SPACES
1 to 200	5%, but not less than 1
201 and over	10, plus 2% of total number of units over 200

[14.7.2.20 NMAC – Rp 14 NMAC 7.2.1100, 12-1-00; A, 03-30-02]

14.7.2.34 CHAPTER 25. GYPSUM BOARD AND PLASTER. ~~[Refer to 1997 Uniform Building Code for provisions of this Chapter.]~~ 2506.5 Application of Metal Plaster Bases. The application of metal lath or wire fabric shall be as specified in Section 2505.3 and they shall be furred out from vertical supports or backing not less than ¼ inch (6.4 mm) except as set forth in Table 25-B, Footnote 2. Where no external corner reinforcement is used, lath shall be furred out and carried around corners at least one support on frame construction. If required as part of a proprietary stucco system, equivalent or a minimum 0.019-inch (0.48) (No.26 galvanized sheet gage) corrosion-resistant weep screed with a minimum vertical attachment flange of 3 ½ inches (89 mm) shall be provided at or below the foundation plate line on all exterior stud walls. The screed shall be placed a minimum of 4 inches (102 mm) above the earth or 2 inches (51mm) above paved areas and shall be of a type that will allow trapped water to drain to the exterior of the building. The weather-resistive barrier shall lap the attachment flange, and the exterior lath shall cover and terminate on the attachment flange of the screed. [14.7.2.34 NMAC – Rp, 14 NMAC 7.2.2500, 12-1-00; 14.7.2.34 NMAC – A, 03-30-02]

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

This is an amendment to 19.15.40.7 NMAC. This is an amendment to 19.15.40.24 NMAC. Due to a clerical error Exhibit 1 was inserted in the wrong section and Exhibit 2 was inadvertently omitted. Exhibit 1 follows Paragraph (6) of Subsection A of 19.15.40.24 NMAC and Exhibit 2 follows Paragraph (2) of Subsection D of 19.15.40.24 NMAC. 19.15.40 NMAC was also renumbered and reformatted from 19 NMAC 15.4 to 19.15.40 NMAC to conform to the current NMAC requirements.

19.15.40.7 DEFINITIONS

A. “Accessible” means having access to; may require the removal of a panel, door or similar covering of the item described.

B. “Approved” means acceptable to the authority having jurisdiction.

C. “Authority having jurisdiction” means the New Mexico LPGas Bureau.

D. “Bulk plant” means storage facilities for liquid LPGas awaiting transfer.

E. “Bureau” means the liquefied petroleum and compressed gas bureau of the division.

F. “Certified” means “listed” or “labeled”.

G. “Certificate of competence” means a written certificate issued by the LPGas Bureau to an LPGas installer based on evidence of competence.

H. “Clearance” means the distance between the appliance, chimney, vent chimney or vent connector, or plenum and the nearest surface.

I. “Code” means NFPA 52, NFPA 54, NFPA 57, NFPA 58 and ~~NFPA 501C~~ NFPA 1192 and other code-books adopted ~~and~~ as amended by the commission.

J. “Commission” means the construction industries commission.

K. “Compressed natural gases” and “CNG” means mixtures of hydrocarbon gases and vapors consisting principally of methane in gaseous form, which has been compressed for vehicular fuel.

L. “Concealed LPGas piping” means all LPGas piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping.

M. "Connector, gas appliance" means a connector, used to convey fuel gas three feet or less in length (six feet or less for gas ranges), between a gas shut off valve and gas appliance in the same room.

N. "Consumer's LPgas system" means any arrangement of LPgas piping, extending from the point of delivery to and including all outlets, appliances and appurtenances, installed under the provisions of the Code, which the consumer is responsible to maintain in a serviceable condition, exclusive of piping, tanks, regulators, valves, fittings, etc. owned by the gas company.

O. "Distributing plant" means a facility with the primary purpose of distribution of LPgas, which receives LPgas in tank car, truck transport or truck lots, and distributes such LPgas to end-users by delivery tank truck or through gas piping; such plants have bulk storage of 2,000 gallons water capacity or more, and usually have container-filling and truck-loading facilities on the premises.

P. "Distributing point" means a facility other than a distributing plant which normally receives gas by tank truck and which fills small containers or the engine fuel tank of motor vehicles on the premises. (An LPgas service station is one type of distributing point).

Q. "Division" means the construction industries division of the regulation and licensing department.

R. "Energy efficient water heater" means any LPgas automatic storage water heater that meets or exceeds ASHREA 90-75 standards for energy efficiency.

S. "Fuel gas piping system" means the arrangement of piping, tubing, fittings, connectors, valves and devices designed and intended to supply or control the flow of fuel gas to the appliances.

T. "Gas company" means any LPgas company or LPgas distributor.

U. "Gas supply connection" means the terminal end or connection to which a gas supply connector is attached.

V. "Gas supply connector" means tubing or piping connecting the mobile home to the gas supply source.

W. "Gas vents" means factory-built vent piping and vent fittings listed by an approved testing agency, that are assembled and used in accordance with the terms of their listings, for conveying flue gases to the outside atmosphere.

X. "Heat producing appliance" means all heating and cooking appliances and all fuel burning appliances.

Y. "Heating appliance" means an appliance for comfort heating or for water heating of a manufactured home.

Z. "House piping" means the LPgas piping from the point where it enters the building or foundation, up to and including the outlets.

AA. "Input rating" means the LPgas-burning capacity of an appliance in BTU's per hour as specified by the manufacturer.

BB. "Inspector" means a person hired by the Bureau to enforce under administrative direction the laws and safety rules and regulations of the LPgas industry and the enforcement of the codes used in CNG, LNG and LCNG in motor vehicles.

CC. "Labeled" means equipment or materials to which has been attached a label, symbol or other identifying mark of an organization acceptable to the "authority having jurisdiction" and concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling the manufacturer indicate compliance with appropriate standards or performance in specified manner.

DD. "Liquefied natural gases", "liquefied compressed natural gases", "LNG" and "LCNG" means a fluid in the liquid state composed predominantly of methane and that can contain minor quantities of ethane, propane, nitrogen, or other components normally found in natural gas.

EE. "Liquefied petroleum gases", "LPG" and "LPGas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butane (normal butane or ISO-butane) and butylenes.

FF. "Liquid transfer" means the transfer of LPgas in a liquid form from an approved container into another approved container.

GG. "Liquid withdrawal" means an approved LPgas container designed for the withdrawal of LPgas for utilization in an approved means.

HH. "Listed" means equipment or materials included in a list published by an organization acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

II. "LPgas installation" means the installation of materials, fixtures, appliances or equipment that utilize LPgas, which is installed by a licensee of the LPGas Bureau.

JJ. "Manufactured homes" means a movable or portable hous-

ing structure over thirty-two feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one internal unit, as well as a single unit. Manufactured homes do not include recreational vehicles or modular or pre-manufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property.

KK. "Manufactured home site" means a designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

LL. "Manufactured home park" means a parcel (or contiguous parcels) of land which has been so designated and improved so that it contains two or more manufactured home sites available to the general public for the placement thereon of manufactured homes for occupancy.

MM. "Outlet" means a threaded connection or bolted flange in a pipe system to which an LPgas-burning appliance is or may be attached; such outlet must be located in the room or space where the appliance is or may be installed.

NN. "Point of delivery" means the initial junction of the consumer's gas piping with the gas company's piping, at the outlet side of the first regulator, regardless of whether it is a single-stage regulator system or the first stage regulator of a two-stage regulator system.

OO. "Product" or "products" of liquefied petroleum gases, compressed natural gases or liquefied natural gas are considered to be liquefied petroleum gases or compressed natural gases or liquefied natural gases respectively.

PP. "Qualified instructor" means an employee who has passed the required examination and performed for at least one year the work being taught.

QQ. "Readily accessible" means having direct access without the necessity of removing any panel, door or similar obstruction.

RR. "Regulator" means a device for controlling and maintaining a uniform pressure to the manifold of gas equipment.

SS. "Riser" means that portion of the yardline, which protrudes through the grade level of the ground.

TT. "Roof jack" that portion of venting system, including the cap, insulating means, flashing and ceiling plate,

located in and above the roof.

UU. “Sealed combustion/direct vent system appliance”, “direct vent system appliance” means an appliance which by its inherent design is constructed so that all air supplied for combustion to the combustion system of the appliance, and all products of combustion are completely isolated from the atmosphere of the space in which it is installed, and all flue gases are discharged to the outside.

VV. “Yardline” means a buried line servicing utilities from the on-site utility terminal to the manufactured home.

[11-15-97; 19.15.40.7 NMAC – Rn, 19 NMAC 15.4.7 & A, 03-28-02]

19.15.40.24 MANUFACTURED HOMES

A. Exterior gas piping.

(1) location of containers, containers and underground piping.

(a) Containers, appurtenances and underground piping shall be installed in accordance with the currently adopted edition of NFPA 54 and NFPA 58.

(b) Underground gas piping shall not be installed under any manufactured home or any attachments to the manufactured home. This is an exception to NFPA 54.

(2) All gas piping beneath a manufactured home shall be adequately supported by galvanized, or equivalently protective metal straps or hangers at least every four (4) feet, except, where adequate support and protection is provided by structural members.

(3) Gas shut-off valves shall not be placed beneath a manufactured home.

(4) Any extensions or alterations made to the gas piping system for the purpose of establishing the supply inlet for connection to the riser may not reduce or restrict the gas piping size from that of the original inlet.

(5) There shall be only one point of crossover between the section of a multi wide manufactured home, which must be readily accessible from the outside.

(6) Unless otherwise approved by the Bureau the connector used for the cross-over on multi wide manufactured homes when gas is supplied to more than one (1) section, must be made by a listed “Quick Disconnect” device which shall be designed to provide a positive seal of the supply side of the gas system when such device is separated. (Refer to Exhibit #1) LP Gas Exhibit #1.pdf

(7) The crossover connection shall be of the same size as the piping with which it directly connects.

(8) The gas inlet on the manufac-

tured home shall protrude no more than six (6) inches from the manufactured home. The inlet shall be rigidly anchored or strapped to a structural member within six (6) inches of the point where it enters beneath the manufactured home.

(9) bond of gas piping:

(a) Gas piping shall not be used as an electrical ground.

(b) Gas piping shall be bonded. Metallic gas piping shall be considered bonded if it is connected to the terminal on the chassis of the manufactured home by clamps, solderless connectors or by suitable ground-type straps.

(10) location of riser. The gas riser shall be located within twelve (12) inches of the manufactured home.

(11) site connector. Each manufactured home utilizing gas shall be connected to the manufactured home site outlet by an approved mobile home connector not more than thirty-six (36) inches in length. If encased flexible polyethylene pipe is used, a flexible connector shall not be required. The above ground portion of the polyethylene flexible riser shall not exceed thirty-six (36) inches in length and be installed so as to maintain flexibility and compensate for expansion and contraction.

(12) mechanical protection. All gas outlet risers, regulators, meters, valves or other exposed equipment shall be protected from mechanical damage by vehicles or other causes. Meters shall not be supported by gas service piping. Regulators may be supported by the rigid extended piping of the manufactured home.

(13) maximum pressure permitted. Gas supplied into the manufactured home shall not exceed 1/2 pounds per square inch gauge or fourteen (14) inches water column.

(14) gas pipe sizing. Gas piping systems shall be sized so that the pressure drop to any appliance inlet connection from any gas supply connections, when all appliances are in operation at maximum capacity, is no more than 0.5 inch water column. Conformance may be determined on the basis of test, or the gas piping system may be sized in accordance with the current National Fuel Gas Code, NFPA 54.

B. interior gas piping:

(1) Interior gas piping shall be installed in accordance with the currently adopted edition of NFPA 54 and NFPA 58.

(2) gas-fired appliances. Each gas-fired appliance must have a listed shut-off valve located within three (3) feet of the appliance and located in the same room as the gas appliance.

(3) appliance connectors. Appliance connectors shall not exceed three (3) feet in length, except for range connectors, which shall not exceed six (6) feet in

length.

(4) inspection testing and purging. Inspection testing and purging shall comply with the currently adopted edition of NFPA 54.

C. heat producing appliances. Every heat-producing appliance used in manufactured homes shall be listed or certified by an approved nationally recognized testing agency for this application.

(1) fuel conversion. Fuel burning appliances shall not be converted from one fuel to another unless converted in accordance with the terms of its listing.

(2) venting. Fuel burning, heating and refrigeration appliances shall be of the vented type and vented to the outside. In no case shall the vent of a gas-burning appliance terminate underneath the manufactured home.

(a) Fuel burning heat-producing appliances, except ranges, gas dryers and ovens, shall have complete separation of the combustion system from the atmosphere of the manufactured home. Combustion air inlets and flue gas outlets shall be listed or certified as components of the appliance.

(b) Vents, roof jacks and special fittings supplied as component parts of an appliance shall be installed in conformity with the terms of their listing. A single wall metal vent shall not be used unless it is a component part of a listed appliance.

(c) Vent terminations shall not be less than three (3) feet from any motor driven air intake that opens into habitable areas.

(d) Every joint of any vent or vent connector shall be secure, rigid, and tight, in alignment and have approved design and workmanship. Vent connectors shall be firmly attached to draft hood outlets or flue collars by sheet metal screws or other approved means, or the vent connectors using listed TYPE B or TYPE L gas vent materials shall be securely assembled using the method shown in the manufacturer’s instructions.

(3) gas clothes dryers.

(a) Clothes dryers shall not be installed in a room intended to be used for sleeping purposes.

(b) Clothes dryers shall be exhausted to the outside air by a moisture lint exhaust duct and terminating fitting listed or certified as components of the appliance.

(c) A clothes dryer moisture lint exhaust duct shall not be connected to any furnace duct, gas vent or chimney.

(d) The moisture lint exhaust duct shall not terminate beneath the manufactured home.

(e) Moisture lint exhaust ducts shall not be connected with sheet metal screws or other fastening devices, which extend into the duct.

(4) installation. The installation of each heat producing appliance shall conform to the terms of its listing as specified on the appliance and in the manufacturer's instructions. The installer shall leave the manufacturer's instructions attached to the appliance. Every appliance shall be secured in place to avoid displacement and movement from vibration and road shock.

(a) instructions. Instruction operating instructions shall be provided with the appliance.

(b) marking. Information on clearances, input ratings, lighting and shut-down shall be attached to the appliances with the same permanence as the nameplate, and so located that it is easily readable when the appliance is properly installed. Each fuel-burning appliance shall bear a permanent marking designating the type(s) of fuel for which it is listed.

(c) accessibility. Every appliance shall be accessible for inspection, service, repair and replacement without removing permanent construction. Sufficient room shall be available to enable the operator to observe the burner, control and ignition means while starting the appliance.

(5) location. Heat producing appliances shall be so located that no doors, drapes or other such material can be placed or swung closer to the front of the appliance than the clearances specified on the labeled appliances.

(6) clearances. Clearances between heat producing appliances and adjacent surfaces shall not be less than specified in the terms of their listing. Clearance spaces shall be framed in or guarded to prevent creation of storage space within the clearance specified.

D. Cross ventilation:

(1) above ground installation.

(a) Manufactured homes from 32' to 52' in length shall have one (1) vent of at least 36 square inches on all exposed sides of underfloor area. Vents must be located diagonally across from each other.

(b) Manufactured homes from 53' to 80' in length shall have a minimum of two (2) vents of at least 36 square inches on exposed sides of the underfloor areas. Vents must be located diagonally across from each other.

(c) The ends of the Manufactured home are not considered sides for determining cross ventilation.

(2) Ground Level Installation.

~~(Refer to Exhibit #1)~~ (Refer to Exhibit #2) LP Gas Exhibit #2.pdf

(a) Manufactured homes from 32' to 52' in length must have a minimum of 36 square inches of venting on the curbside and roadside of the manufactured home. Vents must be located diagonally across from each other.

(b) Manufactured homes from 52' to 80' in length must have a minimum of two 36 square inches of venting on the roadside and curbside of the manufactured home. Vents must be located diagonally across from each other.

(c) Each end of the unit must have a minimum of at least 36 square inches of venting so the air flow will be directed to ground level under the unit.

(d) All multi-sectioned manufactured homes shall be vented as per the above requirement doubling the number of vents per side of the unit. All vents shall be installed in a way not to allow any rodents or direct rainfall to enter the home.

E. Manufactured home parks:

(1) fuel gas equipment and installation. Fuel gas equipment and installations installed within a building in a manufactured home park shall comply with the current standard for the Installation of Gas Appliances and Gas Piping (NFPA 54), or the current standard for the Storage and Handling of Liquefied Petroleum Gases (NFPA 58).

(2) manufactured home park gas systems. Gas equipment and installations within a manufactured home park shall be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction.

(a) required gas supply. The minimum hourly volume of gas required at each manufactured home lot outlet or any section of the mobile home park has piping system shall be calculated as shown on Chart IV.

CHART IV-Demand Factors for use in Calculating Gas Piping Systems in Manufactured Home Parks.

No Of Manufactured Home Sites	BTU Per Hour Per Mfg. Home Site
1	125,000
2	117,000
3	104,000
4	96,000
5	92,000
6	87,000
7	83,000
8	81,000
9	79,000
10	77,000
11 to 20	66,000
21 to 30	62,000
31 to 40	58,000
41 to 60	55,000
Over 60	50,000

(b) lot shutoff valve. On systems supplied from a central container, each manufactured home lot shall have an approved gas shutoff valve installed

upstream of the mobile home lot gas outlet and located on the outlet riser at a height of not less than four (4) inches above grade. Such valve shall not be located under any manufactured home. Whenever the manufactured home lot outlet is not in use, the outlet shall be equipped with an approved cap or plug to prevent accidental discharge of gas.

[11-15-97; 19.15.40.24 NMAC – Rn, 19 NMAC 15.4.24, & A, 03-28-02]

End of Adopted Rules and Regulations Section

2002
SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 18	March 29
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 3	June 14
Issue Number 12	June 17	June 28
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.