

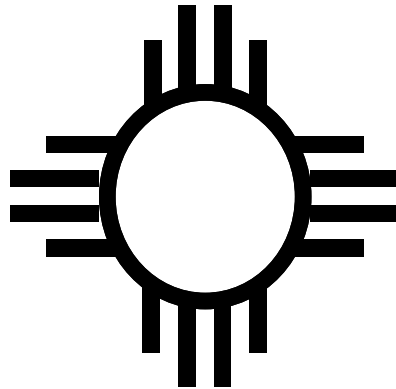
**NEW
MEXICO
REGISTER**



Volume XVI
Issue Number 11
June 15, 2005

New Mexico Register

**Volume XVI, Issue Number 11
June 15, 2005**



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

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Administrative Law Division
Santa Fe, New Mexico
2005

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New Mexico Register

Volume XVI, Number 11

June 15, 2005

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Effective Date and Validity of Rule Filings

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

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

PUBLIC ACCOUNTANCY BOARD NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Accountancy Board ("Board") will convene a public hearing on Friday, July 15, 2005. The hearing will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Suite D, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules. The hearing will be followed by a regular Board meeting in the same location.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.3 NMAC	Licensure and Continuing Professional Education Requirements

Notice of the hearing and Board meeting has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at www.rld.state.nm.us/b&c/accountancy. Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Wednesday, July 13, 2005; however, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Friday, July 8, 2005.

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

The Lea County Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to consider reducing the assessment rate collected to support cotton boll weevil control within the Lea County District.

The hearing will be held in the Fair Board meeting room, located at 101 South Commercial Street, Lovington, New Mexico, beginning at 1:30 p.m. on July 7, 2005.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on July 7, 2005. Written statements, inquiries, or requests for copies of the rule should be directed to the Lea County Cotton Boll Weevil Control Committee in care of Mr. John Norris at P.O. Box 541, Lovington, New Mexico 88260.

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

The Central Lea County Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to consider reducing the assessment rate collected to support cotton boll weevil control within the Central Lea County District.

The hearing will be held in the Fair Board meeting room, located at 101 South Commercial Street, Lovington, New Mexico, beginning at 2:30 p.m. on July 7, 2005.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on July 7, 2005. Written statements, inquiries, or requests for copies of the rule should be directed to the Central Lea County Cotton Boll Weevil Control Committee in care of Mr. Ace Hamm at P.O. Box 2032, Lovington, New Mexico 88260.

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On August 10, 2005, at 5:15 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Board) will hold a combined public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

* Proposal to adopt the *Implementation Plan for Municipal Solid Waste Landfills for Albuquerque and Bernalillo County*. This implementation plan is designed to control emissions of non-methane organic compounds (NMOC) from municipal solid waste landfills in Bernalillo County. This plan fulfills requirements for "designated pollutants" under Section 111(d) of the Clean Air Act. The adoption of this plan also fulfills part of the requirements set forth by EPA in order to accept delegation of 40 CFR 60 Subparts WWW, *Standards of Performance for Municipal Solid Waste Landfills* and Cc, *Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills*. Delegation of authority will enable the Air Quality Division to oversee landfill gas emissions at landfills located in Bernalillo County. The U. S. Environmental Protection Agency (EPA) currently administers and enforces Subparts WWW and Cc in Bernalillo County.

* Proposal to adopt a new regulation 20.11.71 NMAC, Municipal Solid Waste Landfills. This regulation will establish requirements for municipal solid waste landfills in order to control emissions of NMOC. This regulation will incorporate by reference the federal standards for landfill gas emissions found at 40 CFR 60 Subpart WWW *Standards of Performance for Municipal Solid Waste Landfills* and 40 CFR 60 Subpart Cc *Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills*, and will become locally enforceable.

* Proposal to amend 20.11.63 NMAC, New Source Performance Standards for Stationary Sources. This amendment will remove the current exclu-

sions from delegation of 40 CFR 60 Subpart WWW *Standards of Performance for Municipal Solid Waste Landfills* and 40 CFR 60 Subpart Cc *Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills*. If the proposed deletion of these exclusions is adopted, the City Of Albuquerque Air Quality Division will administer and enforce Subparts WWW and Cc.

Following the combined hearing, the Board will hold its regular monthly meeting during which the Board is expected to consider adopting the *Implementation Plan for Municipal Solid Waste Landfills for Albuquerque and Bernalillo County*, the new regulation 20.11.71 NMAC, Municipal Solid Waste Landfills, and the proposed amendments to 20.11.63 NMAC, New Source Performance Standards for Stationary Sources.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written notice of intent before 5:00 pm on Wednesday August 3, 2005 to: Attn: August Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The notice of intent shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on August 3, 2005. The comments shall include the name, address and affiliation of the individual or organization submitting the statement. Written com-

ments may also be submitted electronically to nbutt@cabq.gov and shall include the required name, address and affiliation information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes.

**NEW MEXICO
CHILDREN, YOUTH AND
FAMILIES DEPARTMENT
JUVENILE JUSTICE DIVISION**

**NEW MEXICO
CHILDREN, YOUTH AND FAMILIES
DEPARTMENT
JUVENILE JUSTICE SERVICES
NOTICE OF PUBLIC HEARING**

The New Mexico Children, Youth and Families Department, Juvenile Justice Services, will hold a formal public hearing on Tuesday, June 21, 2005, from 8:00 a.m. until 5:00 p.m. in room 565 of the P.E.R.A. Building, located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502, to receive public comments regarding the repeal of 8 NMAC 14.1 and replacement with 8.14.1 NMAC (Part 1 General Provisions), and the repeal of 8 NMAC 14.11 and replacement with 8.14.11 NMAC (Part 11 Contracted Facility: Camp Sierra Blanca).

The proposed replacement policies will, in part, reflect changes to in the Children's Code, NMSA Section 32A-1-1 et seq., that were passed by the New Mexico State Legislature during the 2005 Session, effective June 17, 2005, and will clarify and supplement Policies currently in effect.

The proposed policies may be reviewed, or a copy obtained during the regular business hours of Juvenile Justice Services, room 542, P.E.R.A. Building, Santa Fe, New Mexico 87502. Please address inquiries to the attention of Cynthia Leyba, or Terence G. Cady, Assistant General Counsel.

Interested persons may testify at the hearing or submit written comments at the above

address no later than 5:00 p.m., June 21, 2005. Written comments will be given the same consideration as oral testimony given at the hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Juvenile Justice Services at 505-827-7632. Juvenile Justice Services requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

**NEW MEXICO
CHILDREN, YOUTH AND
FAMILIES DEPARTMENT
PROTECTIVE SERVICES DIVISION**

**NEW MEXICO
CHILDREN, YOUTH AND FAMILIES
DEPARTMENT**

PROTECTIVE SERVICES

NOTICE OF PUBLIC HEARING

Protective Services (PS) will hold a public hearing in Santa Fe on Thursday June 30, 2005 from 1:00 p.m. to 2:00 p.m. Interested parties are invited to make comments regarding the repeal and replacement of the following policies as a result of new revisions to the NM Children's Code authorized by the 2005 legislature:

8.8.2 General; 8.10.2 Intake; 8.10.3 Investigations; 8.10.6 In-home Services; 8.10.7 Legal; 8.10.8 Permanency Planning; 8.10.9 Independent Living; 8.26.2 Adoption; and, 8.27.2 Foster Parenting.

Comments may also be made regarding the repeal of the following obsolete policies: 8.10.4 Voluntary Family Services; 8.10.6 Family Preservation; and, 8.10.5 Child Care.

The hearing will be held at the Public Employees Retirement Association (PERA) Building at 1120 Paseo de Peralta, Santa Fe, NM 87501, Room 227. The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearing. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The current and proposed policies may be accessed by contacting Mark J Ruttkay at 505-827-8445. Copies can also be requested through the use of the New Mexico relay system by calling 505-827-7586.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

OPEN MEETING NOTICE

Chairwoman, Kathy Keith has announced that an Annual Retreat and Monthly Board Meeting for the Industrial Training Board will be held as scheduled:

DATE:

Thursday - June 9, 2005
JTIP Annual Retreat
9:00 a.m. to 5:00 p.m.

Friday, June 10, 2005
JTIP Board Meeting
9:00 a.m. to 12:00 noon

LOCATION:

Workforce Training Center
Albuquerque Technical Vocational
Institute
Room 130
5600 Eagle Rock Ave. NE
NW Corner of Interstate 25 and Alameda
Albuquerque, NM 87113
Telephone: (505) 224-5200

PURPOSE: To review the Job Training Incentive Program's proposals, fiscal update and the Board will revise its policies (Title 5, Chapter 5, Part 50).

The Board will address and possibly take action on any other issues related to the Job Training Program

For additional information, including a meeting agenda, please contact Therese R. Varela at (505) 827-0323. If you are disabled and require assistance, auxiliary aids and services, (Voice & TDD), and/or alternate formats in order to further your participation, please contact Cynthia Jaramillo, ADA Coordinator at (505) 827-0248. These individuals are employees of New Mexico Economic Development Department, 1100 St. Francis Dr., Santa Fe, NM 87505-4147.

NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION
LOCAL GOVERNMENT DIVISION

Notice of Hearing of Amendments to

Rule 2.110.2 NMAC Small Cities Community Development Block Grants

New Mexico Department of Finance and Administration

The Department of Finance and Administration (DFA) hereby gives notice that DFA will conduct a public hearing in Room 321, State Capitol Building, 415 Old Santa Fe Trail, Santa Fe, New Mexico, 87503, on July 28, 2005 at 9:00 a.m. concerning amendments to 2.110.11 NMAC and 2.110.17 NMAC, Small Cities Community Development Block Grants (hereinafter referred to as the CDBG Rule). 2.110.2.11.H NMAC has been amended to make water associations subject to the comprehensive plan standard and cannot apply for development of other eligible planning studies and renumbered portions. 2.110.2.17.E.1 NMAC has been amended to make it clear that all projects for the eligible activities in the categories listed in 2.110.2.11.C., D., E., and I. NMAC must be completed prior to submitting a new application.

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on July 25, 2005, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed rules are available from Ms. Juleann Martinez, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4973 or from the DFA internet website <http://www.state.nm.us/clients/dfa/index.html>.

These are amendments to 2.110.2.11 and 2.110.2.17 NMAC effective August 15, 2005.

2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES

A. Applicants may apply for funding assistance under the following categories:

- (1) community infrastructure;
- (2) housing;
- (3) public facility capital outlay;
- (4) economic development;
- (5) emergency;
- (6) colonias;
- (7) planning.

B. Eligible activities under each of the categories are listed below.

C. Community infrastructure: Eligible activities may include,

but are not limited to, the following:

- (1) real property acquisition
- (2) construction and/or rehabilitation of the following:
 - (a) water systems;
 - (b) sewer systems;
 - (c) municipal utilities;
 - (d) roads;
 - (e) streets;
 - (f) highways;
 - (g) curbs;
 - (h) gutters;
 - (i) sidewalks;
 - (j) storm sewers;
 - (k) street lighting;
 - (l) traffic control devices;
 - (m) parking facilities;
 - (n) solid waste disposal facilities.

D. Housing: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;
- (3) clearance;
- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;
- (5) provision of public facilities to increase housing opportunities;
- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;
- (7) certain types of housing modernization;
- (8) temporary relocation assistance;
- (9) code enforcement;
- (10) historic preservation activities;
- (11) an average of \$30,000 in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public facility capital outlay: Eligible activities may include, but are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.

F. Economic development: The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

G. Emergency: The emergency fund provides funding for emer-

agency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

(1) Applications under this category will be accepted throughout the year.

(2) An appropriate state agency must concur and provide written verification and adequate documentation with the applicant's assessment of the life threatening situation and the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

H. Planning: In addition to municipalities and counties, water associations, including water and sanitation districts, as defined in Section 2.110.2.7, Subsection L; are eligible to apply directly for planning grants only. ~~[Water associations are not subject to the comprehensive plan standard and may apply for development of other eligible planning studies.]~~ Grant assistance from the CDBG program must be used for a comprehensive plan, if a community or county does not have a current comprehensive plan (adopted or updated within the last five years) that includes at a minimum the following ~~[seven elements]:~~

(1) elements:

~~[(1)] (a)~~ land use;

~~[(2)] (b)~~ housing;

~~[(3)] (c)~~ transportation;

~~[(4)] (d)~~ infrastructure;

~~[(5)] (e)~~ economic develop-

ment; and

~~[(7)] (f)~~ water;

~~[(g)] (g)~~ hazards;

~~[(6)] (h)~~ implementation, a compilation of programs and specific actions to be completed in a stated sequence;

~~[(8)] (2)~~ development of additional elements of a comprehensive plan may include but are not limited to:

(a) drainage;

(b) parks, recreation and open

space;

(c) tourism;

(d) growth management;

(e) fiscal impact analysis;

(f) intergovernmental coopera-

tion;

(g) social services;

(h) historic preservation.

~~[(9)] (3)~~ if the entity has a current comprehensive plan, it may apply for funding assistance for any of the following:

~~[(10)] (4)~~ data gathering analysis and special studies;

~~[(11)] (5)~~ base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

~~[(12)] (6)~~ improvement of

infrastructure capital improvement plans and individual project plans;

~~[(13)] (7)~~ development of codes and ordinances, to further refine the implementation of the comprehensive plan;

~~[(14)] (8)~~ other functional or comprehensive planning activities;

~~[(15)] (9)~~ related citizen participation or strategic planning processes;

~~[(16)] (10)~~ applicants may apply for funding assistance throughout the year as long as funds are available.

~~[(17)] (11)~~ preliminary engineering reports will follow the USDA/RUS guidelines.

I. Colonias:

(1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias setaside are municipalities and counties located within 150 miles of the U.S.- Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

(a) lack of potable water supply;

(b) lack of adequate sewage systems;

(c) lack of decent, safe and sanitary housing;

(d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp 2 NMAC 110.2.11, 08-30-01; A, 08-13-04; A, 08-15-05]

2.110.2.17 APPLICATION REQUIREMENTS

A. Number of applications

- All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing or public facility capital outlay.

(1) Planning applicants may submit an additional application for funding.

(2) Requests for assistance from eligible applicants in the economic development, emergency and planning categories can be submitted at any time, subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

B. Single purpose applica-

-An application for CDBG funding

must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

C. Joint applications -Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.

D. Applications limit - Applications are limited to the amount of funding necessary to complete a basic, meaningful and targeted project within a 24 month period.

(1) Applications may not exceed \$500,000 and planning applications may not exceed \$50,000.

(2) If, after conducting the required public hearing, an applicant determines that the previous year's CDBG application is still a priority, the applicant may ask the council to reconsider the previous year's application.

(3) The applicant need only submit a current year's resolution, updated project budget and schedule and any other information required by division staff.

E. Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements ~~[must be met by]~~ shall be met prior to the application deadline.

(1) All projects for the eligible activities in the categories listed in 2.110.2.11.C., D., E., and I. NMAC must be completed at the time of application. (certificate of occupancy and/or certification of operation must be in place).

(2) Audit and monitoring findings, especially in general program administration for CDBG projects, must be resolved.

(3) The following setaside categories are exempt from threshold requirement: planning, economic development, and emergency.

F. Matching requirements - In order to assist the council in making funding resources go further and to ensure

there is a local investment in applications submitted to the council for funding consideration, the following will be required:

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with Section 26 of these regulations, all applications in the economic development category must provide at least two private dollars for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

G. Matching loan fund - In order to assist communities who do not have the resources to comply with the matching requirement for their project, a matching fund is available to provide money at appropriate interest rates.

(1) The council will use NMCA reversions as a funding source for the loan fund.

(2) Payment schedules will be developed by the division with appropriate payment amounts and due dates.

H. Other funding commitments - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

I. Water conservation and drought commitments - In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged:

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought

management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) In developing a water conservation ordinance pursuant to this section: Applicants shall adopt ordinances and codes to encourage water conservation measures. They shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) Applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(vii) water rate structures designed to encourage water-use efficiency and reuse in a fiscally responsible manner; and

(viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) The council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold 2 separate public hearings on July 18, 2005 at the New Mexico State Library, Room 2022 (1205 Camino Carlos Rey), Santa Fe, New Mexico.

At 9:00 a.m. the subject of the hearing will be Durable Medical Equipment &

Supplies Services. The Human Services Department is proposing to revise the section regarding the coverage of oral nutritional supplements to more clearly and more appropriately describe the conditions under which these items are covered. There must be a pathophysiologic process for which the provision of nutritional support is considered specifically therapeutic. Under this proposal, use of an oral nutritional supplement solely for increased nutritional support or weight gain without a pathophysiologic process will be considered as meeting a normal physiologic need for food; and therefore, is not a covered benefit of the Medicaid program.

At 10:00 a.m. the subject of the hearing will be Prior Authorization & Utilization

Review. The Human Services Department requires prior authorization and utilization review of many services in the Medicaid benefit. The wording has been slightly changed to clarify who may perform utilization review services.

Interested persons may submit written comments no later than 5:00 p.m., July 18, 2005, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**New Mexico Public Education Department
NOTICE OF PROPOSED
RULEMAKING**

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, from 1:30 p.m. - 3:30 p.m. on July 18, 2005 to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
6.12.2 NMAC	Health Services (Proposed Part Name)	Rename and amend rule
6.12.3 NMAC	Health - Acquired Immune Deficiency Syndrome (AIDS)	Repeal rule (revised content will be incorporated in 6.12.2 NMAC)

The Department proposes to rename the current 6.12.2 NMAC (Health - Immunization of School Children) as 6.12.2 NMAC (Health Services). The renamed rule will incorporate the provisions of the current 6.12.2 NMAC, the current 6.12.3 NMAC (Health - Acquired Immune Deficiency Syndrome) as updated; and add new language addressing asthma self-carry medications. The Department proposes to repeal 6.12.3 NMAC as its updated provisions will be incorporated into 6.12.2 NMAC.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking to Dr. Kristine Meurer, Director, School and Family Supports Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (kmeurer@ped.state.nm.us) (505) 224-5287 (telefax (505) 827-1826). Written comments must be received no later than 5:00 pm on July 18, 2005.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Doris Sandoval, School and Family Support Bureau, Public Education Department, 120 S. Federal Place, Room 206; Santa Fe, NM 87501 (dsandoval@ped.state.nm.us) (505) 827-1804(telefax (505) 827-1806).

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Sandoval at (505) 827-1804 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, June 21, 2005, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM 87507. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. 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 Darlene A. Torres at 476-7902 by June 17, 2005. 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 Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendment

- 1.15.2 NMAC
- 1.18.333 NMAC

- GRRDS, General Administrative Records
- ERRDS, Taxation and Revenue Department

1.18.780 NMAC E R R D S ,
Crime Victims Reparation Commission

Repeal

1.18.601 NMAC E R R D S ,
Commission on the Status of Women

New-Replacement

1.18.601 NMAC E R R D S ,
Commission on the Status of Women

**NEW MEXICO RACING
COMMISSION**

**NEW MEXICO RACING
COMMISSION NOTICE OF
RULEMAKING AND PUBLIC
HEARING**

NOTICE IS HEREBY GIVEN

that a rulemaking and public hearing will be held in the Commission Conference Room, 300 San Mateo N.E., Albuquerque, New Mexico, commencing in executive session at 8:00 o'clock a.m. on Wednesday, June 22, 2005. The public session will begin at 9:00 o'clock a.m. on Wednesday, June 22, 2005. The Commission will consider adoption of proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.7.12 NMAC (regarding pick three pools and pick (n) pools)

Copies of the proposed rule may be obtained from India Hatch, Agency Director, New Mexico Racing Commission, 300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87108, (505) 841-6400. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

India Hatch
Agency Director

Dated: May 27, 2005

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The Department proposes to amend the following regulation:

3.2.1.16 NMAC Section 7-9-3.5 NMSA 1978 Gross Receipts and Compensating Tax Act
(Gross Receipts – Real Estate and Intangible Property)

The Department proposes to adopt the following regulations:

3.2.242.7 NMAC Laws 2005, Chapter 104, Section 25 Gross Receipts and Compensating Tax Act
(Definitions)

3.2.242.8 NMAC Laws 2005, Chapter 104, Section 25 Gross Receipts and Compensating Tax Act
(Items Normally Sold as a Unit)

3.2.242.9 NMAC Laws 2005, Chapter 104, Section 25 Gross Receipts and Compensating Tax Act
(Purchases Using a Rain Check)

3.2.242.10 NMAC Laws 2005, Chapter 104, Section 25 Gross Receipts and Compensating Tax Act
(Layaway Sales)

3.2.242.11 NMAC Laws 2005, Chapter 104, Section 25 Gross Receipts and Compensating Tax Act
(Exchanges and Refunds)

3.2.242.12 NMAC Laws 2005, Chapter 104, Section 25 Gross Receipts and Compensating Tax Act
(Internet, Mail Order and Telephone Sales)

3.2.242.13 NMAC Laws 2005, Chapter 104, Section 25 Gross Receipts and Compensating Tax Act
(Documenting Deductible Sales)

3.2.242.14 NMAC Laws 2005, Chapter 104, Section 25 Gross Receipts and Compensating Tax Act
(Items That Do Not Qualify for the Deduction Under Laws 2005, Chapter 104, Section 25)

3.2.242.15 NMAC Laws 2005, Chapter 104, Section 25 Gross Receipts and Compensating Tax Act
(Receipts That Are Not Deductible)

The proposals were placed on file in the Office of the Secretary on June 1, 2005. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about August 15, 2005.

A public hearing will be held on the proposals on Tuesday, July 19, 2005, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible

copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before July 19, 2005.

3.2.1.16 GROSS RECEIPTS - REAL ESTATE AND INTANGIBLE PROPERTY.

A. Insurance proceeds:

(1) Receipts of an insured derived from payments made by an insurer pursuant to an insurance policy are not subject to the gross receipts tax. Such receipts are not receipts derived from the sale of property in New Mexico, the leasing of property employed in New Mexico, or the performance of a service.

(2) Example: ABC is an auto dealer in the business of selling new and used cars. In addition to selling cars, ABC also maintains a service garage with a large inventory of automobile parts. As part of its regular sales practice, ABC allows potential purchasers to test drive the cars. ABC carries automobile insurance which is applicable in the situation where the potential purchaser is test driving the car. When an accident occurs, even though some or all the parts used to repair the automobile are taken from ABC's inventory of parts and ABC does the actual repair work, payment received from the insurance company for the damaged automobile is not gross receipts. Such a payment is not received as consideration for selling property in New Mexico, leasing property employed in New Mexico, or for performing services. ABC is not liable for compensating tax on the value of the parts used or the labor.

B. Speculative housing sales:

(1) Receipts of a person in the business of constructing improvements on real property owned and sold in the ordinary course of that person's construction business do not include amounts retained by financial institutions as prepaid finance charges or discounts, if these amounts are not received by the real estate vendor. It is immaterial whether or not such amounts are included in the quoted real estate sales price.

(2) The receipts of such a person include all amounts actually paid over which are attributable to improvements constructed on the real property sold in the ordinary course of that person's construction business.

(3) The receipts of such a person also include any amounts deducted by a title-insuring company to cover title insur-

ance, legal fees, escrow fees, real estate brokerage commissions, real estate taxes, principal and interest on construction loans, liens, and the like.

(4) Example 1: X, a speculative builder, sells improvements to Y who arranges to finance \$43,000 with Z, a loan company. The loan company makes payment of \$41,800 to X and designates the amounts retained as prepaid finance charges and/or discounts. X's gross receipts in this example are \$41,800.

(5) Example 2: The same facts as Example 1 above are used except that the loan company Z made payment to a title insurance company, legal fees to a lawyer, escrow fees to a bank and also paid the real estate brokerage commission. These payments referred to are part of the gross receipts of the speculative builder and are not deductible under Subsection B of Section 3.2.1.16 NMAC, whether or not actually paid over to the speculative builder.

C. Receipts from sale of automotive service contracts:

(1) "Automotive service contract" means an undertaking, promise or obligation of the promisor, for a consideration separate from the sale price of a motor vehicle, to furnish or to pay for parts and labor to repair specified parts of the covered motor vehicle only if breakdowns (failures) of those specified parts occur within certain time or mileage limits. The promisor's obligation is conditioned upon regular maintenance of the motor vehicle by the purchaser of the automotive service contract at the purchaser's expense. The automotive service contract may also obligate the promisor to reimburse the purchaser for certain breakdown related rental and towing charges. The automotive service contract may require the payment of a specified "deductible" or "co-payment" by the purchaser in connection with each repair.

(2) The receipts of a person from selling an automotive service contract are not gross receipts. The undertaking, promise or obligation of the promisor under the automotive service contract to pay for or to furnish parts and service if an uncertain future event (breakdown) occurs is not within the definition of property under Subsection J of Section 7-9-3 NMSA 1978. Since the receipts from selling an automotive service contract do not arise "from selling property in New Mexico, from leasing property employed in New Mexico or from performing services in New Mexico", the receipts are not gross receipts as defined in Section 7-9-3.5 NMSA 1978 and are not subject to the tax imposed by Section 7-9-4 NMSA 1978.

(3) The furnishing by the promisor of parts or labor or both to fulfill the promisor's obligation when a breakdown occurs is a taxable event.

D. Receipts from insurance company under an automotive service contract program: The receipts of a New Mexico automotive dealer from an insurance company are not taxable gross receipts if the payments by the insurance company are to reimburse the dealer, who is promisor under an automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC, for all parts and labor furnished by the dealer under the contract or for parts and labor furnished by the dealer under the contract in an amount in excess of a specified reserve established by the dealer under an agreement with the insurance company. The receipt of the payments from the insurance company are not receipts from the sale of parts and labor but are payments to indemnify the dealer for the dealer's expense in fulfilling the dealer's obligation. The value of parts and labor furnished to make the repairs was subject to the gross receipts tax when the parts and labor were furnished to discharge the dealer's obligation as the promisor under the automotive service contracts.

E. Gift certificates:

(1) Receipts from the sale of gift certificates are receipts from the sale of intangible personal property of a type not included in the definition of "property" and, therefore, are not gross receipts.

(2) When a gift certificate is redeemed for merchandise, services or leasing, the person accepting the gift certificate in payment receives consideration, which is gross receipts subject to the gross receipts tax unless an exemption or deduction applies. The value of the consideration is the face value of the gift certificate.

(3) When a gift certificate is purchased during the time period set out in Laws 2005, Chapter 104, Section 25 subsequent redemption of the gift certificate for the purchase of qualified tangible personal property after that period is not deductible under Laws 2005, Chapter 104, Section 25.

(4) When a gift certificate is redeemed during the time period set out in Laws 2005, Chapter 104, Section 25 for the purchase of qualified tangible personal property, the receipts from the sale are deductible under Laws 2005, Chapter 104, Section 25.

F. Merchant discount and interchange rate fee receipts: Bank receipts derived from credit and debit card merchant discounts and bank interchange rate fees are not gross receipts within the meaning of the Gross Receipts and Compensating Tax Act and therefore are not taxable.

G. Prepaid telephone cards - "calling cards":

(1) Receipts from the sale of an unexpired prepaid telephone card, sometimes known as a "calling card", are

receipts from the sale of a license to use the telecommunications system and, therefore, are gross receipts and are not interstate telecommunications gross receipts. Receipts from selling an expired prepaid telephone card are receipts from the sale of tangible personal property and are gross receipts and are not interstate telecommunications gross receipts.

(2) Receipts from recharging a rechargeable prepaid telephone card are receipts from the sale of a license to use the telecommunications system and are gross receipts and are not interstate telecommunications gross receipts.

(3) Subsection F of 3.2.1.16 NMAC is retroactively applicable to transactions and receipts on or after September 1, 1998.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 6/12/89, 6/28/89, 11/26/90, 2/1/95, 11/15/96, 9/15/98, 1/29/99; 3.2.1.16 NMAC - Rn & A, 3 NMAC 2.1.16, 4/30/01; A, 12/30/03; A, XXX]

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 242: DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF RETAILERS FROM SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY

3.2.242.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.2.242.1 NMAC - N, XXX]

3.2.242.2 SCOPE: This part applies to each person engaging in business in New Mexico.

[3.2.242.2 NMAC - N, XXX]

3.2.242.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.2.242.3 NMAC - N, XXX]

3.2.242.4 DURATION: Permanent.

[3.2.242.4 NMAC - N, XXX]

3.2.242.5 EFFECTIVE DATE: XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.242.5 NMAC - N, XXX]

3.2.242.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.242.6 NMAC - N, XXX]

3.2.242.7 DEFINITIONS

A. As used in Laws 2005, Chapter 104, Section 25 "standard classroom" means a classroom that:

(1) is located in a school;

(2) is configured for a general

education curriculum; and

(3) does not contain specialized

equipment such as scientific laboratory equipment or musical instruments.

B. As used in Laws 2005, Chapter 104, Section 25 "school supplies normally used by students in a standard classroom for educational purposes" means implements and materials used by typical students of a general education curriculum. These include notebooks, paper, writing instruments, crayons, art supplies, paper clips, staples, staplers, scissors, and rulers valued at under \$15 per unit, and book bags, backpacks, handheld calculators, maps and globes valued at under \$100 per unit. The items that qualify for the deduction under Laws 2005, Chapter 104, Section 25 do not have to be used for school; they only have to be items normally used by students in a standard classroom setting.

[3.2.242.7 NMAC - N, XXX]

3.2.242.8 ITEMS NORMALLY SOLD AS A UNIT: Articles normally sold as a unit must be sold that way during the time period specified in Laws 2005, Chapter 104, Section 25 to qualify for the deduction. They cannot be priced separately and sold as individual items to qualify for the deduction. For example, shoes normally sold in a pair for \$180 cannot be sold singly for \$90 each to qualify for the deduction.

[3.2.242.8 NMAC - N, XXX]

3.2.242.9 PURCHASES USING A RAIN CHECK: A "rain check" is an assurance to a customer that an item on sale that is sold out or out of stock may be purchased later at the sale price. Receipts from qualified purchases of tangible personal property made with a rain check during the time period specified in Laws 2005, Chapter 104, Section 25 are deductible. Purchases made after this time period with a rain check regardless of when the rain check was issued are not deductible.

[3.2.242.9 NMAC - N, XXX]

3.2.242.10 LAYAWAY SALES: A retailer performs a service when holding merchandise on a layaway plan at the request of the customer.

A. The initiation of a layaway plan does not constitute a sale even if the customer makes a deposit to the retailer. A sale of the merchandise under the layaway plan occurs only when the final payment is made and the merchandise is deliv-

ered to the customer.

B. If the final payment on a layaway plan and delivery of merchandise occur at a time other than during the time period specified in Laws 2005, Chapter 104, Section 25, the receipts from the sale are not deductible under Laws 2005, Chapter 104, Section 25.

C. If the final payment on a layaway plan and delivery of merchandise occur during the time period specified in Laws 2005, Chapter 104, Section 25, the receipts are deductible under Laws 2005, Chapter 104, Section 25 if the other requirements of the section are met.

[3.2.242.10 NMAC - N, XXX]

3.2.242.11 EXCHANGES AND REFUNDS

A. The exchange after the time period specified in Laws 2005, Chapter 104, Section 25 of tangible personal property that was purchased during the time period specified in Laws 2005, Chapter 104, Section 25 remains deductible if there is no additional charge for the exchange.

B. If an item of tangible personal property purchased during the time period specified in Laws 2005, Chapter 104, Section 25 and deductible under Laws 2005, Chapter 104, Section 25 is exchanged at a later time for an item of different value, the receipts from the subsequent sale are subject to gross receipts tax.

[3.2.242.11 NMAC - N, XXX]

3.2.242.12 **INTERNET, MAIL ORDER AND TELEPHONE SALES:** Qualified items sold to purchasers with a New Mexico billing address by mail, telephone, email and Internet shall qualify for deduction under Laws 2005, Chapter 104, Section 25 if:

A. the item is both delivered to and paid for by the customer during the time period specified in Laws 2005, Chapter 104, Section 25; or

B. the customer orders and pays for the item and the retailer accepts the order during the time period specified in Laws 2005, Chapter 104, Section 25 for immediate shipment, even if delivery of the item is made after the exemption period.

[3.2.242.12 NMAC - N, XXX]

3.2.242.13 **DOCUMENTING DEDUCTIBLE SALES:** Retailers claiming the deduction under Laws 2005, Chapter 104, Section 25 are required to maintain in their records the type of item sold, the date sold and the sales price of deductible merchandise sold during the time period specified in Laws 2005, Chapter 104, Section 25.

[3.2.242.13 NMAC - N, XXX]

3.2.242.14 **ITEMS THAT DO NOT QUALIFY FOR THE DEDUCTION UNDER LAWS 2005, CHAPTER 104, SECTION 25:** In addition to those items specifically excluded in the statute, the following are ineligible for the deduction:

A. handheld computers, internet, or email devices;

B. personal digital assistants (PDAs), MP3 players, cassette players and recorders, cameras, books, magazines and other periodicals;

C. all computer and computer-related equipment not specifically deductible under Laws 2005, Chapter 104, Section 25 unless bundled with and included in the price of items that qualify for the deduction under Laws 2005, Chapter 104, Section 25;

D. all computer software unless bundled with and included in the price of items that qualify for the deduction under Laws 2005, Chapter 104, Section 25;

E. all games including video games, board games, computer games, and handheld gaming devices;

F. musical instruments;

G. materials and equipment used for making, repairing or altering clothing such as cloth, thread, yarn, needles buttons, zippers, and patterns;

H. athletic and protective gloves, pads, supporters, and helmets;

I. swimwear, cover-ups, and caps;

J. specialized footwear not readily adaptable for wearing on the street, such as ski boots, riding boots, waders, bowling shoes and shoes with cleats or spikes;

K. briefcases and luggage; prerecorded CDs, DVDs, and cassette tapes; and

L. data storage devices such as CD drives and ZIP drives.

[3.2.242.14 NMAC - N, XXX]

3.2.242.15 **RECEIPTS THAT ARE NOT DEDUCTIBLE:** Receipts from the following transactions are not deductible under Laws 2005, Chapter 104, Section 25:

A. Receipts from performing services on tangible personal property that are deductible under Laws 2005, Chapter 104, Section 25, such as the alteration or repair of clothing.

B. Receipts from leasing or renting tangible personal property. In order for the deduction under Laws 2005, Chapter 104, Section 25 to apply the qualified items must be sold at retail.

[3.2.242.15 NMAC - N, XXX]

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.302.2 NMAC, Sections 5 and 10, which will be effective on July 1, 2005. The Medical Assistance Division amended the section to include information on Coordinated Service Contractors.

8.302.2.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.
[2/1/95; 8.302.2.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 5/1/04; A, 7/1/05]

8.302.2.10 BILLING INFORMATION:

A. Some services in the medicaid program are managed by coordinated service contractors. Contracted services may include behavioral health services, dental services, transportation, pharmacy or other benefits as designated by the medical assistance division. The coordinated service contractor may be responsible for any or all aspects of program management, prior authorization, utilization review, claims processing, and issuance of remittance advices and payments. Providers must submit claims to the appropriate coordinated service contractors as directed by the medical assistance division.

~~[A.]~~ **B.** The most currently approved HCFA-1500 form is used by professional service providers, such as physicians, independent laboratories, imaging providers or certified nurse practitioners to bill medicaid for services.

~~[B.]~~ **C.** The HCFA-UB 92 form is used by hospitals, home health agencies, and other institutional providers for billing. The New Mexico turn around document (TAD) is used by nursing facilities, intermediate care facilities for the mentally retarded, and other residential providers to bill medicaid.

(1) **Billing for referral services:** Servicing providers must submit all information necessary to bill medicaid within specified time limits, if their performance of direct health care services for a recipient is furnished at the request of another practitioner. Recipients and medicaid are not responsible for payment if servicing providers fail to get this information.

(2) **Billing for other services:** Medicaid pays only providers or the following individuals or organizations for services:

(a) government agencies or third parties with court orders, based on a valid

provider payment assignment. See 42 CFR Section 447.10(d)(e); or

(b) business agents, such as billing services or accounting firms, that furnish statements and receive payment in the name of the provider; the agent's compensation must be related to the cost of processing the claims and not related on a percentage or other basis to the amount that is billed or collected or dependent upon collection of the payment.

(3) **Billing for individual practitioner services:** MAD may make payments to employers of individual practitioners, if the practitioners are required to turn over their fees to the employer as a condition of employment. See 42 CFR 447.10(g) (2)(3). MAD may make payments to a facility where services are furnished or to a foundation, plan, or similar organization operating as an organized health care delivery system, if the facility, foundation, plan, or organization is required by contract to submit claims for individual practitioners.

(a) **Payment not allowed:** MAD does not pay for services furnished to recipients by providers which are made to or through factors, either directly or by power of attorney [42 CFR Section 447.10(h)]. A factor is an individual or an organization, such as a collection agency or service bureau.

(b) **No reimbursement for the discharge day:** Institutional providers, such as nursing facilities, hospitals, and intermediate care facilities for the mentally retarded and providers of treatment foster care services are reimbursed for services furnished to eligible recipients on the day of admission but are not reimbursed for services furnished on day of discharge.

[2/1/95; 8.302.2.10 NMAC - Rn, 8 NMAC 4.MAD.702.1, 5/1/04; A, 7/1/05]

NEW MEXICO INFORMATION TECHNOLOGY COMMISSION

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 12 INFORMATION TECHNOLOGY PART 11 ENTERPRISE ARCHITECTURE

1.12.11.1 ISSUING AGENCY. Information Technology Commission, 404 Montezuma, Santa Fe, NM 87501.
[1.12.11.1 NMAC - N, 06-15-2005]

1.12.11.2 SCOPE. This rule applies to the enterprise architecture of the

state of New Mexico (SoNM) and all IT projects or programs undertaken by agencies. This rule applies to any state government body or public entity that would like to become a member or utilize services within the enterprise data center.
[1.12.11.2 NMAC - N, 06-15-2005]

1.12.11.3 STATUTORY AUTHORITY. NMSA 1978 Section 15-1C-5 and 15-1C-8.
[1.12.11.3 NMAC - N, 06-15-2005]

1.12.11.4 DURATION. Permanent.
[1.12.11.4 NMAC - N, 06-15-2005]

1.12.11.5 EFFECTIVE DATE. The effective date is 06-15-2005, unless a later date is specified at the end of a section.
[1.12.11.5 NMAC - N, 06-15-2005]

1.12.11.6 OBJECTIVE. The purpose of this document is to establish rules, standards, and policies for the enterprise architecture for the SoNM.
[1.12.11.6 NMAC - N, 06-15-2005]

1.12.11.7 DEFINITIONS. As used in this policy.

A. Address block means a contiguous group of internet protocol (IP) addresses.

B. Addressing resolution means a method for resolving differences between computer addressing schemes. Address resolution usually specifies a method for mapping network layer (layer 3) addresses to data link layer (layer 2) addresses.

C. Address resolution protocol means a protocol for mapping an IP address to a physical machine address that is recognized in the local network.

D. Application administration account means any account that is for administration of an application.

E. Agency network means networks that are managed by individual agencies and autonomous to state's core network.

F. Architecture means a logically consistent set of principles, policies, and standards that guide the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs.

G. American registry for internet numbers (ARIN) means one of four regional internet registries. ARIN, founded in 1997, is a non-profit organization that registers and administers IP numbers for North America. ARIN is one of

four regional internet registries.

H. Class A network means a binary address starting with 0; therefore, the decimal number can be anywhere from 1 to 126. The first 8 bits (the first octet) identify the network, and the remaining 24 bits indicate the host within the network.

I. Class B network means binary addresses that start with 10; therefore, the decimal can be anywhere from 128 to 191; (the number 127 is reserved for loop-back and is used for internal testing on the local machine). The first 16 bits (the first two octets) identify the network, and the remaining 16 bits indicate the host within the network. An example of a class B IP address is 168.212.226.204, where "168.212" identifies the network and "226.204" identifies the host on that network.

J. Class C network means binary addresses that start with 11; therefore, the decimal number can be anywhere from 192 to 223. The first 24 bits (the first three octets) identify the network, and the remaining 8 bits identify the host within the network. An example of a class C IP address is 200.168.212.226, where "200.168.212" identifies the network and "226" identifies the host on that network.

K. Common service means a function that may be in use or deployed in multiple agencies, whether they are using the same programs or people to perform the function or not.

L. Consolidated service means a function that is performed by a common group of programs or people for multiple agencies, under centralized control and with agreed-upon standards, interfaces, and service level agreements.

M. Consolidated service means a function that is performed by a common group of programs or people for multiple agencies, under centralized control and with agreed-upon standards, interfaces, and service-level agreements.

N. Cost recovery service means a service that is charged back to the consumers of the service at a fully loaded rate to allow the provider to recoup all associated costs with providing the service.

O. Current technology means components that have met requirements of the EA - those components that should be used in deployment of technology solutions.

P. Emerging technology means products that have potential to become current components.

Q. Enterprise means that for this document, 'enterprise' refers to the executive branch of the government of the SoNM, including all business processes and IT support systems.

R. Enterprise architect-

ture defines an enterprise-wide, integrated set of components that incorporates strategic business thinking, information assets, and the technical infrastructure of an enterprise to promote information sharing across agency and organizational boundaries; the enterprise architecture is supported by architecture governance and the allied architectures of business, information, technology, and solution architectures.

S. Enterprise project means a project with the purpose of delivering new or modifying existing services to many stakeholders within the state.

T. General funded service means a SoNM service funded through general fund tax dollars.

U. Internet protocol (IP) address means a 32-bit address used to indicate a specific network and host on the internet or within a local network. The address is usually seen in decimal representation in the form *nnn.nnn.nnn.nnn*, where *nnn* can be any number between 0 and 255.

V. Internet protocol security (IPSec) means a set of protocols developed by the internet engineering task force (IETF) to support secure exchange of packets at the IP layer by encrypting a 1.18.361 NMAC authenticating all IP packets. IPsec has been deployed widely to implement virtual private networks.

W. Internet protocol version 6 (IPv6) means a standard intended to replace the previous standard, IPv4, which only supports up to about 4 billion addresses (4 x 10⁹), whereas IPv6 supports approximately 3.4 x 10³⁸ addresses, equivalent to 430,000,000,000,000,000 unique addresses per square inch of earth. The root domain has been changed to support both IPv6 and IPv4. It is expected that IPv4 will be supported until about 2025 to allow for bugs to be worked in support of new IP and wireless devices.

X. Other-funded service means a SoNM service that receives funding from non-SoNM sources or state funds other than the general fund, such as the road fund, federal government, or a locality.

Y. Network address translation means an internet standard that enables a local area network (LAN) to use one set of IP addresses for internal traffic and a second set of addresses for external traffic. A NAT box located where the LAN meets the internet makes all necessary IP address translations by keeping IP addresses of network packets passing through a router or firewall. Hosts, which are behind a NAT-enabled gateway, do not have end-to-end connectivity. NAT serves three main purposes:

(1) provides a type of firewall by hiding internal IP addresses;

(2) enables a company to use more internal IP addresses (since they are

used internally only, there is no possibility of conflict with IP addresses used by other companies and organizations); and

(3) allows a company to combine multiple ISDN connections into a single internet connection.

Z. Passphrases means that a public/private key system defines a mathematical relationship between the public key that is known by all, and the private key, that is known only to the user. Without the passphrase to "unlock" the private key, the user cannot gain access.

AA. Private address means a space that has been allocated via request for comments (RFC) 1918. These addresses are available for any use by anyone, and therefore the same private IP addresses can be reused. However, they are not routable - they are used extensively in private networks due to the shortage of publicly remit-able IP addresses.

BB. Request for comment (RFC) means a series is used as the primary means for communicating information about the internet; some RFCs are designated as internet protocol.

CC. SANS means a sysadmin, audit, network, security, or SANS institute.

DD. Self-funded service means a SoNM service that, through its use, generates a stream of revenue sufficient to cover its on-going costs and to accrue monies to pay for future development and enhancement.

EE. Service (types of) - see 'common service', 'consolidated service', 'cost recovery service', 'general funded service', 'other-funded service', and 'self-funded service'.

FF. Sunset technology means components in use which do not conform to the ITEA and with a stated specific date set for discontinuance - indicating the date that the component will no longer be acceptable for use.

GG. Twilight technology means components in use, but which do not conform to the stated business/technical drivers; no date of discontinuance is identified - but not to be used for new development or new procurements; extensive modifications should be avoided.

[1.12.11.7 NMAC - N, 06-15-2005]

1.12.11.8 ABBREVIATIONS AND ACRONYMS:

A. ARIN means American registry for internet numbers

B. ARP means address resolution protocol

C. CIO means chief information officer

D. EA means enterprise architecture

E. IETF means internet

engineering task force
F. IP means means internet protocol
G. IPsec means IP security
H. Ipv4 means version 4 of the internet protocol
I. ISDN means integrated services digital network
J. IT means information technology
K. ITC means information technology commission
L. ITEA means information technology enterprise architecture
M. LAN means local area network
N. NAT means network address translation
O. NM means New Mexico
P. NT means new technology (predecessor of windows 2000 server)
Q. OCIO means office of chief information officer
R. RFC means request for comments
S. SANS means system administration, audit, network, security, or SANS institute
T. SoNM means state of New Mexico
U. TCP means transmission control protocol
V. VPN means virtual private networks
W. WAN means wide area network
 [1.12.11.8 NMAC - N, 06-15-2005]

1.12.11.9 - 1.12.11.14: [RESERVED]

1.12.11.15 NETWORK. IP addressing.

A. The enterprise service provider will assign, document, and manage all address blocks of private, public, and reserved address spaces.

B. Agencies will manage and control all addresses within their block. Agencies will be required to submit current and accurate IP sub-net assignments and change control documentation to the enterprise service provider database on a real-time basis.

C. An agency core router will be configured to route only 10.0 and 164.64.0.0 addressing.

D. Private class A (RFC 1918) IPv4 is to be the named standard for all agencies and core networks to extend networks within the state that do not want to be routed to external sources with subnets of class B and class C.

E. Public Address.

(1) In the event that access is required to route to an external source,

addresses must be public.

(2) The only public address range that will be advertised by the SoNM to the internet is the 164.64.0.0 class B address space assigned by ARIN.

F. The reserved address 1.18.361 NMAC.

(1) This reserved addressing will be limited to securing segregated voice transmission until an equally secure design is available with RCF 1918.

(2) Reserved addressing will not be implemented in the same autonomous RCF 1918 or public addressing.

[1.12.11.15 NMAC - N, 06-15-2005]

1.12.11.16 SECURITY. Password policy.

A. This policy establishes a standard for creation of strong passwords, the protection of those passwords, and the frequency of change.

B. Passwords must be at least eight (8) alphanumeric characters long.

C. All system-level passwords (e.g., root, enable, NT admin, application administration accounts, etc.) must be changed at least every 6 months. Password changes will be addressed immediately by the password authority when personnel changes are made to staff that have root access.

D. Passwords must not be stored on unencrypted or other insecure forms (i.e., word document, post-its, labels, etc.).

E. All user-level passwords (e.g., email, web, desktop computer, etc.) must be changed periodically. The minimum change interval is every 4 months.

F. User accounts that have system-level privileges granted through group memberships or programs such as "sudo" must have a unique password from all other accounts held by that user.

G. Passwords must not be inserted into email messages or other forms of electronic communication.

H. All user-level and system-level passwords must conform to the guidelines described below.

I. A password authority shall be established by the agency CIO or IT lead to disseminate passwords, facilitate as the gatekeeper for system-level passwords, and be the point of contact for password-related security breaches. Password may only be obtained or requested from the password authority of the agency.

[1.12.11.16 NMAC - N, 06-15-2005]

History of 1.12.11 NMAC: [RESERVED]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.10.11 NMAC, effective 07-01-05

21.32.10.11 BRAND RECORDING FEES

A. The fee for recording a New Mexico livestock brand, pursuant to Sections 77-2-7.4 and 77-2-29, NMSA 1978, is ~~fifty dollars (\$50.00)~~ seventy five dollars (\$75.00).

B. The fee for re-recording a New Mexico livestock brand, pursuant to Sections 77-2-7.12 and 77-2-29, NMSA 1978, is ~~fifty dollars (\$50.00)~~ seventy five dollars (\$75.00).

C. The fee for transferring ownership of a recorded brand, pursuant to Sections 77-2-7.1 and 77-2-29, NMSA 1978 is ~~fifty dollars (\$50.00)~~ seventy five dollars (\$75.00).

D. The fee for recording, or re-recording, a holding brand, pursuant to Sections 77-2-7.9 and 77-9-29, NMSA 1978, is one hundred dollars (\$100.00).
 [3-1-99, 21.32.10.11 NMAC - Rn & A, 21 NMAC 32.10.11, 7-31-2000; A; 07-01-05]

NEW MEXICO MASSAGE THERAPY BOARD

16.7.12 NMAC, License/Registration Renewal, is hereby repealed effective June 24, 2005 and is replaced by 16.7.12 NMAC, License/Registration Renewal, effective June 24, 2005.

NEW MEXICO MASSAGE THERAPY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 12 LICENSE/REGISTRATION RENEWAL

16.7.12.1 ISSUING AGENCY: Regulation and Licensing Department, Massage Therapy Board
 [16.7.12.1 NMAC - Rp, 16.7.12.1 NMAC, 06-24-2005]

16.7.12.2 SCOPE: This part applies to licensees and registrants.
 [16.7.12.2 NMAC - Rp, 16.7.12.2 NMAC, 06-24-2005]

16.7.12.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Section 61-12C-17 and 61-12C-18.

[16.7.12.3 NMAC - Rp, 16.7.12.3 NMAC, 06-24-2005]

16.7.12.4 DURATION:
Permanent.

[16.7.12.4 NMAC - Rp, 16.7.12.4 NMAC, 06-24-2005]

16.7.12.5 EFFECTIVE DATE:
June 24, 2005, unless a later date is cited at the end of a section.

[16.7.12.5 NMAC - Rp, 16.7.12.5 NMAC, 06-24-2005]

16.7.12.6 OBJECTIVE: This part is to establish the requirements for renewal of massage therapy licenses, massage therapy instructor registrations, and massage therapy school registrations; the inactive status and reactivation of inactive massage therapy licenses and massage therapy instructor registrations.

[16.7.12.6 NMAC - Rp, 16.7.12.6 NMAC, 06-24-2005]

16.7.12.7 DEFINITIONS:

A. "Active status" means a license that is current and authorizes the licensee or registrant to perform the practice or service authorized by the license or registration.

B. "Renew" means to begin again after an interval of time; to make valid again for a further period.

C. "Renewal date" means the deadline date upon which the license or registration must be made valid again for another period of time.

D. "Grace period" refers to the sixty (60) days after the renewal date that are allowed a massage therapist licensee, massage therapy instructor or massage therapy school registrant who did not renew the license or registration by the renewal date, to renew with a penalty fee; and during which the licensee or registrant may still practice or provide the services authorized by the license or registration.

E. "Grace period status" means the license or registration has not been renewed by the renewal date assigned to the license or registration; is still within the grace period allowed and under which the licensee or registrant may still practice or provide the services authorized by the license or registration; but which now must be renewed with the addition of a late penalty fee in addition to the renewal fee as set forth in 16.7.3 NMAC.

F. "Inactive status" occurs when a massage therapist's license or massage therapist instructor's registration is not renewed by the end of the grace period allowed for in the licensee's or registrant's renewal cycle. A license or registration can also be placed on inactive status for a period of two years. If the inactive license

or registration is not reactivated within those two years, it automatically expires, lapses and becomes null and void.

G. "Inactive status period" refers to a period not to exceed two years and only applies to massage therapists and massage therapy instructors; NOT to massage therapy schools.

H. "Expired status" means a license that has not been reactivated from inactive status and which has lapsed, become null and void, and can no longer be reactivated.

I. "Null and void status" means the license or registration is no longer valid and cannot be reactivated.

J. "Lapsed status" means the license or registration is null and void, is no longer valid and cannot be reactivated.

K. "Massage therapist" means a person licensed to practice in accordance with the Massage Therapy Practice Act.

L. "Massage therapy instructor" refers to a school-based instructor or to an independent instructor who is registered by the board.

M. "Massage therapy school" means a facility providing an educational program in massage therapy that is registered by the board.

N. "Uniform Licensing Act" refers to NMSA 1978, Sections 61-1-1 et seq. (as amended through 2003).
[16.7.12.7 NMAC - N, 06-24-2005]

16.7.12.8 GENERAL PROVISIONS FOR ALL LICENSEES AND REGISTRANTS:

A. Administrative provisions relative to the renewal process:

(1) Licenses and registrations shall be scheduled to expire either annually or biennially on October 31st of the year. The specific annual or biennial schedule for each license or registration type is further explained under the applicable section for each type in this regulation, 16.7.12 NMAC.

(2) Renewal application forms shall be mailed to the last known address on file with the board for each current licensee or registrant.

(3) It is the responsibility of the licensee or registrant to keep the board informed of any changes in home, employment, business, or school address, as may be applicable, and to update other contact information, such as phone numbers, as become necessary.

(4) Failure to receive the renewal application notice shall not relieve the licensee or registrant from the responsibility of renewing the license by the renewal date.

(5) The licensee or registrant shall

complete the renewal application form in the manner stated on the form. The form must be submitted with the requested documentation and required fee(s) as set forth in 16.7.3 NMAC.

(6) Incomplete renewal applications will be returned to the licensee or registrant for completion, which could result in the assessment of late penalty fees.

B. Grace period provisions:

(1) Licenses or registration renewal applications not submitted with a postmark date or hand-delivered on or before the renewal deadline date of October 31st, or the next business day if the October 31st falls on a weekend or holiday, are late and must also be accompanied by a late renewal penalty fee established in 16.7.3 NMAC.

(2) After the renewal date of October 31st, there is a sixty-day grace period ending December 30th of the same year during which the license or registration may still be renewed, and during which the licensee or registrant may still practice or provide the services authorized by the license or registration.

(3) Massage therapists and massage therapy instructors who have not renewed their licenses or registrations with a postmark date of December 30th, or the next business day if December 30th falls on a weekend or holiday in the same year as their renewal cycle, will automatically be placed on inactive status as of December 30th of that year.

(4) Massage therapy schools that have not renewed their registrations with a postmark date of December 3rd, or the next business day if December 30th falls on a weekend, will automatically expire immediately and become null and void.

[16.7.12.8 NMAC - Rp, 16.7.12.8 NMAC, 06-24-2005]

16.7.12.9 GENERAL PROVISIONS ONLY FOR MASSAGE THERAPISTS AND INSTRUCTORS:

A. Inactive status issues for massage therapists and massage therapy instructors:

(1) Massage therapists or massage therapy instructors whose licenses have been placed on inactive status may not provide the services authorized by the license or registration.

(2) Continuation of the practice of massage therapy by massage therapists; or massage therapy training and instruction by massage therapy instructors while on inactive status is subject to disciplinary action by the board.

(3) The inactive status period shall end two years from the December 30th on which the massage therapist license and instructor registration should have been

renewed.

(4) It is the responsibility of the licensee or registrant to monitor the period of inactive status.

(5) The board will NOT send any notices of the upcoming expiration of inactive status to the licensees or registrants.

B. Reactivation from inactive status - therapists and instructors only:

(1) Massage therapy licenses or massage therapy instructor registrations will expire if not reactivated by the deadline of the inactive status period, which will fall two years after December 30 of the year in which the license was placed on inactive status.

(2) The required reactivation form must be requested from the board office a minimum of one month prior to the expiration of the inactive status period.

(3) The licensee or registrant shall complete and return the completed reactivation form with the required proof of completion of continuing education as set forth in 16.7.11 NMAC, along with the reactivation fee and late renewal penalty fee as set forth in 16.7.3.NMAC.

(4) The reactivation application and required enclosures must be post-marked or hand-delivered to the board office no later than October 31st two years following the December 30 of the year in which the license or registration was placed on inactive status or the license or registration will expire, lapse, and become null and void.

(5) Reactivation applications received with a postmark date or hand-delivered after that December 30th will be returned to the expired licensee or registrant because the license may no longer be reactivated.

[16.7.12.9 NMAC - Rp, 16.7.12.8, 9, and 10 NMAC, 06-24-2005]

16.7.12.10 MASSAGE THERAPISTS:

A. Massage therapist will renew their licenses on or before the renewal date of October 31st of the year stated on their current licenses in a biennial renewal cycle first established when the initial license was issued.

B. Some massage therapists will renew on the odd-numbered year, while others will renew on the even-numbered year.

C. The general provisions in 16.7.12.8, 16.7.12.9, and 16.7.12.10 NMAC explain the policy and procedure for massage therapist license renewal.

D. Massage therapists shall be responsible for meeting the continuing education requirements in accordance with 16.7.11 NMAC and for maintaining documentation of continuing education for

submission to the board upon request and as set forth in 16.7.11 NMAC.

[16.7.12.10 NMAC - Rp, 16.7.12.10 NMAC, 06-24-2005]

16.7.12.11 MASSAGE THERAPY INSTRUCTORS:

A. Prerequisite requirements: The registrant must hold a current active massage therapy license.

B. Instructor registration renewal: The general provisions in 16.7.12.8, 16.7.12.9, and 16.7.12.10 NMAC explain the policy and procedure for massage therapy instructor registration renewal.

(1) Instructor registrations come up for renewal at the same time the registrant's massage therapy license comes up for renewal.

(2) Registrants will renew their registration on or before October 31st, or the next business day if the October 31st falls on a weekend or holiday, of the biennial renewal year in which the registrant's registration is scheduled for renewal.

(3) Registrants will be responsible for meeting the continuing education requirements in accordance with 16.7.11 NMAC and for maintaining documentation of continuing education for submission to the board upon request and as set forth in 16.7.11 NMAC.

(4) Independent instructor registrants will be responsible for submitting their massage therapy training curriculum with their renewal.

(5) School based instructor registrants who teach at a registered massage therapy school are not required to submit a curriculum with their renewal.

[16.7.12.11 NMAC - Rp, 16.7.12.9 NMAC, 06-24-2005]

16.7.12.12 MASSAGE THERAPY SCHOOLS:

A. Massage therapy school registrations shall be renewed annually by the renewal date, October 31st, or the next business day if the October 31st falls on a weekend or holiday.

B. The general provisions in 16.7.12.8 NMAC explain the general policy and procedure for massage therapy school renewal.

C. Registrants will be responsible for annually submitting a curriculum of the massage therapy training to document compliance with the course requirements set forth in 16.7.5 NMAC.

D. After the grace period, which ends on December 30th, an owner/operator of a massage therapy school who has not had its renewed the schools registration shall no longer maintain, manage or operate the "massage therapy school" as defined in 16.7.12.7 NMAC or in Section 61-12C-3.F of the Massage Therapy

Practice Act, or offer education, instruction, or training in "massage therapy" as defined in Section 61-12C-3.E of the Massage Therapy Practice Act because the registration has expired and has lapsed and become null and void.

[16.7.12.12 NMAC - Rp, 16.7.12.10 NMAC, 06-24-2005]

16.7.12.13 A P P R O V E D RENEWAL APPLICATION:

Upon approval of the licensee's or registrant's renewal application, the board will issue a renewal license or registration to the licensee or registrant.

[16.7.12.13 NMAC - N, 06-24-2005]

16.7.12.14 R E N E W A L LICENSE OR REGISTRATION DISPLAY:

The renewal license or registration shall be displayed by the licensee or registrant in a conspicuous place in the licensee's or registrant's principal practice location or place of business.

[16.7.12.14 NMAC - N, 06-24-2005]

16.7.12.15 EXPIRATION OF LICENSE OR REGISTRATION:

A. If a massage therapist or instructor does not reactivate his/her license or registration by the end of the inactive status period, the license or registration will automatically expire without notice from the board and become null and void.

B. If a massage therapy school has not renewed its registration by the end of the sixty-day (60) grace period, the registration will automatically expire without notice from the board and will become null and void.

C. Expired licenses and registrations cannot be reactivated.

D. Licensees and registrants formerly licensed or registered by the board whose registrations have expired must make application to the board and comply with the same requirements as any previously unlicensed or unregistered applicant.

E. A former licensee or registrant with an expired license or registration may not provide or offer to provide massage therapy services, instruction, education or training in massage therapy as defined in Section 61-12C-3.E of the Massage Therapy Practice Act or in Part 1 and Part 4 of the board's rules and regulations. Practicing or providing the services formerly authorized by the expired license or registration is a violation of the law and is subject to disciplinary action by the board.

[16.7.12.15 NMAC - N, 06-24-2005]

16.7.12.16 U N L I C E N S E D PRACTICE PROHIBITED:

A. Massage therapists, massage therapy instructors, and massage therapy schools may not render or attempt to render massage therapy services, instruction as a massage therapy instructor, or training and instruction as a massage therapy school without the required current and valid license or registration issued by the board as provided in NMSA 1978, Section 61-12C-27 of the Massage Therapy Practice Act.

B. In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp), any person, company, firm, or entity who is not licensed or registered by the board is subject to disciplinary actions and proceedings by the board if it is determined that he, she, or it, has been offering or providing massage therapy, offering or providing massage therapy instruction; or offering or providing educational training in massage therapy in New Mexico without a valid New Mexico license or registration.

C. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against any person, company, firm, or entity that violates the Massage Therapy Practice Act by practicing without a valid New Mexico license.

D. In addition, the board may assess the person, company, firm, or entity engaging in the unlicensed practice of massage therapy, massages therapy instruction, or massage therapy education, the administrative costs, including investigative costs and the costs of conducting a hearing.

E. Reports of unlicensed practice may be reported to the board for investigation by phone, fax, mail, or e-mail. An approved complaint form is available from the board office or downloadable from the board's website at .

[16.7.12.16 NMAC - N, 06-24-2005]

HISTORY OF 16.7.12 NMAC:

Pre-NMAC History:

The material in this Part is derived from that previously filed with the State Records Center and Archives under:

Rule 11, License/Massage Therapy School Renewals, 9-3-93.

History of Repealed Material:

16 NMAC 7.12, License/Registration Renewal; Registration - Repealed 12-24-99
16.7.12 NMAC, License/Registration Renewal - Repealed 06-24-2005

NEW MEXICO MASSAGE THERAPY BOARD

This is an amendment to Sections 1, 3, 5, 7, 8, and 9 of 16.7.1 NMAC, effective June 24, 2005.

16.7.1.1 ISSUING AGENCY: Regulation and Licensing Department, Massage Therapy Board [, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7000.]

16.7.1.3 S T A T U T O R Y AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, NMSA 1978, [Section] Sections 61-12C-7.E, 61-12C-7.F, 61-12C-8.A and 61-12C-11 (1999).

16.7.1.5 EFFECTIVE DATE: July 28, 1996, unless a [different] later date is cited at the end of a section [or paragraph].

16.7.1.7 DEFINITIONS:

A. "Board" means the New Mexico board of massage therapy, hereinafter referred to as the board.

B. "Class hour" or "contact hour" means no less than fifty (50) minutes of any one-clock hour during which the student/massage therapist participates in a learning activity in the physical presence and under the tutelage of an instructor.

C. "Clinical practicum" means that a student [enrolled at a registered massage therapy school who] is providing hands-on massage therapy to members of the public under the supervision of a registered massage therapy instructor, [who is] That instructor must be physically present on the premises [and is physically available] for advice and assistance. The student must be enrolled at a registered massage therapy school or being trained by a registered massage therapy instructor. Clinical practicum does not include classroom practice.

D. "Compensation" means a gain, [either] whether monetary, trade or barter, for massage therapy services.

E. "Massage therapy" means the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage,

bodywork, body rub or any derivation of those terms. Massage therapy is the deformation of soft tissues from more than one anatomical point by manual or mechanical means to accomplish homeostasis and/or pain relief in the tissues being deformed, as defined in the Massage Therapy Practice Act, NMSA 1978, Section 61-12C-3.E.

[~~(4)~~] **E. [The treatment]** "**Treatment of soft tissues**" is the repetitive deformation of soft tissues from more than one anatomical point by manual or mechanical means to accomplish homeostasis and/or pain relief in the tissues being deformed[?].

[~~(4)~~] **G. "Soft tissue"** includes skin, adipose, muscle and myofascial tissues[?].

[~~(4)~~] **H. "Manual"** means by use of hands or body[?].

[~~(4)~~] **I. "Mechanical"** means any tool or device that mimics or enhances the actions possible by the hands[~~and~~].

[~~(4)~~] **J. "Deformation"** specifically prohibits the use of high velocity thrust techniques used in joint manipulations.

[~~(2)~~] The practice of massage therapy applies to shiatsu, tui na, and rolling.

[~~(3)~~] The practice of Massage Therapy DOES NOT apply to the practice of: Craniosacral, Feldenkrais, Polarity Therapy, Reiki, Foot and Hand Reflexology (without the use of creams, oils, or mechanical tools), and Trager.]

[~~(F)~~] **K. "Massage Therapy Practice Act"** [means Section] refers to NMSA 1978, Sections 61-12C-1 et seq. [NMSA 1978, hereinafter referred to as the Massage Therapy Practice Act] [as amended through 1999].

[~~(G)~~] **"Alternative Qualifying Experience"** means documented lawful professional experience and/or licensure including but not limited to the following professions: Acupuncture, Athletic Trainer, Chiropractic, Massage Therapy, Nursing, Medicine, Physical Therapy, Occupational Therapy, and Osteopathic, within three (3) years prior to application.

[~~(1)~~] applicable documentation verifying professional experience will include a minimum of three (3) of the following:

- (a) income tax forms;
- (b) CRS 1 Form;
- (c) verifiable letters of confirmation from clients of experience;
- (d) yellow pages advertisement which shows dates;
- (e) printed advertisement with dates;
- (f) office rent or lease;
- (g) current association membership;
- (h) current professional insurance;

ancee;

- ~~(i) copies of dated receipts for supplies which total a minimum of \$500;~~
- ~~(j) verifiable letters from employers;~~

~~(k) work log consisting of client's name, address and/or phone number, appointment date, and time period worked on client; and~~

~~(2) documentation verifying licensure is to be provided on the Board's form "Verification of Licensure" (Form B), or the licensing Board's form, if the minimum information requested in the "Verification of Licensure" form is provided. The form must be completed by the licensing Board and mailed directly to the Board Office from the licensing Board.~~

~~[H.] L.~~ "Related hands-on modalities" means manual therapies, not directly defined as massage therapy.

~~[I.] M.~~ "Semester hour" or "credit hour" means one (1) semester credit hour, which is equivalent to fifteen (15) class or contact hours.

~~[K.] N.~~ "Uniform Licensing Act" ~~[means Section]~~ refers to NMSA 1978, Sections 61-1-1 et seq. ~~[NMSA 1978, hereinafter referred to as the Uniform Licensing Act] (as amended through 2003).~~

16.7.1.8 MASSAGE THERAPY LICENSE AND [CERTIFICATE] REGISTRATION:

A. License/registration display:

(1) A current license/registration must be displayed and must be visible to the public in the principal place of employment or business of the massage therapist or registrant.

(2) A licensee/registrant must practice massage therapy or provide massage therapy training under the name inscribed on the license or registration.

B. Duplicate/replacement license or wall certificate:

(1) The board will issue a duplicate/replacement license or wall certificate upon receipt of a written request which states the reason for such duplication or replacement (for example: it was lost, stolen, destroyed; or name was legally changed).

(2) The records of the board are to reflect that a duplicate/replacement license or wall certificate was issued.

C. Name change:

(1) Any name change ~~[(first or last name)]~~ requires that a replacement license or registration be issued. The board will issue a replacement license or registration upon receipt of a copy of the legal document (ONLY marriage certificate, divorce decree or court order accepted). A change of name form is available from the board's website or from the board office.

(2) A licensee or registrant not wishing to request a replacement license or registration must continue to use the name as ~~[inscribed]~~ initially issued on the license or registration, until the requirements of Paragraph 1 of Subsection C of 16.7.1.8 NMAC, above have been met.

D. Address change:

Licenses and registrations are mailed to the license or registration holder's last mailing address as noted in the records of the board. Therefore, licensees and registrants ~~[will]~~ shall maintain a current mailing address with the board by immediately notifying the board office in writing whenever a change of an address has occurred. A change of address form is available from the board's website or from the board office.

E. License and registration property of the board:

All licenses and registrations are the property of the board and will immediately be returned to the board upon request.

16.7.1.9 INSPECTION OF BOARD RECORDS:

A. The board operates in compliance with the Inspection of Public Records Act, NMSA 1978 Sections 14-2-1 through 14-2-16.

B. The board administrator ~~[will be]~~ is the custodian of the board's records.

C. Any one may examine all public records in the board's custody, provided the person gives advance notice to the board administrator in accordance with the Inspection of Public Records Act.

D. The board may provide copies of public records upon request and upon payment of a copying fee in accordance with Subsection D of 16.7.3.8 NMAC, or ~~[except]~~ as may be ordered by a court of competent jurisdiction.

E. ~~[No person will be permitted to remove original documents from the board office, except board staff who may bring any necessary documents to a board or committee meeting.]~~ Only the board's staff is authorized to remove original board documents from the board's office for the purpose of attending board or committee meetings or other board business.

F. The board office is not obligated to create lists, labels or any other materials ~~[which]~~ that are not already in existence.

NEW MEXICO MASSAGE THERAPY BOARD

This is an amendment to Sections 1, 5, 7 and 8 of 16.7.3 NMAC, effective June 24, 2005.

16.7.3.1 ISSUING AGENCY:
Regulation and Licensing Department, Massage Therapy Board [~~P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090.~~]

16.7.3.5 EFFECTIVE DATE:
July 28, 1996, unless a ~~[different]~~ later date is cited at the end of a section ~~[or paragraph].~~

16.7.3.7 DEFINITIONS:
"Inactive status" occurs when a massage therapist's license or massage therapist instructor's registration is not renewed by the end of the grace period allowed for in the licensee's or registrant's renewal cycle. A license or registration can also be placed on inactive status for a period of two years. If the inactive license or registration is not reactivated within those two years, it automatically expires, lapses and becomes null and void.

16.7.3.8 FEE SCHEDULE:

- A. Massage therapist:**
- (1) Application: ~~[\$25.00]~~ \$75.00
 - (2) Initial license: Pro-rated \$5.00/mo.
 - (3) Biennial renewal: \$125.00
 - (4) Late renewal penalty: \$75.00
 - (5) ~~[Reactivation - Prorated - \$5.00/mo. plus \$25.00]~~ Renewal during the grace period: \$125.00 plus late renewal penalty fee
 - (6) Reactivation from inactive status: \$125.00 plus late renewal penalty fee
 - (7) Review fee for "other" elective courses as provided in 16.7.4.14 NMAC: \$50.00

B. Massage therapy instructor:

- (1) Registration: \$50.00
- (2) Biennial renewal - school based: \$25.00
- (3) Biennial renewal - independent: \$50.00
- (4) Late renewal penalty: \$75.00
- (5) ~~[Reactivation - Prorated - \$5.00/mo. Plus \$25]~~ Renewal during the grace period: \$50.00 plus late renewal penalty
- (6) Reactivation from inactive status: \$50.00 plus late renewal penalty fee

C. Massage therapy school:

- (1) Registration: \$50.00
- (2) Annual renewal: \$50.00
- (3) Late renewal penalty: \$75.00
- (4) Application review: \$400.00
- (5) Curriculum change review:

\$50.00

D. Administrative fees:

- (1) Temporary license: \$25.00
- (2) Visiting massage therapy instructor: \$50.00
- (3) Lists: \$50.00
- (4) Labels: \$75.00
- (5) Other administrative fees (at the discretion of the board and/or board administrator) not to exceed \$500.00

E. ALL FEES COLLECTED BY THE BOARD ARE NON-REFUNDABLE.

NEW MEXICO MASSAGE THERAPY BOARD

This amends 16.7.6 NMAC by amending Sections 1, 5, 7, 8, and 9; adding new Sections 10 and 12; and renumbering the previous Section 10 to Section 11, effective June 24, 2005.

16.7.6.1 ISSUING AGENCY:
Regulation and Licensing Department, Massage Therapy Board [~~P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090~~]

16.7.6.5 EFFECTIVE DATE:
December 24, 1999, unless a [~~different~~] later date is cited at the end of a section [~~or paragraph~~].

16.7.6.7 DEFINITIONS:

A. "Professional massage therapy experience" means lawful massage therapy services performed for compensation. [~~Applicable documentation verifying two (2) years of professional massage therapy experience within three (3) years prior to application, will include a minimum of three (3) of the following:~~

- (1) income tax forms;
- (2) CRS-1 Form;
- (3) verifiable letters of confirmation from clients of massage therapy experience;
- (4) yellow pages advertisement which shows dates;
- (5) printed advertisement with dates;
- (6) office rent or lease;
- (7) current association membership;
- (8) current professional insurance;
- (9) copies of dated receipts for supplies which total a minimum of \$500;
- (10) verifiable letters from employers; and

~~(11) work log consisting of client's name, address and/or phone number, appointment date, and time period worked on client.]~~

B. "Compensation" means gain, either monetary or trade or bartering for massage therapy services.

C. "Class hour" or "contact hour" means no less than fifty (50) minutes of any one-clock hour during which the student/massage therapist participates in a learning activity in the physical presence and under the tutelage of an instructor.

D. "Massage therapy" means the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, bodywork, body rub or any derivation of those terms. Massage therapy is the deformation of soft tissues from more than one anatomical point by manual or mechanical means to accomplish homeostasis and/or pain relief in the tissues being deformed, as defined in the Massage Therapy Practice Act, NMSA 1978, Section 61-12C-3.E.

E. "Teaching assistant" means an individual who assists the registered instructor in class. Any instruction to students must be performed while under the direct supervision of the registered massage therapy instructor.

16.7.6.8 MASSAGE THERAPY INSTRUCTOR:

A. [Prerequisite] Requirements:

(1) The applicant must hold a [~~current~~] valid massage therapist license in New Mexico [~~as a massage therapist~~].

(2) The applicant must have practiced massage therapy for a minimum of two (2) years [~~within~~] during the three (3) years [~~prior to~~] preceding the application for a massage therapy instructor registration.

B. Application requirements for registration: At the time of application the applicant must provide the following:

(1) A [~~complete~~] completed application for massage therapy instructor registration, which must be legible [~~either~~] and printed in black ink or typed.

(a) Incomplete application will be returned for completion.

(b) Faxed application and/or supporting documentation will not be accepted.

~~(c) All documents submitted in a foreign language must be accompanied by~~

an accurate translation in English. Each translated document must bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original, and sworn to before a notary public. Translation of any document relevant to a person's application will be at the expense of the applicant.]

(2) Documentation [~~of Professional Massage Therapy Experience as defined in Subsection A of 16.7.6.7 NMAC~~] verifying two (2) years of professional massage therapy experience during the three (3) years preceding the application must include a minimum of three (3) of the following documents:

(a) income tax forms documenting massage therapy practice;

(b) verifiable letters from clients confirming receipt of massage therapy services from the applicant;

(c) yellow page advertisement(s) that show dates of the advertisement(s);

(d) printed flyers or brochure advertisements including dates;

(e) proof of rent or lease of practice location or office space;

(f) proof of current association membership;

(g) proof of current professional insurance;

(h) copies of dated receipts for massage therapy practice-related supplies or furnishings that total a minimum of \$500;

(i) verifiable letters from employers; and

(j) work log consisting of client's names, addresses and/or phone numbers, appointment dates, and time periods worked on clients.

(3) Documentation of completion of 50 contact hours of instructional experience of professional teaching, or workshop instruction.

(4) The massage therapy instructor registration fee in accordance with Subsection B of 16.7.3.8 NMAC.

C. Documents in foreign language: Any document submitted in a foreign language must be accompanied by an accurate translation in English.

(1) Each translated document must bear the affidavit of the translator sworn to before a notary public certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original.

(2) The affidavit must also contain the translator's contact information, including address and phone number.

(3) Translation of any document relevant to a person's application will be at

the expense of the applicant.

16.7.6.9 [STANDARDS FOR] SCHOOL-BASED MASSAGE THERAPY INSTRUCTORS:

A. Prerequisite requirements: Every instructor teaching massage therapy as defined in [~~Section 61-12C-3.E, of the Massage Therapy Practice Act, and Subsection E of 16.7.1.7 NMAC;~~] 16.7.6.7 NMAC must be registered by the board as a massage therapy instructor.

B. General provision: Every transcript submitted to the board by an instructor shall be accompanied by a course outline(s) and dates of instruction unless previously submitted as part of a registered massage therapy school curriculum approved by the board. The registered school-based massage therapy instructor shall only provide instruction within the board-approved curriculum of a registered massage therapy school.

C. Professional conduct: The registered school-based massage therapy instructor will comply with the board's rule on professional conduct, 16.7.2 NMAC [~~Professional Conduct~~].

16.7.6.10 STANDARDS FOR INDEPENDENT MASSAGE THERAPY INSTRUCTORS:

A. Prerequisite requirements: Every registered instructor teaching massage for continuing education as defined Subsection D of 16.7.6.7 NMAC must be registered as an independent massage therapy instructor.

B. General provision: The registered independent massage therapy instructor may provide instruction at a registered massage therapy school without having to obtain a school-based massage therapy instructor registration, provided that such instruction shall be limited to the school's curriculum approved by the board.

C. Curriculum: The registered independent massage therapy instructor shall submit a curriculum for board review and approval or disapproval, including continuing education courses.

D. Certificates of completion: Every certificate of completion provided by the registered independent massage therapy instructor to the licensee shall include:

- (1) the name of the course;
- (2) the date(s) of training;
- (3) the class hour or contact hour completed;
- (4) the name, registration number, and address of the registered independent massage therapy instructor; and
- (5) the signature of the registered independent massage therapy instructor.

E. Professional Conduct: The registered independent massage thera-

py instructors will comply with the board's rule on professional conduct, 16.7.2 NMAC.

[~~16.7.6.10~~] 16.7.6.11 VISITING MASSAGE THERAPY INSTRUCTOR EXEMPTION:

A. Prerequisite requirements:

(1) the applicant must hold a massage therapy license, in another state or jurisdiction, or

(2) the applicant must have massage therapy training equivalent to the requirements outlined in Paragraph 1 of Subsection B or Paragraph 2 of Subsection B of 16.7.4.9 NMAC.

B. General provisions:

(1) A visiting massage therapy instructor exemption will be granted to an applicant for the purpose of allowing the instructor to teach massage therapy as defined in Section 61-12C-3.E, of the Massage Therapy Practice Act, and Subsection E of 16.7.1.7 NMAC for a limited time without having to obtain a massage therapy license and registration as a massage therapy instructor.

(2) The duration of a visiting massage therapy instructor exemption will not exceed 14 days in a calendar year; thereafter the instructor must comply with the provisions for licensure as a massage therapist and registration as a massage therapy instructor.

C. Application requirements for visiting massage therapy instructor: At the time of application the applicant will provide the following:

(1) a complete application for a visiting massage therapy instructor exemption;

(a) Incomplete application will be returned.

(b) Faxed application and/or supporting documentation will not be accepted.

(c) All documents submitted in a foreign language must be accompanied by an accurate translation in English. Each translated document must bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original, and sworn to before a notary public. Translation of any document relevant to a person's application will be at the expense of the applicant.

(2) the name of the New Mexico sponsor who must be a registrant;

(3) documentation verifying Paragraph 1 of Subsection A or Paragraph 2 of Subsection A of 16.7.6.10 NMAC, above;

(4) documentation of completion of 50 contact hours of instructional experi-

ence of professional teaching, or workshop instruction;

(5) a course description/syllabus; and

(6) the visiting massage therapy instructor fee, in accordance with Subsection D of 16.7.3.8 NMAC.

16.7.6.12 REQUIREMENTS FOR TEACHING ASSISTANTS:

Registered massage therapy schools may utilize persons who are not registered massage therapy instructors in providing instruction to massage therapy students working toward obtaining their massage therapy license. Such persons shall be considered teaching assistants.

A. The teaching assistant must be a licensed massage therapist.

B. The teaching assistant must be supervised by a registered massage therapy instructor who is physically present in the room.

C. Experience as a teaching assistant shall apply to the 50-hour requirement outlined in 16.7.6.8.B (3) NMAC.

D. It is the responsibility of the registered massage therapy school to ensure that the teaching assistant complies with the requirements of the board's regulations, 16.7 NMAC, including 16.7.2 NMAC, Professional Conduct.

NEW MEXICO MASSAGE THERAPY BOARD

This is an amendment to Sections 1, 5, 6, 7, 8, 9, and 10 of 16.7.11 NMAC, effective June 24, 2005.

16.7.11.1 ISSUING AGENCY: Regulation and Licensing Department, Massage Therapy Board [~~P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090.~~]

16.7.11.5 EFFECTIVE DATE: May 30, 1996, unless a later date is cited at the end of a section.

16.7.11.6 OBJECTIVE: This part is to establish the continuing education requirements and procedures, to ensure that licensed massage therapists and massage therapy instructors provide the highest quality professional service. Therefore, licensees should engage in education activities that foster this objective.

16.7.11.7 DEFINITIONS: [~~Refer to Part 1.~~]

A. "Class hour" or "contact hour" means no less than fifty (50) minutes of any one-clock hour during which

the student/massage therapist participates in a learning activity in the physical presence and under the tutelage of an instructor.

B. "Semester hour" or "academic hour" means one (1) semester credit hour that is equivalent to fifteen (15) class or contact hours.

16.7.11.8 GENERAL PROVISIONS: The board does not maintain a list of continuing education providers. It is the responsibility of the licensee/registrant to determine where to obtain the required continuing education. Local massage therapy schools and local or national massage therapy associations might be able to provide information regarding availability of continuing education offerings.

A. [Every massage therapist licensed pursuant to the Massage Therapy Practice Act will be required for renewal starting May 31, 1996] **Massage therapy licensees:** Every massage therapist licensed pursuant to the Massage Therapy Practice Act will be required to complete 16 contact hours of continuing education as a condition for license renewal. Such continuing education [will have been] must be completed within the [24] twenty-four (24) months preceding the renewal date, October 31st. Excess hours of the total number required [will not be allowed to] may not be carried over to future renewals.

(1) Continuing education taken prior to the twenty-four month period will not be accepted.

(2) An automatic late renewal penalty fee will be incurred if the continuing education submitted was taken after the twenty-four month period.

B. [Every registered massage therapy instructor will be required for renewal starting October 31, 2002] **Instructor registrants:** Registered massage therapy instructors will be required to complete an additional 16 contact hours of continuing education over and above the 16 hours required to maintain their massage therapy license as a condition of renewing their instructor registration. Such continuing education [will have been] must be completed within the [24] twenty-four (24) months preceding the renewal date, October 31st. [Up to eight (8) excess hours beyond the additional 16 hours may be carried over up to one (1) year beyond the renewal deadline.]

(1) Continuing education taken prior to the twenty-four month period will not be accepted.

(2) An automatic late renewal penalty fee will be incurred if the continuing education submitted was taken after the twenty-four month period.

C. If the initial license/registration was issued less than twelve (12)

months prior to the renewal date, no continuing education will be required for the first renewal.]

[D.] C. Audit authority: The board may randomly select license renewal applications for an audit of continuing education. Each licensee/registrant will maintain, in his/her personal files, documentation of all continuing education completed with the names, addresses and phone number of the continuing education provider(s).

[E.] D. Audit process: The board will send a notice of audit to each licensee/registrant selected for an audit [a notice of an audit]. The licensee/registrant must provide the board with documentation of the continuing education completed within the [24] twenty-four (24) months preceding the renewal date, October 31st.

(1) If, after audit, it is determined that a licensee failed to meet the continuing education requirement for renewal, he/she will be sent a letter by certified mail return/receipt requesting the following:

(a) that the licensee obtain and submit the required continuing education to the board within thirty-days of the receipt of the board's letter;

(b) that the licensee pay a penalty fee of \$150 within thirty-days of the receipt of the board's letter.

(2) Failure to comply with these requirements will result in the licensee being automatically referred to the attorney general's office for issuance of a notice of contemplated action signaling the beginning of formal disciplinary action.

E. Academic hours: One (1) hour of continuing education taken in an academic setting converts to fifteen (15) clock hours.

16.7.11.9 CONTINUING EDUCATION PROGRAMS FOR MASSAGE THERAPISTS: [The board will accept for compliance any of the following, but not limited to, subjects which contribute directly to the enhancement of massage therapy education of the licensee.] As an example, the board will accept the following types of continuing education offerings as long as they contribute directly to the enhancement of the licensees' massage therapy practice and education:

A. Courses, seminars, workshops and classes in areas related to the practice of massage therapy such as: massage, bodywork, allied health care, psychology, anatomy and physiology, business, insurance, movement therapy, stress management, yoga, CPR, and advanced first aid.

B. Courses of study offered by registered massage therapy schools or massage therapy instructors or by any [national organization in the massage therapy/bodywork field (such as AMTA or ABMP); and] NCBTMB category A or B

provider.

C. The following methods for accruing continuing education may also be applied.

(1) Teaching a non-massage therapy qualifying class, course, seminar or workshop.

(2) Publishing an article in the field relating to massage therapy. No more than [four (4)] twelve (12) hours shall be granted for publishing a professional article in a local or regional publication, and no more than [eight (8)] twelve (12) hours shall be granted for publishing a professional article in a national journal.

(3) Massage therapist in-service programs related to the practice of massage therapy.

(a) No more than four (4) hours shall be granted [; and].

(b) A brief written presentation must be provided which demonstrates the relationship to massage therapy.

D. Ethics requirement: All massage therapists shall be required to complete a minimum of four (4) hours of ethics training as part of the 16-hour requirement for each renewal period. In addition to the other methods of accruing continuing education listed in Subsections A and B of this section (16.7.11.9 NMAC), the ethics course may also be obtained through one of the following methods:

(1) correspondence courses, or

(2) attending an ethics course from any other health related field.

16.7.11.10 CONTINUING EDUCATION PROGRAMS FOR MASSAGE THERAPY INSTRUCTORS:

[A.] All massage therapy instructors shall be required to complete a minimum of four (4) hours of ethics training for each renewal period.

(1) The ethics course may be obtained through correspondence courses; or

(2) attending an ethics course from any other health related field.

[B.] The board will accept for compliance any of the following, but not limited to, subjects [which] that contribute directly to the enhancement of massage therapy instruction of the registrant.

[C.] A. Courses, seminars, workshops and classes in areas related to pedagogy such as: class presentation techniques, class materials preparations, communications skills, research, cultural diversity, and counseling[?].

[D.] B. [courses of study offered by registered massage therapy instructors or by any national organization in the massage therapy/bodywork field (such as AMTA or ABMP);] Courses of study offered by registered massage therapy schools or massage therapy instructors or by

any NCBTMB category A or B provider.

(3) C. Publishing an article in the field relating to massage therapy. No more than ~~four (4)~~ twelve (12) hours may be granted for publishing a professional article in a local or regional publication and no more than ~~eight (8)~~ twelve (12) hours in a national journal.

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.7 NMAC, Section 8, effective June 24, 2005.

16.22.7.8 EXAMINATION FOR LICENSURE AS A PSYCHOLOGIST

A. Description of examination and general information. All persons applying for licensure shall be examined by the board. The examination consists of two parts:

(1) a written examination, called the examination for professional practice in psychology.

(2) an oral examination constructed, administered, and graded by the board and its designees.

B. Examination for professional practice in psychology. To qualify for licensure, an applicant must demonstrate professional competence by passing the examination for professional practice in psychology promulgated by the association of state and provincial psychology boards.

(1) Passing score. The passing score on the examination for professional practice in psychology taken before January 1, 1993, is 140 (70%). The passing score on the examination for professional practice in psychology taken after January 1, 1993, is a score equal to or greater than the passing score recommended by the association of state and provincial psychology boards.

(2) The oral examination will be scored on a pass-fail basis, for doctoral level applicants. Applicants will usually be notified of their score within thirty (30) days following the oral examination.

(3) If the score in either the examination for professional practice in psychology or the oral examination meets the requirement for licensure as a psychologist but the other score does not, the examination passed at the psychologist level will not have to be retaken.

C. Oral examination contents: The oral examination is designed to assess the application of knowledge in four domains:

- (1) diagnosis and assessment;
- (2) treatment and intervention;
- (3) social, personal, and cultural issues which should be considered in treat-

ment and assessment;

(4) ethical standards, New Mexico laws, and the rules and regulations of the board as they apply to psychologists and their clients or patients

D. Panel of oral examiners.

(1) A panel of oral examiners shall be appointed by the board. The examiners shall be licensed psychologists in good standing, licensed for five years in New Mexico and have no pending complaints, adjudicatory proceedings or current disciplinary actions. The panel of examiners, should represent the diversity of psychologists in the state. In appointing oral examiners, the board should give consideration to factors such as gender distribution, geographic location, age, culture, race, ethnicity, disability, religion, areas of practice, or any other factors that can contribute to representing the diversity of the state of New Mexico.

(2) Examiners shall be appointed for ~~[a maximum of two (2) consecutive terms of three (3) years each. After waiting a period of three (3) years, examiners may be re-appointed.]~~ an initial one-year term following successful completion of a training program. Examiners may be re-appointed for indefinite terms on the panel, but must examine at least once a year to maintain their term. Examiners may remove themselves from the panel at any time, with a written notice to the board. The board may remove examiners from the panel at any time with a written notice to the examiner.

(3) Oral examination panels may include examiners who are members of the board.

(4) The applicant will be examined by two examiners. An observer will be present during the examination. The role of the observer will be to provide information to the board on the examination process itself.

(5) Any board member or examiner who has had a major role in the education and/or supervision of any applicant, or who for other reasons might have personal interests causing bias in connection with any applicant, shall disqualify himself or herself from sitting as a panelist while the applicant is being examined.

(6) Any applicant who has reason to believe that a member of the oral examination panel may be biased against, or in favor of his or her application shall so notify the board before the oral examination begins. Failure of the applicant to so notify the board shall constitute a waiver of any later objection based on bias.

E. Re-examination. An applicant may apply to retake the examination for professional practice in psychology or the oral examination at each scheduled

examination date and pay the appropriate examination fee as required by the board. Such fee is due at the time of request and is not refundable.

F. Instructions for the oral examination. Prior to the oral examination, the board will provide each applicant with an information packet describing the examination process. The following are general instructions followed during an oral examination:

(1) The applicant should come to the examination location about fifteen (15) minutes before the examination is scheduled to begin. The exact time of the examination will be provided to the applicant in a separate letter.

(2) The examiners will have no information about the applicant except his or her name and the level of licensure for which application has been made (i.e., psychologist or psychologist associate).

(3) The applicant shall bring two forms of identification; one form of identification shall provide photo identification.

(4) Immediately before the examination is administered, the applicant will be given the opportunity to object to an examiner if the applicant feels any bias exists. There is no penalty to the applicant if he or she raises such an objection and requests another examiner due to concerns about examiner bias.

(5) The applicant shall not be allowed to bring written materials into the examination room. Backpacks or other large carrying cases shall not be allowed in the examination room.

(6) The board will provide the applicant with paper and pencil.

(7) Once the applicant is brought to the examination room, he or she may not leave except to use the rest room. If the applicant needs to use the rest room once a case vignette has been given or the examination has begun, the observer or a board administrative staff member shall accompany the applicant.

(8) Only those applicants with previously approved special accommodations requiring food and/or fluids during the administration of this examination may eat or drink during the oral examination. Applicants desiring special accommodations shall contact the board no later than forty-five (45) days before the scheduled administration of the examination. A letter from a licensed physician certifying the need for special accommodations is required. No other applicants will be allowed to eat during the examination

(9) The examiners are instructed to follow a semi-structured format. They are instructed not to respond to requests by an applicant to rephrase a question or to questions that require deviation from the semi-structured format, other than to repeat

the question

(10) Applicants shall not discuss the contents of the oral examination with anyone.

[16.22.7.8 NMAC - Rp 16 NMAC 22.3.18, 4/16/00; A, 6/24/05]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.12 NMAC. Section 10 is repealed effective June 24, 2005.

16.22.12.10 [PROFESSIONAL EXPERIENCE REQUIREMENTS

~~A. The applicant shall have five (5) years of clinical, counseling, or school psychology of a type satisfactory to the board after having received his or her master's degree.~~

~~B. The applicant shall have had at least one (1) year of supervised clinical, counseling, or school psychology experience within the last five (5) years immediately prior to his or her application date. One (1) year of supervision shall consist of 1,500 hours of supervised experience.~~

~~C. Supervision shall be by a licensed psychologist, a licensed psychologist associate, a licensed social worker, a licensed professional clinical counselor, a licensed marriage and family therapist, or a board-certified psychiatrist.~~

~~D. The supervisee shall meet with the supervisor one (1) hour per week on a one-to-one basis.~~

~~E. The supervisor shall have training and experience in those areas of practice in which the supervisee is being offered supervision.~~

~~F. A statement from each supervisor verifying the applicant's supervised experience and setting forth the nature and extent of such supervision shall be submitted by the applicant on forms provided by the board.~~ [RESERVED]

[16.22.12.10 NMAC - Rp 16 NMAC 22.8.9, 4/16/00; Repealed 6/24/05]

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

This is an amendment to 16.22.13 NMAC, Section 8, effective June 24, 2005.

16.22.13.8 FEE SCHEDULE:

A. All fees payable to the board are non-refundable. The fee for the written examination shall be for the next regularly scheduled exam only. Cancellation of the exam by the applicant

shall result in loss of the initial application fee, unless the applicant submits a written notice to the board 20 days prior to the oral examination. The examination for professional practice in psychology (EPPP) and the psychopharmacology examination for psychologists (PEP) is in addition to the fees described below, shall be determined by the professional examination service (PES), and shall be payable to PES by certified check or money order.

B. APPLICATION FEES for psychologists and psychologist associates, conditional prescribing and prescribing psychologists:

(1) initial application - (includes one oral examination) \$300.00 initial application fee expires after 24 months from the date application is received in the board office.

(2) re-examination application fee \$300.00

(3) application for an out of state psychologist to conduct court-ordered independent examination 150.00 (per case)

(4) initial conditional prescription certificate \$300.00

(5) extension of conditional prescription (60 days) \$100.00

(6) reapplication fee \$300.00

(7) prescription certificate \$300.00

C. ANNUAL RENEWAL FEE: Psychologists, psychologists associates and prescribing psychologists

(1) annual renewal active status (psychologists and psychologists associates) \$300.00

(2) annual renewal active status (conditional prescribing and prescribing psychologist) \$300.00

(3) annual renewal inactive status \$150.00

(4) renewal fee received after July 1 and within 1 year of suspension \$300.00 plus \$100.00 late fee (psychologist, psychologist associate and conditional prescribing and prescribing psychologist).

(5) application from inactive status to active status \$300.00

D. OTHER MISCELLANEOUS CHARGES

(1) duplicate/replacement wall certificate \$ 25.00

(2) licensee lists or labels \$75.00

(3) copying; records request \$00.30pg.

(4) copying; over or undersize copies \$01.00/pg.

[16.22.13.8 NMAC - N, 6/5/00; A, 1/7/05; A, 6/24/05]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 75 INSTRUCTIONAL MATERIALS AND TECHNOLOGY PART 3 RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL MATERIAL BUREAU TEXTBOOK ADOPTIONS

6.75.3.1 ISSUING AGENCY:
Public Education Department
[6.75.3.1 NMAC - N/E, 05/27/05]

6.75.3.2 SCOPE: This regulation governs the procedures for the adoption, purchase, and delivery of instructional material.
[6.75.3.2 NMAC - N/E, 05/27/05]

6.75.3.3 STATUTORY
AUTHORITY: This regulation is promulgated pursuant to Sections 22-2-1 and 22-15-8 NMSA 1978.
[6.75.3.3 NMAC - N/E, 05/27/05]

6.75.3.4 DURATION: This is an emergency rule that shall remain in effect for thirty days.
[6.75.3.4 NMAC - N/E, 05/27/05]

6.75.3.5 EFFECTIVE DATE:
May 27, 2005
[6.75.3.5 NMAC - N/E, 05/27/05]

6.75.3.6 OBJECTIVE: This regulation is designed to facilitate the adoption of instructional material and implement the instructional material review process mandated by Section 22-15-8 NMSA 1978.
[6.75.3.6 NMAC - N/E, 05/27/05]

6.75.3.7 DEFINITIONS:
A. "Adoption" means approval by the department of a multiple list of instructional materials for use in the schools.

B. "Chief" or "director" means the chief of the state instructional material bureau.

C. "Core" or "basal" means a set of subjects and material (science, mathematics, social studies, language acquisition, comprehensive health, early childhood education, special education, physical education, vocational education, fine arts, performing arts, and language arts) or courses that make up a required portion of a curriculum and are the primary tool of instruction for that curriculum.

D. "Department" means the public education department.

E. "Instructional material"

means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media.

F. "Instructional material bureau" means that bureau established within the department pursuant to the Instructional Material Law.

G. "Multiple list" means a list consisting of items of instructional material selected for each course of study and approved by the department. [6.75.3.7 NMAC - N/E, 05/27/05]

6.75.3.8 INSTRUCTIONAL MATERIAL REVIEW PROCESS. The chief is responsible for the coordination and is deemed the administrator in charge of the summer review institute whereby:

A. The chief shall appoint the facilitators and reviewers of record based on experience in the core content area under adoption.

B. Level two and level three-A teachers are reviewers of record.

C. Level one teachers, college students completing teacher preparation programs, parents and community leaders will be recruited and partnered with the reviewers of record.

D. The reviewed material shall be scored and ranked as follows:

(1) The primary rating criterion shall be the alignment of the reviewed material with state academic content and performance standards and presented pedagogy.

(2) Research-based effectiveness and professional development may also be considered in the final recommendation.

E. Materials which score less than 80% alignment with content and performance standards but higher than 70% alignment shall be assessed by a special panel of reviewers for validation of the score.

F. Materials which achieve a final total score of 80% or higher may be considered for recommendation to the Secretary. The final recommendations will be determined by a panel of reviewers and department staff.

G. Supplementary materials shall be adopted without review. [6.75.3.8 NMAC - N/E, 05/27/05]

6.75.3.9 SUMMER REVIEW INSTITUTE PARTICIPANT STIPEND. The chief shall establish a stipend and a mileage reimbursement to the summer review institute facilitators, reviewers of record and others participating in the review process as follows:

A. Facilitators shall receive \$150.00 per day plus a mileage reimbursement as allowed by the Per Diem

and Mileage Act.

B. Reviewers shall receive \$125.00 per day plus a mileage reimbursement as allowed by the Per Diem and Mileage Act.

C. Other participants may qualify for a mileage reimbursement as allowed by the Per Diem and Mileage Act. [6.75.3.9 NMAC - N/E, 05/27/05]

6.75.3.10 VENDOR PROCESSING FEES. The department shall collect a processing fee equal to the unit retail value of the material submitted for adoption. Fees for classroom kits shall be equal to the unit retail value of the material. [6.75.3.10 NMAC - N/E, 05/27/05]

HISTORY OF 6.75.3 NMAC: [Reserved]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

Effective July 1, 2005, the Public Regulation Commission repeals 13.14.4 NMAC, Escrow Services, filed 10-06-2000.

Effective July 1, 2005, the Public Regulation Commission repeals 13.14.16 NMAC, Agent's Experience Report, filed 4-28-2000.

Effective July 1, 2005, the Public Regulation Commission repeals 13.14.17 NMAC, Underwriter's Experience Report, filed 4-16-04.

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

TITLE 13 INSURANCE CHAPTER 14 TITLE INSURANCE PART 4 ESCROW SERVICES

13.14.4.1 ISSUING AGENCY: New Mexico Public Regulation Commission, Insurance Division, Title Insurance Bureau. [13.14.4.1 NMAC - Rp, 13.14.4.1 NMAC, 7-1-05]

13.14.4.2 SCOPE: This rule applies to title insurers, title insurance agents, and their owners, officers, directors, partners or employees whose duties include or relate to the provision of escrow services. [13.14.4.2 NMAC - Rp, 13.14.4.2 NMAC, 7-1-05]

13.14.4.3 STATUTORY AUTHORITY: NMSA 1978 Sections 59A-12-22 and 59A-30-4. [13.14.4.3 NMAC - Rp, 13.14.4.3 NMAC, 7-1-05]

13.14.4.4 DURATION: Permanent. [13.14.4.4 NMAC - Rp, 13.14.4.4 NMAC, 7-1-05]

13.14.4.5 EFFECTIVE DATE: July 1, 2005, unless a later date is cited at the end of a section. [13.14.4.5 NMAC - Rp, 13.14.4.5 NMAC, 7-1-05]

13.14.4.6 OBJECTIVE: The purpose of this rule is to establish requirements for title insurers and title insurance agents who provide escrow services and to protect parties to transactions who deposit funds with title insurers or agents. [13.14.4.6 NMAC - Rp, 13.14.4.6 NMAC, 7-1-05]

13.14.4.7 DEFINITIONS: See 13.14.1 NMAC. [13.14.4.7 NMAC - Rp, 13.14.4.7 NMAC, 7-1-05]

13.14.4.8 REQUIREMENTS FOR PROVIDING SERVICES: A title insurer or title insurance agent providing escrow services shall:

A. only accept funds pursuant to escrow instructions;

B. not solicit or accept any material addition to, or alteration of, original, amended or supplemental escrow instructions, unless the addition or alteration is signed or initialed, or consented to in writing or by electronic transmission by the affected parties or their duly appointed agent or attorney in fact; minor additions or alterations to escrow instructions may be solicited or accepted if consented to by the affected parties, provided a written memorandum of instructions is prepared and maintained in the escrow file;

C. receive and handle all funds pursuant to the requirements of NMSA 1978 Sections 58-28-1 et seq. and 59A-12-22;

(1) all escrow accounts shall be fiduciary accounts separate from all operating accounts, and shall be designated as a fiduciary account, an escrow account, a trust account, or a custodial account on the account signature card and in the books and records of the title insurer or title insurance agent;

(2) title insurers and title insurance agents are prohibited from receiving for their own use interest from escrow accounts or money accepted for escrow, except that nothing herein shall preclude

participation in the Land Title Trust Fund Act pursuant to NMSA 1978 Section 58-28-1 et seq;

D. except as provided in this rule, disburse or deliver funds only in accordance with escrow instructions;

E. disburse funds out of an escrow account only if the funds are available funds;

F. interplead or hold any funds which are the subject of conflicting demands by the parties to an escrow until the title insurer or title insurance agent receives written instructions signed by all parties to the escrow which resolve the conflict or until a court of competent jurisdiction has determined the rights of all parties to the escrow or has ordered the funds released;

G. upon completion of an escrow, have delivered to each affected party a written statement of the escrow specifying all receipts and disbursements of funds made by or on behalf of each affected party to or from the escrow account, including from whom received and to whom made; and

H. not act with partiality toward any of the parties to an escrow as it relates to the disbursement of funds.

[13.14.4.8 NMAC - Rp, 13.14.4.8 NMAC, 7-1-05]

13.14.4.9 BOOKS AND RECORDS:

In addition to the requirements of 13.14.16 NMAC, Agent's Statistical Report, and 13.14.17 NMAC, Underwriter's Statistical Report, a title insurer or title insurance agent shall, on a current basis and in accordance with accounting principles generally accepted in the United States of America:

A. establish and maintain a separate subsidiary ledger for each escrow;

B. post all receipts and disbursements from each subsidiary ledger to a control ledger and prepare a trial balance of all subsidiary ledgers at least once each calendar month;

C. at least once each calendar month, reconcile all bank accounts for escrowed funds to the appropriate control ledger and to the appropriate subsidiary ledger trial balance; and preserve and file in a logical sequence the trial balances and reconciliations necessary to trace an individual escrow in an examination;

D. maintain for each escrow file and record which meets the requirements of 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems and 1.12.7 NMAC, Electronic Authentication, copies of all receipts for escrowed funds and items, deposit slips, checks, and closing or settlement statements signed by the par-

ties; and

E. preserve for at least six (6) years all escrow account bank statements and all books and records required by this section.

[13.14.4.9 NMAC - Rp, 13.14.4.9 NMAC, 7-1-05]

13.14.4.10 ACCOUNTING PROCEDURES AND INTERNAL CONTROLS:

A title insurer or title insurance agent shall, on a current basis and in accordance with accounting principles generally accepted in the United States of America:

A. require each reconciliation to be approved by a manager, a supervisor, or, if neither of those managerial employees are available, another employee;

B. require each reconciliation to be prepared by someone not associated with the receipt and disbursement function; where size does not permit this, a manager or owner shall review each reconciliation;

C. require two signatures on all escrow checks; one signature must be that of a licensed agent or that of a person authorized by a licensed agent to sign escrow checks; this requirement is waived if an insurer or agent requires a manager, supervisor, or owner to review a list of monthly disbursements from escrow accounts; the manager, supervisor or owner must sign the list of monthly disbursements indicating his or her approval of the monthly disbursements;

D. assign each escrow file a unique number; name identification is not acceptable;

E. thoroughly investigate escrow accounts open for longer than six months and only allow disbursements from these accounts with management approval;

F. remove the signature blocks from voided checks or otherwise render them ineffective;

G. require management approval for any transfers of funds between escrow files or escrow accounts and document transfers between escrow files or accounts in both files;

H. notify the seller by written notice deposited in the mail and addressed to the seller's address as shown in the escrow file within seven (7) business days after an earnest money check deposited in the account is returned by the financial institution to the insurer or agent due to insufficient funds, unless the check is replaced by collected funds within the seven-day time period; the insurer or agent shall retain copies of written notices;

I. display related escrow file numbers directly on all escrow checks and deposit tickets to provide a clear and direct connection between the document and the related escrow file;

J. maintain in each escrow file a complete, current disbursement sheet that lists the date, source and type of all receipts; date, check number, item description, payee and amount of all checks; date, amount and type of any other disbursements (i.e.; outgoing wire-transfers) and any remaining balance; voided checks that have been canceled where funds have been credited back to the account shall be shown on the disbursement sheet;

K. keep invoices substantiating, or sufficient evidence to support, all disbursements in the escrow files;

L. require reimbursement of all escrow receivables and other shortages by the appropriate party or from the title insurer's or title agent's operating account within forty-five (45) days from the closing date of the bank statement of the account that reflects the transaction creating the escrow receivable or shortage;

M. if a settlement statement requires changes, prepare a new statement or have all parties affected by the changes initial pen and ink changes, or maintain sufficient evidence to support the changes in the escrow file;

N. issue a signed, pre-numbered receipt for any escrow funds received in cash; and

O. if a bank does not return actual cancelled checks with bank statements, then copies of all checks must be available in agency records, or the agency must obtain a signed acknowledgment from the bank that copies of checks will be provided upon request and will meet the following criteria:

(1) copies of checks must be clearly legible;

(2) both sides of every check will be copied so that endorsements can be verified; and

(3) front and back images of the checks will be copied and provided in a manner that makes it clear they belong together.

[13.14.4.10 NMAC - N, 7-1-05]

13.14.4.11 INDEPENDENT ACCOUNTANT'S ANNUAL ESCROW COMPLIANCE PROCEDURES:

Title insurers and title insurance agents shall, at their own expense, have an independent certified public accountant perform the procedures in this section.

A. Minimum standards.

(1) The accountant shall perform the agreed-upon procedures to determine whether the title insurer or title agent maintains adequate escrow books and records and whether the title insurer or title agent is in compliance with the requirements of 59A-12-22 and 59A-30-4 NMSA 1978 and this rule. The accountant shall perform the agreed-upon procedures in accordance with

attestation standards established by the American institute of certified public accountants and the requirements of this section.

(2) The accountant may use sampling procedures to examine the contents of escrow files. Based on the results of the examination of the sample, the accountant shall determine the number of files to be examined and the appropriate degree of detail to be used.

(3) The accountant shall confirm individual escrow funds, accounts where funds have not been fully disbursed, and escrow bank accounts. Since complete confirmation of all escrow accounts would be impractical, the accountant may adopt a spot-check system of confirmations, consider evidence generated by the title insurer or title agent, and use his or her judgment in accordance with sound attestation and auditing practices to determine the extent to which confirmations are needed. Although positive confirmations and specific replies are desirable, the accountant may use negative confirmations if, in the accountant's judgment, the circumstances warrant.

B. Instructions. The accountant shall:

(1) determine that available funds (as defined in Subsection D of 13.14.1.7 NMAC) for a transaction are received and deposited before any disbursements are made in accordance with 59A-30-5.1 NMSA 1978;

(2) closely scrutinize funds which remain in an escrow account in a dormant condition for a long period of time;

(a) title insurers and title agents must comply with the Uniform Unclaimed Property Act, 7-8A-1, et. seq. NMSA 1978;

(b) all credit balances open for three (3) years or longer as of December 31 of the year in question must be explained in detail on schedule B;

(3) carefully examine checks written from an escrow account to the agency's operating account or to another escrow account, especially if the checks appear to be disbursements for a purpose other than normal charges to a specific escrow;

(a) transfer of funds from one account to another is permissible providing both files contain proper authorization;

(b) the accountant shall examine a judgmentally determined number of cancelled checks to determine properly authorized signatures, payees and endorsements;

(4) itemize and thoroughly explain all escrow receivables in excess of \$200 on schedule C and thoroughly explain any irregularities such as bank overdrafts on schedule D in light of the requirements of NMSA 1978 Sections 59A-12-22 and 59A-30-4;

(5) determine that support for

each disbursement is in the escrow file and that disbursements were made to logical payees;

(a) if there are charges shown on the closing statement for overnight mail service, messenger service, copies of documents, recording fees or tax certificates, the accountant shall determine that these charges are actual charges or reasonable estimates of charges that must be made prior to closing;

(b) if there is evidence of a prior lien in the escrow file, such as a payoff statement from a lending institution, the accountant shall determine that a check was written for the payoff of the loan and a release was received; the accountant shall determine if there is a closing statement in the file and if the entries on the closing statement can be traced to the escrow accounting records; the accountant shall determine if the insurer's or agent's records include copies of all invoices, receipt items and disbursement checks; and

(6) inspect the monthly bank reconciliations on all escrow bank accounts to ensure compliance with the requirements of 13.14.4.9 NMAC.

C. Required report forms. Insurers and agents shall require the independent accountant to use the report forms prescribed in 13.14.4.13, 13.14.4.14, 13.14.4.15, and 13.14.4.16 NMAC when filing their report on applying agreed-upon procedures; facsimiles of the required report forms may be used, but the formats must be identical to the required report forms. The report shall include:

(1) schedule A: the form of opinion should be as set forth in schedule A unless circumstances dictate otherwise;

(a) the opinion letter must be signed by an independent certified public accountant or by a firm composed of independent certified public accountants;

(b) the firm name and address must be provided on Schedule A;

(2) schedule B:

(a) schedule B requires detailed information regarding escrow files that have been open for three (3) years or longer, including the reason the file is still open, such as "disputed earnest money," "funds escrowed for repairs," "error at closing," etc. and the status of the file - active or inactive;

(b) if a file is inactive or has been dormant for more than three (3) years, the insurer or agent should consider clearing the file pursuant to the Unclaimed Property Act or through interpleader with the court;

(c) individual escrow files with dormant balances of \$200 or less may be reported in the aggregate for each specific reason the balances remain in the files;

(3) schedule C:

(a) the accountant shall provide a

detailed explanation of every debit balance or receivable in excess of \$200 occurring throughout the year, even if cleared before the year's end; the explanation should include the date the shortages were created, the cause of the shortages, the date the shortages were cleared, and the method of clearance;

(b) schedule C provides columns for debit balances to be carried forward under each month they remained open; debit balances up to and including \$200 should be included as a lump sum, without separate explanations;

(4) schedule D:

(a) section A: the accountant shall provide detailed information regarding any overdrafts occurring during the fiscal year; the information should include the following: bank name and account number, related escrow file number, amount of overdraft, dates of origin and clearance, and an explanation that includes the method of disposition; if an overdraft situation was caused by an escrow receivable that has already been reported in schedule C, the accountant shall make reference to this explanation;

(b) section B: the accountant shall provide a complete explanation of any irregularity discovered during the course of applying the agreed-upon procedures that has not been explained elsewhere in the report.

D. Negative reports. All reports or exhibits reflecting no activity shall be filed and noted as "none."

E. Filing reports. The accountant shall provide the title insurer or title agent with an adequate number of reports in sufficient time to allow the insurer or agent to review them and mail copies with cover letters to the New Mexico insurance division, by certified mail, within 180 days of the fiscal year end. In addition, each agent shall simultaneously mail, by certified mail, a copy of the report to each insurer that the agent represents. The insurance division will not grant filing extensions.

[13.14.4.11 NMAC - Rp, 13.14.4.10 NMAC, 7-1-05]

13.14.4.12 NOTICE TO THE SUPERINTENDENT:

A. A title insurer or title insurance agent shall notify the superintendent of:

(1) the entry of a judgment in any civil action against the title insurer or title insurance agent involving the misconduct or liability of the title insurer or title insurance agent concerning an escrow;

(2) the entry of a judgment in any civil action against an owner, officer, director, partner, or employee of the title insurer or title insurance agent involving the mis-

conduct or liability of the owner, officer, director, partner, or employee concerning an escrow handled by the title insurer or title insurance agent;

(3) the entry of a judgment of conviction in any criminal proceeding involving the misconduct of the title insurer or title insurance agent or of any owner, officer, director, partner, or employee of the title insurer or title insurance agent concerning an escrow handled by the title insurer or title insurance agent; and

(4) any disciplinary action taken by the disciplinary board or the supreme court of New Mexico involving misconduct concerning an escrow by a title insurer or title insurance agent who is a licensed attorney.

B. Title insurers and title insurance agents who have actual knowledge of judgments entered or disciplinary actions taken after January 1, 2001, shall be required to notify the superintendent within ten (10) days after the date judgment is entered or disciplinary action taken, or within ten (10) days after acquiring actual knowledge thereof, whichever is later, by filing a written notice, which includes the names of the parties to the escrow, a brief description of the escrow, and a copy of the judgment entered or disciplinary action taken.

C. If a judgment or disciplinary action is appealed, each subsequent decision of an appellate court shall be subject to the notice requirements of this section.

D. If a title insurer or title insurance agent detects a defalcation regarding its escrow funds, the insurer or agent must file the following notice with the superintendent within forty-five (45) days of the end of the month in which the defalcation is detected: "We have detected circumstances regarding our escrow funds that may warrant an investigation by the insurance division. The amount of funds involved is believed to be \$_____."

[13.14.4.12 NMAC - Rp, 13.14.4.11 NMAC, 7-1-05]

13.14.4.13 SCHEDULE A - INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES:

[Print on CPA firm letterhead]

**SCHEDULE A - INDEPENDENT ACCOUNTANT'S REPORT ON
APPLYING AGREED-UPON PROCEDURES**

To *[Name of agent]* and the New Mexico Public Regulation Commission, Insurance Division:

We have performed the procedures required by 13.14.4.11 NMAC, which were agreed to by the Insurance Division of the New Mexico Public Regulation Commission, solely to assist the Insurance Division in evaluating *[name of agent]*'s compliance with the provisions of Sections 59A-12-22 and 59A-30-4 NMSA 1978 and 13.14.4 NMAC relating to escrow services provided during the period of January 1, 20__ through December 31, 20___. Management is responsible for *[name of agent]*'s compliance with those requirements. This engagement, based on agreed-upon procedures, was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures for either the purpose for which this report has been requested or for any other purpose. Any findings or other items requiring disclosure have been detailed on the schedules attached to this report.

We were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on compliance. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of *[name of agent]* and the Insurance Division and is not intended to be and should not be used by anyone other than these specified parties.

[Name of CPA firm]

[Date of Accountant's Report]

[13.14.4.13 NMAC - N, 7-1-05]

13.14.4.14 SCHEDULE B - DESCRIPTION OF CREDIT BALANCES OPEN THREE YEARS OR LONGER:

[Please see Schedule B on page 511.]

[13.14.4.15 NMAC - N, 7-1-05]

13.14.4.16 SCHEDULE D - ANALYSIS OF BANK OVERDRAFTS AND OTHER IRREGULARITIES

SCHEDULE D - ANALYSIS OF BANK OVERDRAFTS AND OTHER IRREGULARITIES For the Year Ended December 31, 20__				
Section A.				
Bank Name and Account Number	Amount	Date of Origin	Date of Clearance	Explanation
Section B. Please provide a complete explanation of any other irregularities that are not explained in Section A.				

[13.14.4.16 NMAC - N, 7-1-05]

HISTORY OF 13.14.4 NMAC:

History of Repealed Material.

13.14.4 NMAC, Escrow Services (filed 10-06-2000), repealed 7-15-05.

NMAC History.

13.14.4 NMAC, Escrow Services (filed 10-06-2000), replaced by 13.14.4 NMAC, Escrow Services, effective 7-01-05.

**NEW MEXICO PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

**TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 16 AGENT'S STATISTICAL REPORT**

13.14.16.1 ISSUING AGENCY: Public Regulation Commission, Insurance Division, Title Insurance Bureau.
[13.14.16.1 NMAC - Rp, 13.14.16.1 NMAC, 7-1-05]

13.14.16.2 SCOPE: This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.
[13.14.16.2 NMAC - Rp, 13.14.16.2 NMAC, 7-1-05]

13.14.16.3 STATUTORY AUTHORITY: NMSA 1978 Sections 59A-30-4, 59A-30-7, and 59A-30-12.
[13.14.16.3 NMAC - Rp, 13.14.16.3 NMAC, 7-1-05]

13.14.16.4 DURATION: Permanent.
[13.14.16.4 NMAC - Rp, 13.14.16.4 NMAC, 7-1-05]

13.14.16.5 EFFECTIVE DATE: July 1, 2005, unless a later date is cited at the end of a section.
[13.14.16.5 NMAC - Rp, 13.14.16.5 NMAC, 7-1-05]

13.14.16.6 OBJECTIVE: The purpose of this rule is to provide forms for preparing the required agent's statistical report.
[13.14.16.6 NMAC - Rp, 13.14.16.6 NMAC, 7-1-05]

13.14.16.7 DEFINITIONS: See 13.14.1 NMAC.
[13.14.16.7 NMAC - Rp, 13.14.16.7 NMAC, 7-1-05]

13.14.16.8 ANNUAL STATISTICAL REPORT REQUIRED: All agencies, whether independent, affiliated, or direct operations, must complete all parts of this statistical report in accordance with the instructions issued annually by the title insurance bureau for the next year's reporting (e.g., instructions issued in 2005 shall be used for reporting 2006 calendar year data; the report of 2006 data shall be filed in 2007).
[13.14.16.8 NMAC - Rp, 13.14.16.8 NMAC, 7-1-05]

[Continued on page 514]

13.14.16.9

SCHEDULE A - STATEMENT OF INCOME AND EXPENSES:

<p>NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE A - STATEMENT OF INCOME AND EXPENSES For the Calendar Year Ending December 31, 20__.</p>	
AGENCY NAME	
FEDERAL I.D. NUMBER	
ADDRESS	
CONTACT NAME	

Check one:							
<input type="checkbox"/>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">INDEPENDENT</td> <td>Title insurance agencies that are independently owned and write title insurance business for one or more underwriting companies.</td> </tr> <tr> <td>AFFILIATED</td> <td>A title insurance agency is an affiliated agency if 10% or more of its ownership is held by a title insurance underwriter or if it is a member of a holding company structure that includes an underwriter.</td> </tr> <tr> <td>DIRECT</td> <td>A direct operation has 100% of its ownership held directly by a title insurance underwriter.</td> </tr> </table>	INDEPENDENT	Title insurance agencies that are independently owned and write title insurance business for one or more underwriting companies.	AFFILIATED	A title insurance agency is an affiliated agency if 10% or more of its ownership is held by a title insurance underwriter or if it is a member of a holding company structure that includes an underwriter.	DIRECT	A direct operation has 100% of its ownership held directly by a title insurance underwriter.
INDEPENDENT	Title insurance agencies that are independently owned and write title insurance business for one or more underwriting companies.						
AFFILIATED	A title insurance agency is an affiliated agency if 10% or more of its ownership is held by a title insurance underwriter or if it is a member of a holding company structure that includes an underwriter.						
DIRECT	A direct operation has 100% of its ownership held directly by a title insurance underwriter.						

Part A: Revenue		
1.	Title insurance premiums (from Schedule B)	
2.	Less: Remitted title premiums (from Schedule B)	
3.	Retained title premiums (from Schedule B)	
4.	Other income (from Schedule C)	
5.	Total Revenue	

Part B: Expenses		
1.	Employees' salaries and wages	
2.	Owners' and partners' salaries and wages	
3.	Employee benefits	
4.	Rent	
5.	Insurance	
6.	Legal expense	
7.	Licenses, taxes and fees	
8.	Title plant expense and maintenance	
9.	Office supplies	
10.	Depreciation	
11.	Automobile expense	
12.	Communication expense	
13.	Education expense	
14.	Bad debts	
15.	Interest expense	
16.	Employee travel and lodging	
17.	Loss and loss adjustment expense (from Schedule D)	
18.	Accounting and auditing expense	
19.	Public relations expense	
20.	Other expenses (from Schedule E)	
21.	Total Expenses	

Part C: Net Income for Ratemaking Purposes		
1.	Income (Loss) from Operations	

Part D: Excluded Expenses		
1.	NMLTA lobbying expense	
2.	Direct lobbying expense	
3.	Political contributions	
4.	State and federal income tax expense	
5.	½ of meals and entertainment expense	
6.	Penalties	
7.	Country club dues	
8.	Salaries in excess of salary cap	
9.	Other excluded expenses (from Schedule E)	

10.	Total Excluded Expenses	
Part E: Investment Gain and Equity		
1.	Net investment income earned	
2.	Net realized capital gains (losses)	
3.	Total net investment gain	
4.	Equity on balance sheet	

[13.14.16.9 NMAC - Rp, 13.14.16.18 NMAC, 7-1-05]

13.14.16.10 SCHEDULE B - PREMIUMS BY UNDERWRITER:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE B - PREMIUMS BY UNDERWRITER For the Calendar Year Ending December 31, 20___.			
Name of each underwriting company for which this agency charged premiums	Title premiums charged by this agency	Title premiums remitted or owed by this agency to underwriters	Title premiums retained by this agency
Total			
	(Carry total forward to Schedule A, line A-1)	(Carry total forward to Schedule A, line A-2)	(Carry total forward to Schedule A, line A-3)

[13.14.16.10 NMAC - N, 7-1-05]

13.14.16.11 SCHEDULE C - IDENTIFICATION OF OTHER INCOME

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE C - IDENTIFICATION OF OTHER INCOME For the Calendar Year Ending December 31, 20___.	
Description of Income Item	
A.	Closing fees
B.	Abstracting and title report income
C.	Recording fees
D.	Copy fees
E.	Inspection fees
F.	Interest income
Itemization of All Other Income	
G.	
H.	
I.	
J.	
K.	
L.	

M.		
N.		
O.		
P.		
Q.		
R.		
S.		
Total Expenses (Carry forward to Schedule A, line A -4)		

[13.14.16.11 NMAC - N, 7-1-05]

13.14.16.12 SCHEDULE D - LOSSES AND LOSS ADJUSTMENT EXPENSES:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE D - LOSSES AND LOSS ADJUSTMENT EXPENSES For the Calendar Year Ending December 31, 20___.		
Description of Expense Item		
1.	Closing Losses	
2.	Agent Errors	
3.	Unfair Trade Practices	
4.	Loss Adjustment Expenses	
5.	E&O or Fidelity Insurance	
Total (Carry forward to Schedule A, line B -17)		

[13.14.16.12 NMAC - N, 7-1-05]

13.14.16.13 SCHEDULE E - IDENTIFICATION OF OTHER EXPENSES:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE E - IDENTIFICATION OF OTHER EXPENSES For the Calendar Year Ending December 31, 20___.		
Part A - Deductible Expenses		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
Total (Carry forward to Schedule A, line B -20)		
Part B - Excluded Expenses		
1.		

2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
Total (Carry forward to Schedule A, line D -8)		

[13.14.16.13 NMAC - N, 7-1-05]

13.14.16.14 SCHEDULE F - UNDERWRITER EXPENSE ALLOCATION:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE F - UNDERWRITER EXPENSE ALLOCATION For the Calendar Year Ending December 31, 20___.		
Direct or Affiliated Underwriter	Total Expenses Allocated	
	To Underwriter	From Underwriter
Total		

[13.14.16.13 NMAC - N, 7-1-05]

13.14.16.14 SCHEDULE G - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATED ENTITIES:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE G - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATED ENTITIES For the Calendar Year Ending December 31, 20___.			
Name and Address of Affiliated Entity	Relation to Your Agency	Reported in this Statistical Report	Amount

Total			

[13.14.16.14 NMAC - N, 7-1-05]

13.14.16.15 SCHEDULE H - PREMIUMS BY COUNTY:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE H - PREMIUMS BY COUNTY For the Calendar Year Ending December 31, 20___.			
COUNTY	TITLE PREMIUMS CHARGED	TITLE PREMIUMS RETAINED	OTHER INCOME
Bernalillo			
Catron			
Chaves			
Cibola			
Colfax			
Curry			
De Baca			
Eddy			
Grant			
Guadalupe			
Harding			
Hidalgo			
Lea			
Lincoln			
Los Alamos			
Luna			
McKinley			
Mora			
Otero			
Quay			
Rio Arriba			
Roosevelt			
San Juan			
San Miguel			
Sandoval			
Santa Fe			
Sierra			
Socorro			
Taos			
Torrance			
Union			
Valencia			
TOTAL			

[13.14.16.15 NMAC - N, 7-1-05]

13.14.16.16 SCHEDULE I - IDENTIFICATION OF OWNERS:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE I - IDENTIFICATION OF OWNERS For the Calendar Year Ending December 31, 20__.		
Name of Each Individual or Entity	Percentage of Agency Owned	Description Code (see below)
TOTAL		

Description	Code
Attorney	A
Real Estate Agent	REA
Real Estate Developer	RED
Lending institution	L
Underwriter	UW
None of the above	NA

[13.14.16.16 NMAC - N, 7-1-05]

HISTORY OF 13.14.16 NMAC:

Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3-7-74
 SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9-6-85
 SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5-9-86

History of Repealed Material.

13.14.16 NMAC, Agent's Experience Report (filed 4-28-00), repealed 7-1-05

Other History.

That applicable portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5-9-86) was replaced by 13 NMAC 14.3 Subpart C, Agent's Experience Report, effective 11-01-96.
 13 NMAC 14.3 Subpart C, Agent's Experience Report (filed 10-2-96) was renumbered and replaced by 13.14.16 NMAC, Agent's Experience Report, effective 5-15-00.
 13.14.16 NMAC, Agent's Experience Report (filed 4-28-00); replaced by 13.14.16 NMAC, Agent's Statistical Report, effective 7-1-05.

<p>NEW MEXICO PUBLIC REGULATION COMMISSION</p> <p>INSURANCE DIVISION</p> <p>TITLE 13 INSURANCE CHAPTER 14 TITLE INSURANCE PART 17 UNDERWRITER'S STATISTICAL REPORT</p> <p>13.14.17.1 ISSUING AGENCY: Public Regulation Commission, Insurance Division, Title Insurance Bureau.</p>	<p>[13.14.17.1 NMAC - Rp, 13.14.17.1 NMAC, 7-1-05]</p> <p>13.14.17.2 SCOPE: This rule applies to all title insurers conducting title insurance business in New Mexico. [13.14.17.2 NMAC - Rp, 13.14.17.2 NMAC, 7-1-05]</p> <p>13.14.17.3 S T A T U T O R Y AUTHORITY: NMSA 1978 Sections 59A-30-4, 59A-30-7, 59A-30-12. [13.14.17.3 NMAC - Rp, 13.14.17.3 NMAC, 7-1-05]</p>	<p>13.14.17.4 D U R A T I O N : Permanent. [13.14.17.4 NMAC - Rp, 13.14.17.4 NMAC, 7-1-05]</p> <p>13.14.17.5 EFFECTIVE DATE: July 1, 2005, unless a later date is cited at the end of a section. [13.14.17.5 NMAC - Rp, 13.14.17.5 NMAC, 7-1-05]</p> <p>13.14.17.6 OBJECTIVE: The purpose of this rule is to provide a form for preparing the required underwriter's statisti-</p>
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cal report.

[13.14.17.6 NMAC - Rp, 13.14.17.6 NMAC, 7-1-05]

13.14.17.7 DEFINITIONS: See 13.14.1 NMAC.

[13.14.17.7 NMAC - Rp, 13.14.17.7 NMAC, 7-1-05]

13.14.17.8 ANNUAL STATISTICAL REPORT REQUIRED: All licensed title insurers must complete all parts of this statistical report in accordance with the instructions issued annually by the title insurance bureau for the next year's reporting (e.g., instructions issued in 2005 shall be used for reporting 2006 calendar year data; the report of 2006 data shall be filed in 2007).

[13.14.17.8 NMAC - Rp, 13.14.17.8 NMAC, 7-1-05]

13.14.17.9 FORM 1 – STATEMENT OF INCOME AND EXPENSES:

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT FORM 1 – STATEMENT OF INCOME AND EXPENSES For the Calendar Year Ending December 31, 20__ NEW MEXICO EXPERIENCE ONLY								
Insurance Company								
NAIC Code								
		Underwriting	Direct Operations	Affiliated Agents	Independent Agents	Total	NAIC Annual Statement Schedule T	Difference
Part A – Revenue								
1	Total direct written title insurance premiums							
2	Direct written premiums retained by agent							
3	Direct written premiums remitted to underwriter							
4	Other income							
5	Total revenue							
Part B – Home office Expenses								
1	Losses and allocated loss adjustment expenses incurred							
2	Unallocated loss adjustment expenses incurred							
3	Increase in direct premium reserve							
4	Personnel costs							
5	Production services (purchased outside)							
6	Advertising							
7	Boards, bureaus, and associations							
8	Title plant rent and maintenance							
9	Claim adjustment services							
10	Amounts charged off, net of recoveries							
11	Marketing and promotional expenses							
12	Insurance							
13	Director's fees							
14	Travel and travel items							
15	Rent and rent items							
16	Equipment							
17	Cost or depreciation of EDP equipment and software							

18	Printing, stationery, books, and periodicals							
19	Postage, telephone, messenger, and express							
20	Legal and auditing							
21	Taxes, licenses, and fees							
22	Real estate expenses and taxes							
23	Aggregate write -ins for miscellaneous expenses						Form 2	Difference
24	Less: expenses allocated to affiliated agents and direct operations							
25	Total Home Office Expenses							
Part C - Net Income Before Affiliated and Direct Operations								
1	Income (Loss) before affiliated and direct operations							
Part D – Affiliated Agents and Direct Operations Expenses								
1	Employees’ salaries and wages							
2	Owners’ and partners’ salaries							
3	Employee benefits							
4	Rent							
5	Insurance							
6	Legal expenses							
7	Licenses, taxes, and fees							
8	Title plant expense and maintenance							
9	Office supplies							
10	Depreciation							
11	Automobile expenses							
12	Communications expenses							
13	Education expenses							
14	Bad debts							
15	Interest expenses							
16	Employee travel and lodging							
17	Loss and loss adjustment expenses							
18	Accounting and auditing expenses							
19	Public relations expenses							
20	Other expenses						Form 2	Difference
21	Total Expenses from Affiliated Agents and Direct Operations							
Part E – Net Income from Operations								
1	INCOME (LOSS)							

[13.14.17.9 NMAC - N, 7-1-05]

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT
FORM 2 - EXPENSE ALLOCATIONS TO AND FROM AGENTS
 For the Calendar Year Ending December 31, 20____
NEW MEXICO EXPERIENCE ONLY

Insurance Company		
EXPENSES ALLOCATED TO AFFILIATED AND DIRECT AGENTS		
Name of Agency	Type of Agency (see code)	Amount
Total		

EXPENSES ALLOCATED FROM AFFILIATED AND DIRECT AGENTS		
Name of Agency	Type of Agency (see code)	Amount
Total		

Description	Code
Direct	D
Affiliated	A

13.14.17.10 FORM 2 - EXPENSE ALLOCATIONS TO AND FROM AGENTS:
 [13.14.17.10 NMAC - N, 7-1-05]

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT
FORM 3 - RESERVES, INVESTMENT GAIN, AND SURPLUS
 For the Calendar Year Ending December 31, 20____

Insurance Company		
Statutory Premium Reserves (Net of Reinsurance)	New Mexico	Countrywide
Balance at December 31 prior year		
Additions during the current year		
Withdrawals during the current year		
Other adjustments to statutory premium reserves		
Balance at December 31 current year		
Other Reserves (Net of Reinsurance)	New Mexico	Countrywide
Known Claims Reserve		
Aggregate of other reserves required by law		
Net recognized supplemental reserve		
Total of Other Reserves		
Investment Gain		Countrywide

13.14.17.11 FORM 3 - RESERVES, INVESTMENT GAIN, AND SURPLUS:

Net investment income earned		
Net realized capital gains (losses)		
Total net investment gain		
Policyholder Surplus		Countrywide
Surplus as regards policyholders		

[13.14.17.11 NMAC - N, 7-1-05]

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT FORM 4 - TRANSACTION REPORT For the Calendar Year Ending December 31, 20____ NEW MEXICO EXPERIENCE ONLY				
Insurance Company				
Transaction code	Transaction Type	NMAC Rate Provision	No. of Transactions (1)	Premiums (2)
0001	Charge for Additional Chain of Title	13.14.9.16		
0002	Charge for Unplatted Tract of Unusual Complexity	13.14.9.16		
0003	Abstract Retirement Credit	13.14.9.24		
0004	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage With Evidence Of Priority	13.14.9.40G		
0005	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage Without Evidence Of Priority	13.14.9.40G		
0006	Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired	13.14.10.9A		
0007	Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired	13.14.10.9B		
0008	Survey Coverage Endorsement	13.14.10.10		
0009	Duplicate Original Policy	13.14.9.33		
0010	Navigable Streams, Lakes, etc. - Standard Exception 6	13.14.10.29		
0011	Permissible Modification - Standard Exception No. 7	13.14.10.35		
0012	Waiver of Arbitration	None		
0013	Cancellation Fee	13.14.9.19B		
0014	Permissible Deletion - Standard Exception No. 8	13.14.10.46		
0101	Owner's Policy	13.14.9.20		
0102	Owner's Policy - With Bulk Rate	13.14.9.23		
0103	Multiple Owner's on Same Land - Simultaneous Issue	13.14.9.32		
0104	Replacement Owner's Policy	13.14.9.26		
0110	Owner's Policy - Reissue (10% Discount)	13.14.9.35		
0115	Owner's Policy - Reissue (15% Discount)	13.14.9.35		
0120	Owner's Policy - Reissue (20% Discount)	13.14.9.35		
0125	Owner's Policy - Reissue (25% Discount)	13.14.9.35		
0201	Loan Policy - Single Issue	13.14.9.22		
0202	Loan Policy - Simultaneous Issue with Owner's Policy	13.14.9.30		
0203	Loan Policy - Second Mortgage or Subsequent Issue	13.14.9.36		
0204	Replacement Loan Policy	13.14.9.26		
0205	NMMFA "HELP" Program Simultaneous Issue Rate	13.14.9.34		
0240	Loan Policy - Substitution Rate (less than 2 years - 40%)	13.14.9.39		
0245	Loan Policy - Substitution Rate (more than 2 years, less than 3 - 45%)	13.14.9.39		
0250	Loan Policy - Substitution Rate (more than 3 years, less than 4 - 50%)	13.14.9.39		
0255	Loan Policy - Substitution Rate (more than 4 years, less than 5 - 55%)	13.14.9.39		
0260	Loan Policy - Substitution Rate (more than 5 years, less than 6 - 60%)	13.14.9.39		
0265	Loan Policy - Substitution Rate (more than 6 years, less than 7 - 65%)	13.14.9.39		
0270	Loan Policy - Substitution Rate (more than 7 years, less than 8 - 70%)	13.14.9.39		
0275	Loan Policy - Substitution Rate (more than 8 years, less than 9 - 75%)	13.14.9.39		
0280	Loan Policy - Substitution Rate (more than 9 years, less than 10 - 80%)	13.14.9.39		
0300	Construction Loan Policy	13.14.9.40A		
0600	Commitment for Title Insurance	13.14.9.19A		
0700	U.S. Policy, ALTA 1963	13.14.9.25		
0900	Notice of Availability of Owner's Title Insurance	None		
1000	Facultative Reinsurance Agreement	None		
1101	Construction Loan Extension Endorsement	13.14.9.40B		
1102	Pending Disbursement Clause - Subsequent Attachment	13.14.9.40F		

1103	Pending Disbursement Clause - Simultaneous Insertion or Attachment	13.14.9.40F		
1104	Correction/Multipurpose Endorsement	13.14.8.8		
1105	Renewal, Extension, Modification & Partial Release Endorsement	13.14.10.20		
1106	Extension of Commitment for Title Insurance	13.14.9.19A		
1108	Increase in Coverage	13.14.6.8D		
1200	Condominium Endorsement to Loan Policy (ALTA 4)	13.14.10.14		
1300	Planned Unit Development Endorsement (ALTA 5)	13.14.10.15		
1400	Variable Rate Mortgage Endorsement (ALTA 6)	13.14.10.12		
1500	Variable Rate Mortgage Endorsement - Negative Amortization (ALTA 6.1)	13.14.10.12		
1600	Manufactured Housing Unit Endorsement (ALTA 7)	13.14.10.13		
1700	Revolving Credit Endorsement	13.14.10.12		
1800	Construction Loan Policy Endorsement A	13.14.9.40D		
1900	Construction Loan Policy Endorsement D	13.14.9.40E		
2001	Leasehold Owner's Endorsement (to create policy)	13.14.10.19		
2002	Leasehold Loan Policy - Simultaneous Issue with Owner's Policy	13.14.9.30		
2003	Leasehold Loan Policy - Subsequent Issue	13.14.9.31		
2010	Leasehold Owner's Policy - Reissue (10% Discount)	13.14.9.35		
2015	Leasehold Owner's Policy - Reissue (15% Discount)	13.14.9.35		
2020	Leasehold Owner's Policy - Reissue (20% Discount)	13.14.9.35		
2025	Leasehold Owner's Policy - Reissue (25% Discount)	13.14.9.35		
2100	Leasehold Loan Endorsement (to create policy)	13.14.10.19		
2200	Pending Disbursement Down Date Endorsement	13.14.10.18		
2300	Pending Improvements Endorsement	13.14.10.23		
2401	Assignment of Mortgage Endorsement - Within 6 Months	13.14.10.8		
2402	Assignment of Mortgage Endorsement - Beyond 6 Months	13.14.10.8		
2500	Additional Advance Endorsement	13.14.10.11		
2600	Partial Coverage Endorsement	None		
2700	U. S. Policy, ALTA 1963 Down Date Endorsement	13.14.10.16		
2800	Non-Imputation Endorsement	13.14.10.21		
2900	Environmental Protection Lien Endorsement (ALTA 8.1)	13.14.10.22		
3000	Condominium Endorsement to Owner's Policy	13.14.10.24		
3100	Owner's Leasehold Conversion Endorsement (to create policy)	13.14.9.38		
3200	Coordinate and Proportionate Endorsement	None		
3300	Change of Name Endorsement	None		
3400	U.S. Policy, ALTA 1991	13.14.9.25		
3600	Limited Title Search Policy (LTSP)	13.14.9.27		
3700	Continuation Endorsement for LTSP	13.14.10.25		
3800	Revolving Credit, Variable Rate Endorsement F or LTSP	13.14.10.26		
3900	Lenders' Creditors' Rights Endorsement	13.14.10.28		
4000	Owner's Creditors' Rights Endorsement	13.14.10.27		
4101	Foreclosure Guarantee Policy (80% rate)	13.14.9.28		
4102	Foreclosure Guarantee Policy (50% rate)	13.14.9.28		
4200	Foreclosure Guarantee Policy Down Date Endorsement	13.14.10.18		
4300	Insuring Around Endorsement	None		
4400	Revolving Credit, Increased Credit Limit Endorsement	13.14.10.30		
4500	Residential Limited Coverage Junior Loan Policy	13.14.9.29		
4600	Down Date End. to Residential Limited Coverage Junior Loan Policy	13.14.10.32		
4700	Revolving Credit, Variable Rate Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.10.33		
4800	Truth-in-Lending Endorsement	13.14.10.31		
5000	Restrictions, Encroachments and Minerals Endorsement - Loan Policy (ALTA 9)	13.14.10.34		
5100	Land Abuts Street Endorsement	13.14.10.36		
5200	Designation of Improvements, Address Endorsement	13.14.10.37		
5300	Same as Survey Endorsement	13.14.10.38		
5400	Contiguity of Parcels Endorsement	13.14.10.39		
5500	Named Insured Endorsement	13.14.10.40		
5600	Restrictions, Encroachments, & Minerals Endorsement - Unimproved Land (ALTA 9.1)	13.14.10.34		
5700	Restrictions, Encroachments, & Minerals Endorsement - Improved Land (ALTA 9.2)	13.14.10.34		
5800	First Loss Endorsement	13.14.10.41		
5900	Last Dollar Endorsement	13.14.10.42		
6000	Loan Policy Aggregation Endorsement	13.14.10.43		
6100	Foundation Endorsement	13.14.10.44		
6200	Assignment of Rents/ Leases Endorsement	13.14.10.45		
6300	Short Form Residential Loan Policy	13.14.9.22		
6400	Zoning Endorsement, Unimproved Land (ALTA 3.0)	13.14.10.47		
6500	Zoning Endorsement, Completed Structure (ALTA 3.1)	13.14.10.48		
	TOTAL			

13.14.17.12 FORM 4 - TRANSACTION REPORT:

13.14.17.12 NMAC - Rp, 13.14.17.29, 7-1-05]

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT			
FORM 5 - LIABILITY DISTRIBUTION			
For the Calendar Year Ending December 31, 20__			
NEW MEXICO EXPERIENCE ONLY			
INCLUDE ALL TRANSACTIONS THAT ARE DEPENDENT ON THE BASIC PREMIUM RATE			
Insurance Company			
Liability Range (\$000)		Number of transactions	Direct written premium
More than	But no more than		
0	5		
5	10		
10	20		
20	30		
30	40		
40	50		
50	60		
60	70		
70	80		
80	90		
90	100		
100	200		
200	300		
300	400		
400	500		
500	1,000		
1,000	2,000		
2,000	3,000		
3,000	4,000		
4,000	5,000		
5,000	10,000		
10,000	15,000		
15,000	25,000		
25,000	50,000		
50,000	75,000		
75,000	100,000		
	Over 100,000		
	ALL		

13.14.17.13 FORM 5 - LIABILITY DISTRIBUTION:
 [13.14.17.13 NMAC - N, 7-1-05]

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT													
FORM 6 - DIRECT PAID LOSS DEVELOPMENT													
For the Calendar Year Ending December 31, 20__													
NEW MEXICO EXPERIENCE ONLY													
Insurance Company													
Years in which policies were written	CUMULATIVE PAID LOSSES AND ALLOCATED LOSS ADJUSTMENT EXPENSES AT YEAR END (000 OMITTED)										Number of claims closed with loss payment	Number of claims closed without loss payment	
	Latest PY-9	Latest PY-8	Latest PY-7	Latest PY-6	Latest PY-5	Latest PY-4	Latest PY-3	Latest PY-2	Latest PY-1	Latest PY			
Prior													
Latest PY-19													

13.14.17.14 FORM 6 - DIRECT PAID LOSS DEVELOPMENT:

Latest PY-18												
Latest PY-17												
Latest PY-16												
Latest PY-15												
Latest PY-14												
Latest PY-13												
Latest PY-12												
Latest PY-11												
Latest PY-10												
Latest PY-9												
Latest PY-8												
Latest PY-7												
Latest PY-6												
Latest PY-5												
Latest PY-4												
Latest PY-3												
Latest PY-2												
Latest PY-1												
Latest PY												

Note: Use the same reporting instructions as for Schedule P, Part 2A of the NAIC Annual Statement, except that loss and ALAE should be

	Latest PY-1	Latest PY
Total		
Total payments during Latest PY		
New Mexico direct losses paid as shown on NAIC Annual Statement Schedule		
	T	
	Difference	

Explanation of Difference (if any)

direct of reinsurance.

[13.14.17.14 NMAC – N, 7-1-05]

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT												
FORM 7 – DIRECT CASE BASIS RESERVES												
For the Calendar Year Ending December 31, 20__												
NEW MEXICO EXPERIENCE ONLY												
Insurance Company												
Years in which policies were written	Direct Written Premium (\$000s)	Amount of insurance written in millions	CASE BASIS LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSE RESERVES AT YEAR END (000 OMITTED)									
			Latest PY-9	Latest PY-8	Latest PY-7	Latest PY-6	Latest PY-5	Latest PY-4	Latest PY-3	Latest PY-2	Latest PY-1	Latest PY
Prior												
Latest PY-19												
Latest PY-18												
Latest PY-17												
Latest PY-16												
Latest PY-15												
Latest PY-14												
Latest PY-13												
Latest PY-12												
Latest PY-11												
Latest PY-10												
Latest PY-9												
Latest PY-8												
Latest PY-7												
Latest PY-6												
Latest PY-5												
Latest PY-4												
Latest PY-3												
Latest PY-2												
Latest PY-1												
Latest PY												

13.14.17.15 FORM 7 – DIRECT CASE BASIS RESERVES:

Note: Use the same reporting instructions as for Schedule P, Part 2B of the NAIC Annual Statement, except that loss and ALAE should be direct of reinsurance.

	Latest PY-1	Latest PY
Total		
Increase in reserves during Latest PY		
Total payments during Latest PY		
Case incurred loss during Latest PY		
New Mexico losses incurred as shown on NAIC Annual Statement Schedule		
T		
	Difference	

Explanation of Difference (if any)

[13.14.17.15 NMAC – N, 7-1-05]

HISTORY OF 13.14.17 NMAC:

History of Repealed Material.

13 NMAC 14.3.D.19 - Repealed 5-15-00

13.14.17 NMAC, Underwriter’s Experience Report (filed 4-28-00), repealed 7-1-05

NMAC History.

13 NMAC 14.3 Subpart D, Underwriter’s Experience Report (filed 05-30-97) renumbered, reformatted and replaced by 13.14.17 NMAC, Underwriter’s Experience Report, effective 7-1-97.

13.14.17 NMAC, Underwriter’s Experience Report (filed 4-28-00) was replaced by 13.14.17 NMAC, Underwriter’s Statistical Report,

**NEW MEXICO PUBLIC
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COMMISSION
INSURANCE DIVISION**

Explanatory paragraph: This is an amendment to 13.14.2.14 NMAC, effective July 1, 2005.

Subsections B and C of 13.14.2.14 NMAC were deleted. The remainder of the section was amended as follows:

13.14.2.14 AGENT’S ~~[EXPERIENCE]~~ STATISTICAL REPORT:

~~f~~ ~~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]~~ statistical report form[s and instructions] set forth in 13.14.16 NMAC, Agent’s ~~[Experience]~~ Statistical 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]~~ statistical report for the calendar year and shall notify each agent of the date 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]~~ statistical report prior to May 15th of the year following the end of the calendar year being reported.

**NEW MEXICO PUBLIC
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INSURANCE DIVISION**

Explanatory paragraph: This is an amendment to 13.14.3.11 NMAC, effective July 1, 2005.

Paragraphs (2) through (6) of Subsection A and Subsections B, C, and D of 13.14.3.11 NMAC were unchanged.

13.14.3.11 PREMIUM DIVISION WITH AGENTS — OTHER FEES AND EXPENSES:

A. On or after May 1, 2000, all agency contracts, agency agreements and other contracts between licensed New Mexico title insurance agents and insurers admitted to write title insurance in New Mexico shall provide that agents shall retain the following amounts of all gross premiums on commitments, binders, policies and endorsements issued on or after April 1, 1995, and shall remit to the insurer the remainder of all such gross premiums:

(I) for amounts of insurance up to two million dollars (\$2,000,000), agents shall retain seventy-eight to eighty percent (78% - 80%);

**NEW MEXICO PUBLIC
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COMMISSION
INSURANCE DIVISION**

Explanatory paragraph: This is an amendment to 13.14.5.9 NMAC, effective July 1, 2005, to change “general” exception to “standard” exception and to add number 8 as one that may be deleted. Subsections A and B of 13.14.5.9 NMAC were unchanged; Subsection C was amended as shown below.

13.14.5.9 STANDARD EXCEPTIONS IN SCHEDULE B:

C. Each commitment shall contain the following statement: ~~[General]~~ Standard exceptions 1, 2, 3, 4, 6 and/or ~~[7]~~ 8 may be deleted from any policy, and standard exception 7 may be modified on any policy, upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company’s underwriting standards for each such deletion. ~~[General]~~ Standard exception 5 may be deleted from the policy if the named insured in the case of an owner’s policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. The policy to be issued pursuant to this commitment will be endorsed or modified in schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipu-

lations of the policy at no cost or charge to the insured. The endorsement or the language added to schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American arbitration association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

13.14.6 NMAC is amended to add a new section 24, effective July 1, 2005.

13.14.6.24 TAXES OR ASSESSMENTS WHICH ARE NOT SHOWN AS EXISTING LIENS BY THE PUBLIC RECORDS — STANDARD EXCEPTION 8: Upon request of the insured, upon being paid the premium provided for in 13.14.10.46 NMAC, and upon being furnished with a satisfactory search of the appropriate records, if any, the standard exception numbered 8 in Subsection A of 13.14.5.9 NMAC may be deleted in its entirety from an owner's or leasehold owner's policy.

[13.14.6.24 NMAC - N, 7-1-05]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

Explanatory paragraph: This is an amendment to Sections 21 and 25 of 13.14.7 NMAC, effective July 1, 2005. Section 21 was deleted in its entirety. Section 25 was amended to correct the names of the policies from which standard exception number 8 may be deleted as shown below.

13.14.7.25 TAXES OR ASSESSMENTS WHICH ARE NOT SHOWN AS EXISTING LIENS BY THE PUBLIC RECORDS - STANDARD EXCEPTION 8: Upon request of the insured, upon being paid the premium provided for in 13.14.10.46 NMAC, and upon being furnished with a satisfactory search of the appropriate records, if any, the standard exception numbered 8 in Subsection A of 13.14.5.9 NMAC may be deleted in its entirety from a loan policy, leasehold [owner's] loan policy, short form residential loan policy or [leasehold] construction loan policy.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to Sections 12, 26 and 27 of 13.14.8 NMAC, effective July 1, 2005.

~~13.14.8.12 CREDITORS' RIGHTS ENDORSEMENTS:~~ ~~The insurer may issue the NM Form 40, Owner's Creditors' Rights Endorsement to the Owner's Policy or the Leasehold Owner's Policy or the NM Form 39, Lender's Creditors' Rights Endorsement to the Loan Policy, Construction Loan Policy, or Leasehold Loan Policy if it considers the risk acceptable.~~ [Reserved]

[4-1-93; 13.14.8.12 NMAC - Rn, 13 NMAC 14.8.12, 5-15-00; Repealed, 7-1-05]

13.14.8.26 ZONING ENDORSEMENT, UNIMPROVED LAND: Upon payment of the premium provided for in 13.14.10.47 NMAC, and where the underwriter determines the risk to be acceptable, the "zoning endorsement, unimproved land" may be attached to a loan policy or owner's policy. This endorsement shall not be issued on properties that are defined as "one-to-four family residential." Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two (2) years following issuance of the endorsement.

[13.14.8.26 NMAC - N, 7-1-05]

13.14.8.27 ZONING ENDORSEMENT, COMPLETED STRUCTURE: Upon being furnished with a satisfactory survey, payment of the premium provided for in 13.14.10.48 NMAC, and where the underwriter determines the risk to be acceptable; the "zoning endorsement, completed structure" may be attached to a loan policy or owner's policy. This endorsement shall not be issued on properties that are defined as "one-to-four family residential." Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two (2) years following issuance of the endorsement.

[13.14.8.27 NMAC - N, 7-1-05]

**NEW MEXICO PUBLIC
REGULATION
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INSURANCE DIVISION**

Explanatory paragraph: This is an amendment to Sections 18, 27, 34, and 39 of 13.14.9 NMAC, effective July 1, 2005. Sections 27 and 34 were deleted in their entirety. Section 18 was amended as shown below and language was added to Section 39 regarding the premium rate.

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 July 1, [2004] 2005 until modified by the superintendent:

[Please see Table on page 530]

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	[190] 187	24,000	[313] 307	38,000	[416] 412
11,000	[199] 196	25,000	[320] 315	39,000	[422] 419
12,000	[206] 205	26,000	[327] 323	40,000	[430] 426
13,000	[216] 214	27,000	[338] 331	41,000	[436] 433
14,000	[224] 223	28,000	[342] 339	42,000	[444] 440
15,000	[234] 232	29,000	[349] 347	43,000	[451] 447
16,000	[242] 241	30,000	[357] 355	44,000	[458] 545
17,000	[251] 250	31,000	[364] 363	45,000	[466] 461
18,000	[259] 259	32,000	[372] 370	46,000	[472] 468
19,000	[268] 267	33,000	[378] 377	47,000	[481] 475
20,000	[276] 275	34,000	[385] 384	48,000	[488] 482
21,000	[285] 283	35,000	[393] 391	49,000	[494] 489
22,000	[294] 291	36,000	[400] 398	50,000	[502] 496
23,000	[304] 299	37,000	[409] 405		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission, add	Agent retention percentage	Additional rate per \$1000 to be collected on policy amounts in excess of \$10 million (solely for underwriter)	Total Charged to Consumer
over \$50 to \$100	\$ [6.10] 6.04	78-80%		\$ [6.10] 6.04
over \$100 to \$500	\$ [4.80] 4.75	78-80%		\$ [4.80] 4.75
over \$500 to \$2,000	\$ [3.77] 3.73	78-80%		\$ [3.77] 3.73
over \$2,000 to \$5,000	\$ [3.03] 3.00	75%		\$ [3.03] 3.00
over \$5,000 to \$10,000	\$ [2.52] 2.49	70%		\$ [2.52] 2.49
Over \$10,000 to \$25,000	\$ [2.16] 2.14	65%	\$ 0.25	\$ [2.41] 2.39
over \$25,000 to \$50,000	\$ [1.88] 1.86	60%	\$ 0.25	\$ [2.13] 2.11
over \$50,000	\$ [1.50] 1.49	50%	\$ 0.25	\$ [1.75] 1.74

13.14.9.39 ~~LIENS~~ **() SUBSTITUTION RATE ON (EXISTING) LOANS TO TAKE UP, RENEW, EXTEND OR SATISFY AN EXISTING INSURED LOAN():**

C. The premium for all liability above the amount of the unpaid balance of any original indebtedness shall be ninety percent (90%) of the current basic premium rates by brackets. In no event shall the premium collected be less than the regular minimum promulgated rate for a mortgagee policy.

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

Explanatory paragraph: This is an amendment to Sections 25, 26, 27, 28, 46 and the addition of new Sections 47 and 48 of 13.14.10 NMAC, effective July 1, 2005. Sections 25, 26, 27, and 28 were deleted in their entirety, to delete 4 obsolete endorsements. Section 46 was amended regarding standard exception number 8. The new sections were adopted to add 2 new zoning endorsements, 1 for unimproved land, the other for completed structures as shown below.

13.14.10.46 PERMISSIBLE DELETION OF STANDARD EXCEPTION 8: The premium for deletion of standard exception 8 from an owner's policy, a leasehold owner's policy, a loan policy, leasehold loan policy, short form residential loan policy, or construction loan policy shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.

13.14.10.47 ZONING ENDORSEMENT, UNIMPROVED LAND: When a zoning endorsement, unimproved land (NM Form 64), is issued pursuant to 13.14.8.26 NMAC, the premium shall be 15% of the full basic premium rate. Agents shall receive commissions pursuant to 13.14.3.11

NMAC for liabilities up to \$27,000,000.00; agents' retention shall be zero for liabilities greater than \$27,000,000.00. In no case shall the premium charge for the issuance of NM Form 64 be less than \$250.00. When issuing multiple zoning endorsements simultaneously on an owner's policy and a loan policy or loan policies in a single transaction, only one premium shall be charged calculated on the policy with the highest amount of insurance.

13.14.10.48 ZONING ENDORSEMENT, COMPLETED STRUCTURE: When a zoning endorsement, completed structure (NM Form 65), is issued pursuant to 13.14.8.27 NMAC, the premium shall be 23% of the full basic premium rate. Agents

shall receive commissions pursuant to 13.14.3.11 NMAC for liabilities up to \$27,000,000.00; agents' retention shall be zero for liabilities greater than \$27,000,000.00. In no case shall the premium charge for the issuance of NM Form 65 be less than \$250.00. When issuing multiple zoning endorsements simultaneously on an owner's policy and a loan policy in a single transaction, only one premium shall be charged calculated on the policy with the highest amount of insurance.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

Explanatory paragraph: This is an amendment to 13.14.18 NMAC, Sections 13, 29, 49, 50, 51, 52, 53, 77, and 78, effective July 1, 2005. Section 13 was amended to show the deletion of 5 forms and the addition of the 2 new approved forms. Section 29 was amended to correct the ALTA Form number in the heading of the form. Sections 49, 50, 51, 52, and 53 were deleted in their entirety. Sections 77 and 78 were adopted as new sections.

13.14.18.77 NM Form 64: ZONING ENDORSEMENT, UNIMPROVED LAND:

Zoning Endorsement, Unimproved Land Attached to Policy No. _____
Issued By Blank Title Insurance Company [NM Form 64; ALTA Form 3.0, Rev. 10-17-98]

The Company insures the insured against loss or damage sustained in the event that, at Date of Policy:

1. According to applicable zoning ordinances and amendments thereto, the land is not classified Zone _____.

2. The following use or uses are not allowed under that classification:

There shall be no liability under this endorsement based on:

(a) Lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments thereto mentioned above, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses.

(b) The invalidity of the ordinances and amendments thereto mentioned above until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the

effect of which is to prohibit the use or uses.

(c) The refusal of any person to purchase, lease or lend money on the estate or interest covered by this policy.

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: _____

13.14.18.78 NM Form 65: ZONING ENDORSEMENT, COMPLETED STRUCTURE:

Zoning Endorsement, Completed Structure Attached to Policy No. _____
Issued By Blank Title Insurance Company [NM Form 65; ALTA Form 3.1, Rev. 10-17-98]

1. The Company insures the insured against loss or damage sustained in the event that, at Date of Policy:

(a) According to applicable zoning ordinances and amendments thereto, the land is not classified Zone _____.

(b) The following use or uses are not allowed under that classification:

and there shall be no liability under this paragraph 1(b) if the use or uses are not allowed as a result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments thereto mentioned above, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses.

2. The company further insures against loss or damage arising from a final decree of a court of competent jurisdiction:

(a) prohibiting the use of the land, with any structure presently located thereon, as specified in paragraph 1(b); or

(b) requiring the removal or alteration of the structure on the basis that, at date of pol-

icy, the ordinances and amendments thereto have been violated with respect to any of the following matters:

- (i) Area, width or depth of the land as a building site for the structure;
- (ii) Floor space area of the structure;
- (iii) Setback of the structure from the property lines of the land;
- (iv) Height of the structure; or
- (v) Number of parking spaces.

There shall be no liability under this endorsement based on:

(a) The invalidity of the ordinances and amendments thereto mentioned above until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses.

(b) The refusal of any person to purchase, lease, or lend money on the estate or interest covered by this policy.

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 PUBLIC
REGULATION
COMMISSION
UTILITY DIVISION**

Explanatory paragraph: This is an amendment to Sections 1, 2, 3, 4, 5, 7, 8, 12, 13, 14, and 15 of 17.9.560 NMAC, effective June 15, 2005. This rule is also being renumbered and reformatted to comply with current NMAC requirements.

Wherever it appeared in the rule, "Public Service Commission" was changed to "Public Regulation Commission." Also, wherever "ASA" appeared in the rule, it was changed to "ANSI standard." The definitions in 17.9.560.7 NMAC were reorganized in alphabetical order and the word "means" was substituted for "is," "shall be," and "are" in definitions F, G, I, and J. 17.9.560.8 NMAC was deleted from the rule. The following textual changes were also made:

17.9.560.3 STATUTORY AUTHORITY: NMSA 1978 Section 8-8-15.

17.9.560.4 DURATION: Permanent.

17.9.560.5 EFFECTIVE DATE: June 30, 1988, unless a later date is cited at the end of a section.

17.9.560.7 DEFINITIONS:
[B] P. utility and electric utility [as used in 17.9.560 NMAC shall have the same meaning as that set out] has the meaning given for "public utility" or "utility" in NMSA 1978 Section 62-3-3.

17.9.560.12 CUSTOMER RELATIONS:

B. Customer deposits.

(2) Interest on deposits.

(a) ~~[Simple interest on deposits at the rate of at least 6% per annum shall accrue annually to a customer's credit by the utility for each consumer required to make such a deposit for the time it is held by the utility, provided that no interest need be paid unless the deposit is held longer than twelve (12) months]~~ Simple interest on deposits at a rate not less than the rate required by NMSA 1978 Section 62-13-13 shall accrue annually to a customer's credit for the time the deposit is held by the utility. By no later than January 15 of each year the commission shall post on its website the minimum rate to be paid on any deposits required of a customer by any public utility.

17.9.560.14 INSPECTION AND TESTS:

H. Test procedures and accuracies.

(4) Transformers.

(a) All current and potential transformers shall be tested in accordance with the applicable procedures prescribed in ~~[American standards association code ASA]~~ ANSI standard C-57.13.

I. Facilities and equipment for meter testing. Each utility shall maintain a meter shop or shall have the services of a meter shop available to it for the purpose of inspecting, testing, and repairing meters. The shop shall be open for inspection by authorized representatives of the commission at all reasonable times, and the facilities and equipment as well as the methods of measurement and testing employed shall be subject to the approval of the commission. ~~[Any meter shop having adequate and sufficient testing equipment to comply with these rules and approved by the commission may for any utility make the tests, repairs, and adjustments required by 17.9.560 NMAC.]~~ The meter shop used by a utility shall have adequate and suffi-

cient testing equipment to comply with this rule and to conduct the tests and make repairs and adjustments in compliance with this rule.

~~[17.9.560.17 [HISTORY:—Codified by NMPSC Case No. 2086, order dated June 30, 1988; Amended by NMPSC Case No. 2232, order dated December 19, 1988. Formerly NMPSC Second Revised General Order No. 10, superseded for purposes of rule reorganization and codification.]~~

NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION

Explanatory paragraph: This is an amendment to sections 1, 2, 3, 4, 5, 7, 8, 11, 13, and 16 of 17.10.650 NMAC, effective June 15, 2005. This rule is also being renumbered and reformatted to comply with current NMAC requirements.

Wherever it appeared in the rule, "Public Service Commission" was changed to "Public Regulation Commission." The definitions in 17.9.560.7 NMAC were reorganized in alphabetical order, five definitions formerly contained within a definition for abbreviations were set out as separate definitions, and the word "means" was substituted for "is" and "shall" in several definitions. 17.10.650.8 NMAC was deleted from the rule. The following textual changes were also made:

17.10.650.3 STATUTORY AUTHORITY: ~~[Reserved]~~ NMSA 1978 Section 8-8-15.

17.10.650.4 DURATION: Permanent.

17.10.650.5 EFFECTIVE DATE: June 30, 1988, unless a later date is cited at the end of a section.

17.10.650.7 DEFINITIONS: When used in 17.10.650 NMAC unless otherwise specified the following definitions will apply:

A. BTU means British thermal unit;

[B] S. utility and gas utility ~~[as used in these rules shall have the same meaning as set out]~~ shall have the meaning given for "public utility" or "utility" in the New Mexico Public Utility Act, Section 62-3-3 NMSA 1978;

17.10.650.11 CUSTOMER RELATIONS:

B. Customer deposits.

(2) Interest on deposits.

(a) ~~[Simple interest on deposits at the rate of at least six percent (6%) per annum shall be paid annually by the utility to each customer required to make such a deposit for the time it is held by the utility, provided that no interest need be paid unless the deposit is held longer than twelve (12) months]~~ Simple interest on deposits at a rate not less than the rate required by NMSA 1978 Section 62-13-13 shall accrue annually to a customer's credit for the time the deposit is held by a utility. By no later than January 15 of each year the commission shall post on its website the minimum rate to be paid on any deposits required of a customer by any public utility.

C. Customer bill forms.

(10) In lieu of information required ~~[under (d), (h), and (i) above]~~ by Paragraphs (4), (8), and (9) of this subsection, the utility may incorporate on the bill form a statement advising the customer that any additional information desired relative to the application of the rate schedule can be obtained by contacting one of the utility's offices.

F. Reasons for denying or discontinuing service. Service may be denied or discontinued for any of the reasons listed below. Unless otherwise stated the customer shall be allowed a reasonable time in which to comply with the rule before service is discontinued, except as provided in Paragraphs (1), (2), (3), and (4) ~~[below]~~ of this subsection:

17.10.650.13 INSPECTIONS AND TESTS:

A. Utility inspections and tests.

(6) The basic periodic test interval for positive displacement meters may be extended under the following circumstances:

(d) Any authorized extension of the basic periodic test interval is subject to cancellation at any time; upon such cancellation the test interval shall be determined by the commission, but such interval shall not be less than the requirements of Paragraph (5) ~~[above]~~ of this subsection.

C. Facilities and equipment for meter testing.

(3) Working standards must be checked periodically (see Paragraph (5) of Subsection A of 17.10.650.13 NMAC) by comparison with a secondary standard.

(b) Rotary displacement test meters must be checked with a bell prover of adequate capacity which has been checked as provided in Subparagraph (a) [above] of this paragraph.

End of Adopted Rules Section

Other Material Related to Administrative Law

**NEW MEXICO
COMMISSION OF
PUBLIC RECORDS
HISTORICAL RECORDS
ADVISORY BOARD****NOTICE OF REGULAR MEETING**

A regular meeting of the New Mexico Historical Records Advisory Board has been scheduled for Friday, June 17, 2005 at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM 87507. 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 or meeting, please contact William De La O at the State Records Center and Archives at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact William De La O at 505-476-7956 at the State Records Center and Archives if a summary or other type of accessible format is needed.

A copy of the proposed agenda may be obtained at the State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505.

**End of Other Related
Material Section**

2005

SUBMITTAL DEADLINES AND PUBLICATION DATES

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