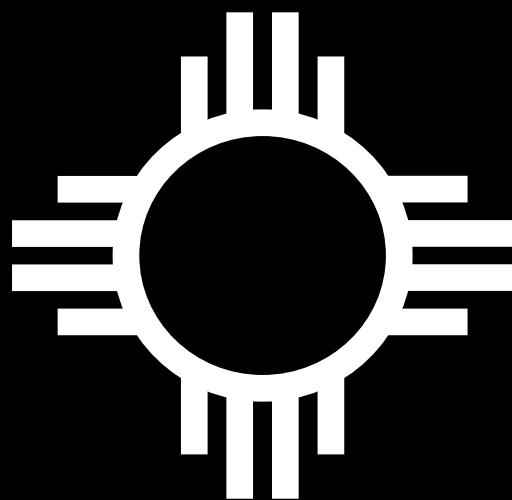


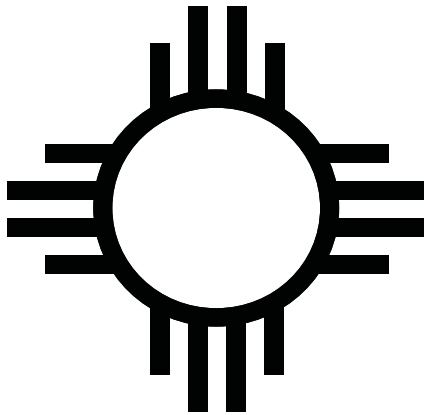
NEW MEXICO REGISTER



Volume XXI
Issue Number 17
September 15, 2010

New Mexico Register

**Volume XXI, Issue Number 17
September 15, 2010**



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
2010

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New Mexico Register

Volume XXI, Number 17

September 15, 2010

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Notices of Rulemaking and Proposed Rules

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, September 30, 2010, beginning at 9:00 a.m., at **Hubbard Museum of American West - Cope Learning Center, 841 Highway 70-West, Ruidoso Downs, NM 88346**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; General Public Comments (comments limited to 3 minutes); Evaluation of Game Management Unit 51 Option II Trial Elk License Allocation System as Described in 19.30.5.8 B(2)(l), NMAC; Update on the Department's Response to House Joint Memorial 58 Requesting the Department of Game and Fish to Study the Consolidation of Various Hunting and Fishing Licenses and Stamps; Department will Request that the Commission Open the Falconry Rule (19.35.8, NMAC); and Closed Executive Session pursuant to Section 10-15-1, H, (1), NMSA, 1978.

The following rules are available for public comment and discussion by the Commission:

- * Adoption of Changes to Required Application Fees for Special Hunt Lottery Draws and Setting the 2010-2012 Special Hunt Application Deadline Dates;
- * Adoption of Proposed Amendments to the Bear and Cougar Rule (19.31.11, NMAC);
- * Adoption of a New Rule - Private Land Antelope License Allocation (19.30.12, NMAC);
- * Adoption of Proposed Amendments to the Pronghorn Antelope Rule (19.31.15, NMAC);
- * Adoption of Proposed Amendments to the Deer Rule (19.31.13, NMAC);
- * Adoption of Proposed Amendments to the Following Rules - Boundary Descriptions for Wildlife Management Areas (19.30.4, NMAC), Hunting and Fishing License Application (19.31.3, NMAC), Hunting and Fishing - Manner and Method of Taking (19.31.10, NMAC); and
- * Adoption of Amendment to the Trapping and Furbearers Rule (19.35.8, NMAC) to Conform to the Executive Order 2010-029.

A copy of the agenda or any of the affected

rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8029. Please contact Ms. Quintana at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please also contact Ms. Quintana if a summary or other type of accessible form is needed.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to obtain comment on proposed rules for the State Food Stamp Supplement Program. The hearing will be held at 9:00 am on October 15, 2010. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The state food stamp supplement program is aimed at providing the elderly and disabled with increased food purchasing power resulting in better nutrition. This amount of this allotment is based on the availability of state funds; this register proposes to decrease this allotment from a \$30.00 maximum benefit amount to \$25.00.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

The interim regulation is available on

the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

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

Kathryn Falls, Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to: vida.tapia-sanchez@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider proposed rules in the Low Income Home Energy Assistance Program. The hearing will be held from 10:00 am on October 15, 2010. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department is proposing to amend the LIHEAP regulations to provide consistent regulatory language with regard to the processing of overpayments and claims. The Department further proposes new regulatory language to allow the Department to terminate certain claims against households.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

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

Kathryn Falls, Secretary

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

You may send comments electronically to:
vida.tapia-sanchez@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing on changes to the Food Stamp Program income limits for participation, standards and deductions available to otherwise eligible households that are made effective for the benefit month of October. The United States Department of Agriculture, Food and Nutrition Services determine these amounts. The hearing will be held at 10:30 am on October 15, 2010. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department received notification of the adjusted amounts on August 3, 2010 and will make the adjustments effective for the benefit month of October 2010. Pursuant to the Human Services Department Act at NMSA 1978, at 9-8-6(F), Because the Department has received less than sixty days notice of federal legislation and has insufficient time to follow the regular rulemaking process, it will implement an interim emergency rule in order to comply with the federal mandate effective date of October 1, 2010.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

The emergency regulations are available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the

hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 PM on the date of the hearing. Please send comments to:

Kathryn Falls, Secretary
Human Services Department
P.O. Box 2348
Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to:
vida.tapia-sanchez@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider proposed rules in the Cash Assistance Program. The hearing will be held from 2:00 - 3:00 pm on October 15, 2010. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The New Mexico Human Services Department is proposing to suspend the Transition Bonus Program due to funding limitations. The proposed amendments align the regulations with the Human Services Department Secretary's statutory authority to comply with the Legislative and Executive appropriated budget by: suspending the program; and denying new applications for the program. The Department proposes regulatory amendments consistent with chapter 27, article 2B, of the Public Assistance Act, NMSA 1978.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

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

Kathryn Falls, Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to:
vida.tapia-sanchez@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling two public hearings on October 14, 2010. Both hearings will be held in the South Park Conference Room, 2055 S. Pacheco St., Ste. 500-590 in Santa Fe.

The subject of the first hearing at 9:00 a.m. is: Medically Fragile Home and Community-Based Services Waiver Services. New Mexico Human Services Department, Medical Assistance Division (HSD/MAD) proposes amendments to the Medically Fragile Home and Community-Based Services (HCBS) Waiver rules to clarify qualifications of eligible providers, program services and the processes for the development of the plan of care and to include a description of the added covered waiver service, Specialized Medical Equipment and Supplies, and its provider qualifications, in accordance with the federally approved waiver renewal.

HSD/MAD also proposes to rename the covered waiver service psychosocial counseling to behavior support consultation with a modified service definition.

The subject of the second hearing at 10:00 a.m. is: Acquired Immunodeficiency Syndrome (AIDS) or AIDS-Related Condition (ARC) Home and Community-Based Services Waiver. New Mexico Human Services Department, Medical Assistance Division (HSD/MAD) proposes amendments to the Acquired Immunodeficiency Syndrome (AIDS) or AIDS-Related Condition (ARC) Home and Community-Based Services Waiver rules to apply the nursing facility level of care requirement and clarify qualifications of eligible providers, program services and the processes for the development of the plan of care per the newly approved waiver renewal.

Interested persons may submit written comments no later than 5:00 p.m., October 14, 2010, to Kathryn Falls, 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 all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register and their proposed rules are available for review on our Website at www.hsd.state.nm.us/mad/register/2010 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 HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on October 15, 2010 at 9:00 a.m. in the ASD Conference Room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

The subject of the hearing is: Pharmacy Services The Human Services Department, Medical Assistance Division, is proposing amendments to 8.324.4 NMAC, Pharmacy Services, rule to clarify regulatory language, accuracy with existing rules and respond to current budgetary constraints.

If implemented as proposed, the following changes to Medicaid pharmacy benefit coverage will affect recipients:

* Coverage of over-the-counter (non-prescription) drug items for adults who are not in institutions, would be limited to insulin. Provisions are included to expand the list of covered over-the-counter items after making a determination that it is overall more economical to cover an over-the-counter item as an alternative to prescriptions items.

* Covered drugs would be subject to the generic-first coverage provisions, requiring a generic item to be tried by the eligible recipient before MAD covers a 'brand name' item. The prescriber must first use one or more generic items available to treat a condition before MAD covers a 'brand name' drug. The generic-first provisions would not apply to Indian Health Service (IHS) facilities and PL 93-638 tribally operated hospitals and clinics. The following categories of drug items would be

exempt from the generic-first requirements:

1. Anti-asthmatic and other respiratory drugs
2. Anticoagulants
3. Anticonvulsants
4. Antipsychotics and antidepressants
5. Cancer chemotherapy items, and
6. Thyroid hormones.

* For some categories of drugs, brand names will not be covered. For the following categories of drug items, only generic items will be covered:

1. Acne medications
2. Oral birth control pills
3. Cough and cold medications.

* Compounded drug items will not be covered when the therapeutic ingredients have not been assigned national drug code numbers and are not approved for human use. This will terminate coverage for some 17-hydroxyprogesterone products compounded by pharmacists.

If implemented as proposed, the following changes to Medicaid pharmacy benefits will affect pharmacy providers by:

* Adding language for brand name drug products and for all A-rated therapeutic equivalents as to how MAD will determine state maximum allowable prices for multi-source drugs.

* Adding language to allow the baseline price of a multi-source drug as calculated by a national supplier of drug pricing information to serve as the state MAC price when a state MAC price has not otherwise been calculated by MAD.

* Adding language to accept a federal Department of Justice recommendation for pricing instead of a CMS price (such recommendations apply to very few items and are issued when the Department of Justice believes a manufacturer is reporting prices inaccurately.)

* Including language for 340B drug discount actual acquisition cost and 340B discount instructions.

* Changing the grace period for dispensing frequencies for maintenance drugs from 20 days to 14 days for necessary early refills.

* Adding to refill requirements that the consistent use of early refills will result in a calculation that the eligible recipient has sufficient stock of the drug item on hand and allowed refill dates will be adjusted accordingly.

* Adding controls on quantities dispensed for controlled substances.

* Adding language that overlapping use of multiple drug items with the same therapeutic uses that are potentially abused or otherwise dangerous may result in the prescriptions being subject to the prior

authorization process.

* Removing language concerning over-the-counter items coverage in order to support the expanded description of these items.

* Removing language in 8.324.4 NMAC Section A subsection 14, Noncovered Services, in order to combine paragraph B with paragraph C.

* Removing language concerning UR contractor prior authorizations for durable medical equipment and medical supplies which can be dispensed by pharmacy services providers.

* Removing language concerning maximum allowable costs in order to support proposed changes.

Other changes in the rule being proposed at this time include the following:

* Adding New Mexico licensed mail order pharmacies as eligible providers.

* Replacing outdated word usage, such as Medicaid with MAD, the Medical Assistance Division.

* Providing more instruction on the eligibility of providers and their responsibilities.

* Directing providers to enroll and follow a MAD managed care or MAD fee-for-service coordinated care contractor's instructions for billing and authorization of services.

The changes in the pharmacy benefits are being proposed because the Department believes the changes are more in line with the benefits typically available from other pharmacy service insurers. Also, at this time there is a serious shortfall in state revenues which has resulted in reductions in many state agency budgets. The New Mexico Medicaid program budget is no exception. Program costs are outpacing available revenues. Therefore, the Department has looked at pharmacy and other program benefits to determine changes that can be made while still providing medically appropriate services.

The reduction in payments for these services in the Medicaid fee-for-service program is estimated to be \$2.5 million.

Interested persons may submit written comments no later than 5:00 p.m., October 15, 2010, to Kathryn Falls, 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 all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register and their proposed rules are available for review on our Website at www.hsd.state.nm.us/mad/registers/2010 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 BOARD OF NURSING

Public Rules Hearing

The New Mexico Board of Nursing will hold a Rules Hearing on Friday, October 15, 2010. The rules hearing will be held at the San Juan College, Henderson Fine Arts Building, Rooms 9009 and 9010, 4601 College Blvd, Farmington NM 87402.

The purpose of the rules hearing is to hear public testimony and comments regarding the proposed amendments to the Board's rules and regulations: 16.12 NMAC: Part 1 General Provisions and Part 2 Nurse Licensure.

Persons desiring to present their views on the proposed amendments to the rules may write to request draft copies of the rules from the Board office at 6301 Indian School Rd NE, Suite 710, Albuquerque, NM, 87110, call (505) 841-8340 or download them from www.bon.state.nm.us.

In order for the Board members to review the comments prior to the hearing, persons wishing to submit written comments regarding the proposed rules should submit them to the Board office in writing no later than October 1, 2010. Persons wishing to present written comments at the hearing are asked to provide (10) copies of any comments or proposed changes for distribution to the Board and staff. In addition, persons may present their comments orally at the hearing.

Notice: Any person presenting testimony, who is representing a client, employer or group, must be registered as a lobbyist through the Secretary of State's Office (9505)

827-3600 or do so within 10 days of the Public Hearing.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, please call the Board office at (505) 841-8340 at least two weeks prior to the hearing or as soon as possible.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday, November 12, 2010. The hearing will be held during the Board's regular business meeting beginning at 8:30 a.m. at the State Personnel Office, Willie Ortiz Building at 2600 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to:

Training and Development, 1.7.1.15 NMAC; Pay Differentials, 1.7.4.13 NMAC; Overtime, 1.7.4.14 NMAC; Donating an Organ or Bone Marrow, 1.7.7.19 NMAC; Drug and Alcohol Abuse, 1.7.8 NMAC; Separation Without Prejudice, 1.7.10.13 NMAC; Reemployment of Job-Related Injured or Ill Former Employees, 1.7.10.14 NMAC; Hearings, 1.7.12.18 NMAC; and Reinstatements, 1.7.12.23 NMAC.

A final agenda for the board meeting will be available at the Board office on November 3, 2010.

Persons desiring to present their views on the proposed changes may appear in person at said time and place or may submit written comments no later than 5:00 p.m. October 14, 2010, to the Board Office, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Ken Giles. Copies of the proposed rule changes are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.spo.state.nm.us/ beginning September 15, 2010.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

NEW MEXICO REAL ESTATE APPRAISERS BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Real Estate Appraisers Board will hold a Rule Hearing on Friday, October 15, 2010. Following the Rule Hearing, the New Mexico Real Estate Appraisers Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Real Estate Appraisers Board Rule Hearing will begin at 8:00 a.m. and the regular meeting will convene immediately following the Rule Hearing. The meetings will be held at the Regulation and Licensing Department, 5200 Oakland NE, Albuquerque, New Mexico.

The purpose of the Rule Hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.62.1 NMAC: General Provisions; 16.62.7 NMAC: Issuance/Renewal of Apprentice Registration/License/Certificates; 16.62.8 NMAC: Educational Programs/Continuing Education; 16.62.12 NMAC: Fees; 16.62.13 NMAC: Disciplinary Proceedings; 16.65.2 NMAC: Application for Registration; 16.65.3 NMAC: Registration and Renewal.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, (505)476-4860, or send an e-mail to Real.Estate.Appraisers.Board@State.nm.us after September 17, 2010. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than October 4, 2010. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

The Board may enter into Executive Session pursuant to § 10-15-1 of the Open Meetings Act, to discuss matters related to the issuance, suspension, renewal or revocation of licenses.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary

aid or service to participate, please call the Board office at (505) 476-4860 at least two weeks prior to the meeting or as soon as possible.

Amanda Roybal – 476-4898
PO Box 25101- Santa Fe, New Mexico
87504

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

New Mexico Taxation and Revenue Department

Notice of Change to Public Hearing Agenda

In the August 16, 2010, issue of the NM Register, the Taxation and Revenue Department published a Notice of Hearing and Proposed Rules that included the following proposed rule:

Uniform Division of Income for Tax Purposes Act

3.5.19.20 NMAC Section 7-4-19 NMSA
1978

*(Special Rules: Telecommunications
Industry)*

At this time the Department has decided to reconsider this proposed draft and not hold a hearing on this rule at the scheduled September 21, 2010, hearing. Any changes to 3.5.19.20 NMAC will be re-published and scheduled for a future hearing. The Department does plan to hear the other proposal published in the August 16, 2010, notice (3.2.1.18(K) NMAC) on September 21, 2010.

Any questions concerning this notice can be submitted via email to poffice@state.nm.us.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comment on the repeal of Rule Number 18 NMAC 28.2, New Mexico State Highway and Transportation Department's Disadvantaged Business Enterprise Program. The repeal of Rule Number 18 NMAC 28.2 was filed on an emergency

basis on June 23, 2010, and notice thereof was published in Volume XXI, Number 13 of the New Mexico Register on July 15, 2010. While the NMDOT's responsibility and authority to administer the Disadvantaged Business Enterprise (DBE) program continues through the provisions of 49 CFR Part 26, NMDOT repealed Rule Number 18 NMAC 28.2 because there is no New Mexico statutory authority that permits the NMDOT (formerly the New Mexico State Highway and Transportation Department) to promulgate rules on this subject. As required by 49 CFR Part 26.21(b)(1), the NMDOT will prepare a DBE program manual conforming to 49 CFR Part 26. The DBE program manual will essentially take the place of the repealed rule.

The hearing is scheduled on October 21, 2010, from 9:00 a.m. to 10:00 a.m. at the New Mexico Department of Transportation, General Office, Training Rooms 1 and 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. Please contact Stephanie Nemett, Office of General Counsel, New Mexico Department of Transportation, P.O. Box 1149, Room 123, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5431 to request a copy of the repealed rule.

The hearing will be held before Bryan Brock, Director, Office of Equal Opportunity Programs. Interested persons may also present their views by written statements submitted on or before October 14, 2010, to New Mexico Department of Transportation, Attention: Stephanie Nemett, Office of General Counsel, P.O. Box 1149, Room 123, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5431.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the repealed rule in an accessible form may contact Stephanie Nemett at (505) 827-5431 at least ten (10) days before the hearing.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.1 NMAC Section 10, effective 9-15-2010.

16.60.1.10 FEES AND OBLIGATIONS: Fees charged by the board shall be as follows.

A. Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination administration on a break even basis, but in no case shall the fee be less than the state's cost of procuring and administering the exam.

B. Initial examination qualification review under Section 27F of the act shall be \$75.

C. Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the act shall be \$50.

D. Certificate application under Section 27B of the act shall be: initial certificate, \$175; certificate renewal, [~~\$125~~] \$130.

E. No annual renewal fee shall be assessed for an individual who holds an inactive certificate and who has reached the age of 70.

F. Firm permit application or renewal fee under Section 27C of the act shall be \$75 for each firm, regardless of form of entity.

G. Firm permit renewal delinquency fee under Section 27C of the act shall be \$50 and includes all practitioners whose renewal applications are delinquent.

H. Certificate/license reinstatement fee under Section 27G of the act shall be \$175 plus the current year's renewal fee. No delinquency fee shall be assessed.

I. No fee shall be charged for firm permit reinstatement, and no delinquency fee shall be assessed; only the current year's renewal fee shall be assessed.

J. Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections 27H and 27I of the act shall not exceed \$75 each occurrence.

K. Administrative fees for services under Section 27F shall be:

(1) list of certificate or permit holders, \$250;

(2) duplicate or replacement certificate card or permit card, \$10 each;

(3) duplicate or replacement wall

certificate, \$25 each;

(4) board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;

(5) certificate application package for reciprocity and grade transfer candidates and replacement packages for by-examination candidates, \$20 each;

(6) copies of combined Accountancy Act and board rules, \$10 each;

(7) copies of records and documents, \$.25 per page;

(8) the board may, at its discretion, charge for other administrative costs as it deems appropriate.

L. Fee for the transfer of licensure or examination information to a third party under Section 27E of the act shall be \$20.

M. Fee for criminal history background check under Section 8.1 of the act shall be the amount established by the department of public safety for the processing of criminal history background checks.

N. The board may waive charges as it deems appropriate.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 02-14-2002; A, 01-15-2004; A, 04-29-2005; A, 11-30-2007; A, 06-30-2008; A, 05-29-2009; A, 11-13-2009; A, 09-15-2010]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC Section 15, effective 9-15-2010.

16.60.3.15 CONTINUING PROFESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:

A. The following requirements of continuing professional education apply to certificate/license renewals and reinstatements pursuant to Sections 9E and 12A of the act. An applicant for certificate/license renewal shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 36-month period ending on the last day of the certificate/license holder's birth month.

(1) Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board.

(2) Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the preceding 36-month period ending on the last day of the certificate/license holder's birth month, with a minimum of 20 hours completed in each year. For any CPE reporting period which begins on or after January 1, 2010, continuing professional education must include a minimum of 4 hours of ethics education during the 36-month period after January 1, 2010. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

(3) The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

(4) Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be postmarked or hand-delivered no later than the renewal deadline date or the next business day if the deadline date falls on a weekend or holiday.

(5) In the event that a renewal applicant has not completed the requisite CPE by the renewal deadline, he shall provide a written explanation for failure to complete CPE; request an extension for completion of the required CPE; and shall provide a written plan of action to remediate the deficiency.

(a) The extension request and action plan shall accompany the renewal application.

(b) The provisions of the action plan shall be executed within 60 days of the expiration date of the license.

(c) The board reserves the right not to approve a plan of action or grant an extension.

(d) Although a plan of action may be approved immediately upon receipt, the board reserves the right to levy a fine at a later date for late CPE of \$10.00 per day not to exceed \$1,000.

(e) The board may waive this fine for good cause.

(f) If all CPE requirements are not met within 90 days beyond the expiration

date of the license, the license shall be subject to cancellation.

(6) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(7) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the CPE requirements of Sections 9E and 12A of the act and of these rules.

(8) Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of 40 hours of CPE for each year the certificate/license was expired, not to exceed 200 hours. If the license was expired for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was expired, the continuing professional education must include a minimum of 4 hours of ethics education during the 36 months preceding reinstatement.

(a) The length of expiration shall be calculated from the date the license expired to the date the application for reinstatement was received by the board office.

(b) If the license was expired for less than one year, documented evidence of 40 hours of CPE earned within the 12 months immediately preceding the date of application for reinstatement must be provided.

(c) If the license was expired for longer than one year, for the purpose of determining the number of CPE hours required, the length of expiration shall be rounded down to the last full year if the partial year was less than six months and rounded up to the next full year if the partial year was more than six months.

B. Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status.

(1) Pursuant to Section 9E of the act, the board may grant an exception to CPE requirements for certificate holders who do not provide services to the public. Public means any private or public corporate or governmental entity or individual. An individual who holds an inactive certificate/license is prohibited from practicing public accounting and may only use the CPA-inactive designation if they are not offering accounting, tax, tax consulting, management advisory, or similar services either in New Mexico or in another state or country. Persons desiring exemption from CPE rules requirements may request to change from "active" to "inactive" or "retired" certificate/license status, provided that they:

(a) complete board-prescribed change-of-status forms and remit related fees;

(b) not practice public accountancy as defined in Section 3M of the act; public accountancy means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters; and

(c) place the word "inactive" or "retired" adjacent to their CPA or RPA title on a business card, letterhead or other documents or devices, except for a board-issued certificate.

(2) Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE for each year the certificate/license was inactive, not to exceed 200 hours; if the license was inactive for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was inactive, the continuing professional education must include a minimum of 4 hours of ethics education during the 36 months preceding application for change of status to "active".

(3) The effective date of this provision shall be January 1, 2007. An individual who holds an inactive certificate/license as of January 1, 2006 and expects to be subject to the provisions of this rule shall be permitted to obtain an active certificate/license between January 1, 2006 and December 31, 2006 provided they:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE earned between January 1, 2005 and December 31, 2006 or complete 120 hours of CPE within the three-year period immediately prior to the date of application for active status, provided that the application is received by the board no later than December 31, 2006.

(4) An individual who obtains an active certificate/license during this transitional period of January 1, 2006 to December 31, 2006 shall not be subject to the provisions of sub-paragraph (b) of paragraph (2) above.

C. Hardship exceptions: The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented

in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

D. Programs qualifying for CPE credit: A program qualifies as acceptable CPE for purposes of Sections 9E and 12A of the act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the statement on standards for continuing professional education programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

(1) The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

(a) an hour is considered to be a 50-minute period of instruction;

(b) a full 1-day program will be considered to equal 8 hours;

(c) only class hours or the equivalent (and not student hours devoted to preparation) will be counted;

(d) one-half credit increments are permitted after the first credit has been earned in a given learning activity;

(e) for reporting periods on or after January 1, 2010, acceptable ethics topics may include, but are not limited to, instruction focusing on the AICPA code of professional conduct, the New Mexico occupational and professional licensing code of professional conduct applicable to certified public accountants, Treasury Circular 230, malpractice avoidance, organization ethics, moral reasoning, and the duties of the CPA to the public, clients, and colleagues; ethics hours may be earned as part of any professional development program otherwise qualifying under this rule, provided the ethics content and the time devoted to such content are separately identifiable on the program agenda.

(2) Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence.

(3) Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

(4) Credit allowed as a lecturer, discussion leader, speaker or university

professor/instructor will be on the basis of 2 hours for subject preparation for each hour of teaching and 1 hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

(5) Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.

(6) Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit for published articles and books may not exceed one half of an individual's CPE requirement for a 3-year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

(7) For a continuing education program to qualify under this rule, the following standards must be met:

(a) an outline of the program is prepared in advance and preserved;

(b) the program is at least 1 hour in length;

(c) a qualified instructor conducts the program; and

(d) a record of registration or attendance is maintained.

(8) The following programs are deemed to qualify, provided the above are met:

(a) professional development programs of recognized national and state accounting organizations;

(b) technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

(c) no more than 4 hours CPE annually may be earned for board meeting attendance.

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

(10) Non-credit short courses - each class hour shall equal 1 hour toward the requirement and may include the following:

(a) formal, organized in-firm educational programs;

(b) programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

(c) formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

(11) The board will allow up to a total of 24 hours of CPE credits for firm peer

review program participation. Hours may be earned and allocated in the calendar year of the acceptance letter for the firm's CPAs participating in the peer review.

(a) Firms having an engagement or report peer review will be allowed up to 12 hours of CPE credits.

(b) Firms having a system peer review will be allowed up to 24 hours of CPE credits.

(c) Firms having a system peer review at a location other than the firm's office shall be considered an off-site peer review and will be allowed up to 12 hours of CPE credits.

(d) The firm will report to the board the peer review CPE credit allocation listing individual firm CPAs and the number of credits allotted to each CPA. Individual CPAs receiving credit based upon a firm's report to the board may submit firm-reported hours in their annual CPA report forms to the board. If CPE credits will not be used, no firm report will be necessary.

(12) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the NASBA CPE registry, AICPA guidelines, NASBA quality assurance service, or such other programs deemed acceptable to the board.

(13) For each 3-year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical subjects such as audit; attestation; financial reporting; tax, management consulting; financial advisory or consulting; and other areas acceptable to the board as directly related to the professional competence of the individual.

(14) Effective for CPE reporting periods ending on or after July 31, 2007, for each 3-year reporting period, at least 24 of the hours reported shall not include CPE sponsored by the licensee's firm, agency, company, or organization but may include all methods of CPE delivery, provided that each hour meets the standards specified in paragraphs (1) through (10) of this subsection.

(15) For each 3-year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

E. Programs not qualifying for CPE:

(1) CPA examination review or "cram" courses;

(2) industrial development, community enhancement, political study groups or similar courses, programs or

seminars;

(3) courses, programs or seminars that are generally for the purpose of learning a foreign language;

(4) partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning adhering to the standards prescribed in this rule.

F. Continuing professional education records requirements: When applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

(1) Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

(2) Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of 5 years after program completion and at minimum shall consist of the following:

(a) copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

(b) for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course. For non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

(3) Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

(4) The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are required to provide supporting documentation and/or access to such records and documentation as necessary to substantiate validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of 5 years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

(5) In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

(6) An individual who has submitted a sworn affidavit on their renewal application as evidence of compliance with CPE requirements and is found, as the result of a random audit, not to be in compliance will be subject to a minimum \$250.00 fine and any other penalties deemed appropriate by the board as permitted by Section 20B of the act.

(7) The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of 5 years after program completion.

(8) The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 02-14-2002; A, 09-16-2002; A, 06-15-2004; A, 07-30-2004; A, 12-30-2004; A, 04-29-2005; A, 12-30-2005; A, 05-15-2006; A, 07-29-2007; A, 02-27-2009; A, 09-15-2010]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

TITLE 3 TAXATION CHAPTER 3 PERSONAL INCOME TAXES PART 32 CERTIFICATION FORTAX CREDIT FOR GEOTHERMAL GROUND-COUPLED HEAT PUMPS

3.3.32.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.
[3.3.32.1 NMAC - N, 09/15/2010]

3.3.32.2 SCOPE: 3.3.32 NMAC applies to the application and certification procedures for administration of the tax credit for geothermal ground-coupled heat pumps.
[3.3.32.2 NMAC - N, 09/15/2010]

3.3.32.3 STATUTORY AUTHORITY: 3.3.32 NMAC is established under the authority of NMSA 1978, Section 7-2-18.24 and NMSA 1978, Section 9-1-5.
[3.3.32.3 NMAC - N, 09/15/2010]

3.3.32.4 DURATION: Permanent.
[3.3.32.4 NMAC - N, 09/15/2010]

3.3.32.5 EFFECTIVE DATE:

09/15/2010, unless a later date is cited at the end of a section.

[3.3.32.5 NMAC - N, 09/15/2010]

3.3.32.6 OBJECTIVE: 3.3.32 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the tax credit for geothermal ground-coupled heat pumps.

[3.3.32.6 NMAC - N, 09/15/2010]

3.3.32.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the geothermal ground-coupled heat pump tax credit available to individual and corporate taxpayers.

B. "Applicant" means an individual taxpayer or taxpayers who own a geothermal ground-coupled heat pump system in New Mexico and that desires to have the department issue a certificate of eligibility for the geothermal ground-coupled heat pump tax credit.

C. "Application package" means the application document and all attachments that an applicant submits to the division to receive a certificate of eligibility for a geothermal ground-coupled heat pump tax credit.

D. "Certificate of eligibility" means the document, with a unique system certification number, that specifies the amount and taxable year for the approved geothermal ground-coupled heat pump tax credit.

E. "Department" means the energy, minerals and natural resources department.

F. "Division" means the energy, minerals and natural resources department's energy conservation and management division.

G. "Geothermal ground-coupled heat pump system" means a system that uses energy from the ground, water or, ultimately, the sun for distribution of heating, cooling or domestic hot water; that has either a minimum coefficient of performance of three and four-tenths or an efficiency ratio of 16 or greater; and that is installed by an accredited installer certified by the international ground source heat pump association.

H. "Geothermal ground-coupled heat pump tax credit" means the personal income tax credit that the taxation and revenue department issues to an applicant for a geothermal ground-coupled heat pump system.

I. "Accredited installer" means a state of New Mexico licensed contractor who has documentation of successful completion, or has documentation of the installing employees' successful completion, of the "Accredited Installer Workshop" course provided by the

international ground source heat pump association.

J. "IGSHPA" means the non-profit organization named the international ground source heat pump association, established in 1987 and as of January 1, 2010, headquartered on the campus of Oklahoma state university in Stillwater, Oklahoma.

K. "System certification number" means the unique number issued by the department that identifies the certified geothermal ground-coupled heat pump system.

L. "Taxpayer" means an individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 *et seq.*

M. "Taxpayer identification number" means the taxpayer's nine digit social security number.

N. "Tax credit" means the New Mexico state tax credit for geothermal ground-coupled heat pumps as described in 3.3.32 NMAC.

[3.3.32.7 NMAC - N, 09/15/2010]

3.3.32.8 GENERAL PROVISIONS:

A. Only a taxpayer who is the owner of a geothermal ground-coupled heat pump system that is purchased and is installed in a residence, business or agricultural enterprise in New Mexico on or after January 1, 2010, but before December 31, 2020 may receive a certificate of eligibility for a tax credit.

B. Only one application package shall be filed per geothermal ground-coupled heat pump system. If more than one taxpayer owns an interest in the property where the geothermal ground-coupled heat pump system is installed as a member of a partnership or other business association, a taxpayer may only claim a tax credit in proportion to that taxpayer's interest in the partnership or association. The application package shall specify the interest each taxpayer has in the property. In the event that there is more than one taxpayer that owns an interest in the property where the geothermal ground-coupled heat pump system is installed:

(1) each such taxpayer applying for a tax credit must be identified as an applicant on the application package;

(2) each such taxpayer applying for a tax credit must provide the required taxpayer information as required by 3.3.32.9 NMAC and the application form;

(3) each such taxpayer applying for a tax credit must sign the application; and

(4) the department shall issue one certificate of eligibility per taxpayer that reflects the amount of the tax credit to which the taxpayer is entitled in accordance with the taxpayer's interest in the property, as set

forth in the application.

C. 3.3.32 NMAC applies to geothermal ground-coupled heat pump systems for personal income tax only; the rules for corporate income tax geothermal ground-coupled heat pump system tax credit are at 3.4.19 NMAC.

D. The tax credit certificate may be issued for up to 30 percent of the purchase and installation costs of the geothermal ground-coupled heat pump system but may not exceed \$9,000.

E. The annual cap is \$2,000,000. When the \$2,000,000 annual cap is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the next subsequent tax year in which such tax credits are available; except

(2) if no tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which such credits are available, except for the last taxable year when the tax credit is in effect. [3.3.32.8 NMAC - N, 09/15/2010]

3.3.32.9 APPLICATION:

A. To apply for the tax credit an applicant shall submit a complete application package to the division. An applicant may obtain the tax credit application form and system installation form from the division to submit as part of the package.

B. An application package shall include a completed tax credit application form and written attachments for a geothermal ground-coupled heat pump system. The applicant shall submit the tax credit application form together with all attachments required as a complete application package. An applicant shall submit one application package for each geothermal ground-coupled heat pump system. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

C. The completed application form shall include the following information:

(1) the taxpayer's name, mailing address, telephone number and social security number;

(2) the address where the geothermal ground-coupled heat pump system is located;

(3) the geothermal ground-coupled heat pump system's type and description;

(4) the date the geothermal ground-coupled heat pump system started continuous operation;

(5) the accredited installer's name, address, telephone number, license category and license number;

(6) the accredited installer's documentation of IGSHPA "Accredited Installer Workshop" certification;

(7) the net cost of equipment, materials and labor of the geothermal ground-coupled heat pump system, excluding the expenses and income listed in 3.3.32.13 NMAC;

(8) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct;

(b) applicant has read the certification requirements contained in 3.3.32 NMAC;

(c) applicant understands that there are annual aggregate tax credit limits in place for geothermal ground-coupled heat pump systems;

(d) applicant understands that the department must approve the application package before the applicant is eligible for a tax credit;

(e) applicant agrees to make changes the department requires to the geothermal ground-coupled heat pump system for compliance with 3.3.32 NMAC; and

(f) to ensure compliance with 3.3.32 NMAC, applicant agrees to allow the division or its authorized representative to inspect the geothermal ground-coupled heat pump system that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and

(9) a system certification number the division assigns to the application.

D. The application package shall meet 3.3.32 NMAC's requirements and be materially complete.

E. The application package shall include the following information provided as attachments:

(1) a copy of the most recent property tax bill to the taxpayer for the residence where the geothermal ground-coupled heat pump system is located;

(2) a copy of the invoice of itemized equipment and labor costs for the geothermal ground-coupled heat pump system;

(3) a copy of the geothermal ground-coupled heat pump system's design schematic and technical specifications as described in 3.3.32 NMAC;

(4) a photograph of the geothermal ground-coupled heat pump system after installation is completed;

(5) a completed system installation form;

(6) a completed taxpayer and accredited installer statement, with information about the geothermal ground-coupled heat pump that includes:

(a) manufacturer or supplier of system components and the system components' model numbers;

(b) number of well borings (if applicable);

(c) a description of horizontal trenching (if applicable);

(d) a description of a water source system component (if applicable);

(7) if the system was installed using vertical or horizontal directional boreholes, the applicant shall provide the following information:

(a) drilling operator;

(b) office of the state engineer exploratory permit number and approval date (if required);

(c) drilling method;

(d) borehole diameter;

(e) number of boreholes drilled;

(f) general description of subsurface geology, or copies of drilling logs;

(g) depth of the boreholes;

(h) distance between boreholes;

(i) depth to ground water (indicate if ground water not encountered);

(j) whether the system is an "open" or "closed" loop design; and

(8) if the system was installed using horizontal trenching, the applicant shall provide the following information:

(a) length, width and depth of the trench or trenches; and

(b) general description of subsurface geology.

F. The completed system installation form shall include the following information:

(1) printed name of the taxpayer who is identified on the application form;

(2) printed name, title and telephone number of the accredited installer who signs the system installation form;

(3) printed name, title and telephone number of the building code authority's authorized representative, if applicable, who approves the system installation form;

(4) date on which the geothermal ground-coupled heat pump system installation was complete and ready to operate;

(5) a statement that the accredited installer has signed and dated, which may be a form of electronic signature if approved by the department, certifying that:

(a) the geothermal ground-coupled heat pump system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;

(b) the accredited installer has read 3.3.32 NMAC's certification requirements;

(c) the installed geothermal ground-coupled heat pump system will work properly with regular maintenance; and

(d) the accredited installer provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and that is near or at the geothermal ground-coupled heat pump system's components;

(6) documentation of the manufacturer's listed coefficient of performance or efficiency ratio for the heat pump equipment; and

(7) documentation of the total geothermal ground-coupled heat pump system size.

G. The application form shall request that the applicant provide the following optional information:

- (1) taxpayer's email address; and
- (2) contractor's email address.

H. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions. Selection of such options by the applicant shall not create in the department an obligation to take such action:

(1) adding energy monitoring equipment to the geothermal ground-coupled heat pump system;

(2) conducting an analysis of geothermal ground-coupled heat pump system operation and performance; or

(3) conducting an analysis of taxpayer's utility bill records.

[3.3.32.9 NMAC - N, 09/15/2010]

3.3.32.10 APPLICATION REVIEW PROCESS:

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. If the department approves applications received on the same day and the applications would exceed the annual cap, then the department will divide the available tax credit among those applications on a prorated system cost basis.

B. The division shall review the application package to calculate the tax credit and check accuracy of the applicant's documentation and shall determine whether the department certifies the geothermal ground-coupled heat pump system.

C. If an application package fails to meet a requirement or is materially incomplete, the department shall disapprove the application. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application

package for the disapproved project. The division shall place the resubmitted application in the review schedule as if it were a new application.

D. If the division finds that the application package meets 3.3.32 NMAC's requirements and a tax credit is available, the department shall certify the applicant's geothermal ground-coupled heat pump system and documents the taxpayer as eligible for a tax credit. If a tax credit is not available in the taxable year of certification of the geothermal ground-coupled heat pump system submitted in the application package, the division shall place the taxpayer on a waiting list for inclusion in the following taxable year, if a tax credit remains available. The department shall provide approval through written notification to the applicant. The notification shall include the taxpayer's contact information, social security number, system certification number, net system cost eligible for the tax credit, the tax credit amount and, if applicable waiting list status.

E. The division shall report to the taxation and revenue department the information required to verify, process and distribute each tax credit by providing a copy of the department's approval notification.

[3.3.32.10 NMAC - N, 09/15/2010]

3.3.32.11 SAFETY, CODES AND STANDARDS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following minimum requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package including design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6; and

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a geothermal ground-coupled heat pump system is also served by utility electricity or a heating fuel.

B. The application package shall include the following information concerning building codes:

(1) a statement that the building code authority's authorized representative has signed and dated, which may be a form of electronic signature if approved by the

department, that the geothermal ground-coupled heat pump system was installed in full compliance with all applicable codes; or

(2) if the applicant is unable to obtain a signed and dated statement from the building code authority's authorized representative on the system installation form, then the applicant may provide one of the following instead:

(a) a photograph or copy of the permit tag clearly identifying the building code authority's authorized representative's signature, the date and the permit number;

(b) an official document from the building code authority that includes the:

(i) agency's name;

(ii) authorized representative's name, title, telephone number and signature;

(iii) date of authorized representative's signature; and

(iv) permit number; or

(c) a web-based application the building code authority approves.

[3.3.32.11 NMAC - N, 09/15/2010]

3.3.32.12 SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following requirements:

(1) be made of new equipment, components and materials;

(2) have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions:

(a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship; and

(b) the owner of the geothermal ground-coupled heat pump system may bear the actual cost of shipping the product for the repair and replacement;

(3) be a complete system that collects and distributes geothermal energy to the residence, business or agricultural enterprise in New Mexico that it serves;

(4) have a minimum coefficient of performance of three and four-tenths or an efficiency ratio of 16 or greater; and

(5) be a minimum one-ton system size.

B. Geothermal ground-coupled heat pump systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that would be present if the geothermal ground-coupled heat pump system was not installed;

(2) a system that is not connected

to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(3) a system not serving an end use energy load; or

(4) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a tax credit.

C. System components and installation processes that the department may include in the cost calculation and certify include:

(1) the system applications of geothermal space heating, geothermal air heating, geothermal process heating, geothermal space cooling or combinations of geothermal system applications;

(2) collectors;

(3) pumps;

(4) fans;

(5) storage tanks;

(6) buffer tanks;

(7) expansion tanks;

(8) expansion valves;

(9) valves;

(10) "txv" valves;

(11) three-way valves;

(12) refrigerant compressors;

(13) chill water tanks;

(14) refrigerant reversing valves;

(15) controllers;

(16) heat exchangers;

(17) compressors;

(18) compressor gas;

(19) flow center circulators;

(20) tubing;

(21) tubing u-bend connections;

(22) tubing connections and fittings;

(23) manifolds;

(24) supply headers;

(25) expansion metering devices;

(26) desuperheaters;

(27) hot water tanks;

(28) heat exchange refrigerant;

(29) reverse return headers;

(30) thermostats;

(31) evaporators;

(32) borehole grout;

(33) borehole backfill sand or other medium;

(34) turnarounds;

(35) air handlers;

(36) above-ground fluid coolers;

(37) thermal conductivity testing;

and

(38) all materials and costs associated with vertical well drilling and horizontal trenching including well casing and tubing.

[3.3.32.12 NMAC - N, 09/15/2010]

3.3.32.13 CALCULATING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP SYSTEM COST:

A. The cost of a geothermal

ground-coupled heat pump system the department certifies shall be the cost of acquiring the system but shall not include the following:

(1) expenses, including but not limited to:

(a) unpaid labor or the applicant's labor;

(b) unpaid equipment or materials;

(c) land costs or property taxes;

(d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a geothermal ground-coupled heat pump system were not installed;

(e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) fees for use permits or variances;

(i) membership fees;

(j) financing costs or loan interest;

(k) marketing, promotional or advertising costs;

(l) repair, operating or maintenance costs;

(m) extended warranty costs;

(n) system visual barrier costs;

(o) adjacent structure modification costs;

(p) vegetation maintenance costs; and

(2) income, including:

(a) payments the accredited installer or other parties provide that reduce the system cost, including rebates, discounts and refunds with the exception of federal, state and local government and utility company incentives;

(b) services, benefits or material goods the accredited installer or other parties provide by the same or separate contract, whether written or verbal; and

(c) other financial incentives provided for geothermal ground-coupled heat pump system installation, if applicable.

B. The division shall make the final determination of the net cost that the department certifies is eligible for a tax credit.

[3.3.32.13 NMAC - N, 09/15/2010]

3.3.32.14 CLAIMING THE TAX CREDIT:

A. To claim the tax credit, a taxpayer owning a geothermal ground-coupled heat pump system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the certificate of eligibility the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved and any other information the

taxation and revenue department requires.

B. If the amount of tax credit claimed exceeds the taxpayer's individual income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.

[3.3.32.14 NMAC - N, 09/15/2010]

HISTORY OF 3.3.32 NMAC:

Pre-NMAC History: None.

History of Repealed Material: [RESERVED]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

TITLE 3 TAXATION CHAPTER 4 CORPORATE INCOME TAXES

PART 19 CERTIFICATION FORTAXCREDITFORGEOTHERMAL GROUND-COUPLED HEAT PUMPS

3.4.19.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.

[3.4.19.1 NMAC - N, 09/15/2010]

3.4.19.2 SCOPE: 3.4.19 NMAC applies to the application and certification procedures for administration of the tax credit for geothermal ground-coupled heat pumps.

[3.4.19.2 NMAC - N, 09/15/2010]

3.4.19.3 STATUTORY AUTHORITY: 3.4.19 NMAC is established under the authority of NMSA 1978, Section 7-2A-24 and NMSA 1978, Section 9-1-5.

[3.4.19.3 NMAC - N, 09/15/2010]

3.4.19.4 DURATION: Permanent.

[3.4.19.4 NMAC - N, 09/15/2010]

3.4.19.5 EFFECTIVE DATE: 09/15/2010, unless a later date is cited at the end of a section.

[3.4.19.5 NMAC - N, 09/15/2010]

3.4.19.6 OBJECTIVE: 3.4.19 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the tax credit for geothermal ground-coupled heat pumps.

[3.4.19.6 NMAC - N, 09/15/2010]

3.4.19.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the geothermal ground-coupled heat pump tax credit available to individual and corporate taxpayers.

B. "Applicant" means a taxpayer or taxpayers that own a geothermal ground-coupled heat pump system in

New Mexico and that desires to have the department issue a certificate of eligibility for the geothermal ground-coupled heat pump tax credit.

C. "Application package" means the application document and all attachments that an applicant submits to the division to receive a certificate of eligibility for a geothermal ground-coupled heat pump tax credit.

D. "Certificate of eligibility" means the document, with a unique system certification number, that specifies the amount and taxable year for the approved geothermal ground-coupled heat pump tax credit.

E. "Department" means the energy, minerals and natural resources department.

F. "Division" means the energy, minerals and natural resources department's energy conservation and management division.

G. "Geothermal ground-coupled heat pump system" means a reversible refrigerator device that provides space heating, space cooling, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode.

H. "Geothermal ground-coupled heat pump tax credit" means the corporate income tax credit that the taxation and revenue department issues to an applicant for a geothermal ground-coupled heat pump system.

I. "System certification number" means the unique number issued by the department that identifies the certified geothermal ground-coupled heat pump system.

J. "Taxpayer" means a corporation as defined by NMSA 1978, Section 7-2A-2, subject to the tax imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq.*

K. "Taxpayer identification number" means an 11-digit number the taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

L. "Tax credit" means the New Mexico state tax credit for geothermal ground-coupled heat pumps as described in 3.4.19 NMAC.

[3.4.19.7 NMAC - N, 09/15/2010]

3.4.19.8 GENERAL PROVISIONS:

A. Only a taxpayer who is the owner of a geothermal ground-coupled heat pump system that is purchased and

is installed in a residence, business or agricultural enterprise in New Mexico on or after January 1, 2010, but before December 31, 2020 may receive a certificate of eligibility for a tax credit.

B. Only one application package shall be filed per geothermal ground-coupled heat pump system. If more than one taxpayer owns an interest in the property where the geothermal ground-coupled heat pump system is installed as a member of a partnership or other business association, a taxpayer may only claim a tax credit in proportion to that taxpayer's interest in the partnership or association. The application package shall specify the interest each taxpayer has in the property. In the event that there is more than one taxpayer that owns an interest in the property where the geothermal ground-coupled heat pump system is installed:

(1) each such taxpayer applying for a tax credit must be identified as an applicant on the application package;

(2) each such taxpayer applying for a tax credit must provide the required taxpayer information as required by 3.4.19.9 NMAC and the application form;

(3) each such taxpayer applying for a tax credit must sign the application; and

(4) the department shall issue one certificate of eligibility per taxpayer that reflects the amount of the tax credit to which the taxpayer is entitled in accordance with the taxpayer's interest in the property, as set forth in the application.

C. 3.4.19 NMAC applies to geothermal ground-coupled heat pump systems for corporate income tax only; the rules for personal income tax geothermal ground-coupled heat pump system tax credit are at 3.3.32 NMAC.

D. The tax credit certificate may be issued for up to 30 percent of the purchase and installation costs of the geothermal ground-coupled heat pump system but may not exceed \$9,000.

E. The annual cap is \$2,000,000. When the \$2,000,000 annual cap is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the next subsequent tax year in which such tax credits are available; except

(2) if no tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which such credits are available, except for the last taxable year when the tax credit is in effect.

[3.4.19.8 NMAC - N, 09/15/2010]

3.4.19.9 APPLICATION:

A. To apply for the tax credit an applicant shall submit a complete application package to the division. An applicant may obtain the tax credit application form and system installation form from the division to submit as part of the package.

B. An application package shall include a completed tax credit application form and written attachments for a geothermal ground-coupled heat pump system. The applicant shall submit the tax credit application form together with all attachments required as a complete application package. An applicant shall submit one application package for each geothermal ground-coupled heat pump system. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

C. The completed application form shall include the following information:

(1) the taxpayer's name, mailing address, telephone number and taxpayer identification number;

(2) the address where the geothermal ground-coupled heat pump system is located;

(3) the geothermal ground-coupled heat pump system's type and description;

(4) the date the geothermal ground-coupled heat pump system started continuous operation;

(5) the installer's name, address, telephone number, license category and license number;

(6) the net cost of equipment, materials and labor of the geothermal ground-coupled heat pump system, excluding the expenses and income listed in 3.4.19.13 NMAC;

(7) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct;

(b) applicant has read the certification requirements contained in 3.4.19 NMAC;

(c) applicant understands that there are annual aggregate tax credit limits in place for geothermal ground-coupled heat pump systems;

(d) applicant understands that the department must approve the application package before the applicant is eligible for a tax credit;

(e) applicant agrees to make changes the department requires to the geothermal ground-coupled heat pump system for compliance with 3.4.19 NMAC; and

(f) to ensure compliance with 3.4.19 NMAC, applicant agrees to allow

the division or its authorized representative to inspect the geothermal ground-coupled heat pump system that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and

(8) a system certification number the division assigns to the application.

D. The application package shall meet 3.4.19 NMAC's requirements and be materially complete.

E. The application package shall include the following information provided as attachments:

(1) a copy of the most recent property tax bill to the taxpayer for the residence where the geothermal ground-coupled heat pump system is located;

(2) a copy of the invoice of itemized equipment and labor costs for the geothermal ground-coupled heat pump system;

(3) a copy of the geothermal ground-coupled heat pump system's design schematic and technical specifications as described in 3.4.19 NMAC;

(4) a photograph of the geothermal ground-coupled heat pump system after installation is completed;

(5) a completed system installation form;

(6) a completed taxpayer and installer statement, with information about the geothermal ground-coupled heat pump that includes:

(a) manufacturer or supplier of system components and the system components' model numbers;

(b) number of well borings (if applicable);

(c) a description of horizontal trenching (if applicable);

(d) a description of a water source system component (if applicable);

(7) if the system was installed using vertical or horizontal directional boreholes, the applicant shall provide the following information:

(a) drilling operator;

(b) office of the state engineer exploratory permit number and approval date (if required);

(c) drilling method;

(d) borehole diameter;

(e) number of boreholes drilled;

(f) general description of subsurface geology or copies of drillers logs;

(g) depth of the boreholes;

(h) distance between boreholes;

(i) depth to ground water (indicate if ground water not encountered);

(j) whether the system is an "open" or "closed" loop design; and

(8) if the system was installed using horizontal trenching, the applicant shall provide the following information:

(a) length, width and depth of the trench or trenches; and

(b) general description of subsurface geology.

F. The completed system installation form shall include the following information:

(1) printed name of the taxpayer who is identified on the application form;

(2) printed name, title and telephone number of the installer who signs the system installation form;

(3) printed name, title and telephone number of the building code authority's authorized representative, if applicable, who approves the system installation form;

(4) date on which the geothermal ground-coupled heat pump system installation was complete and ready to operate;

(5) a statement that the installer has signed and dated, which may be a form of electronic signature if approved by the department, certifying that:

(a) the geothermal ground-coupled heat pump system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;

(b) the installer has read 3.4.19 NMAC's certification requirements;

(c) the installed geothermal ground-coupled heat pump system will work properly with regular maintenance; and

(d) the installer provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and that is near or at the geothermal ground-coupled heat pump system's components;

(6) documentation of the total geothermal ground-coupled heat pump system size.

G. The application form shall request that the applicant provide the following optional information:

(1) taxpayer's email address; and

(2) contractor's email address.

H. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions. Selection of such options by the applicant shall not create in the department an obligation to take such action:

(1) adding energy monitoring equipment to the geothermal ground-coupled heat pump system;

(2) conducting an analysis of geothermal ground-coupled heat pump system operation and performance; or

(3) conducting an analysis of taxpayer's utility bill records.

[3.4.19.9 NMAC – N, 09/15/2010]

3.4.19.10 APPLICATION REVIEW PROCESS:

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. If the department approves applications received on the same day and the applications would exceed the annual cap, then the department will divide the available tax credit among those applications on a prorated system cost basis.

B. The division shall review the application package to calculate the tax credit and check accuracy of the applicant's documentation and shall determine whether the department certifies the geothermal ground-coupled heat pump system.

C. If an application package fails to meet a requirement or is materially incomplete, the department shall disapprove the application. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division shall place the resubmitted application in the review schedule as if it were a new application.

D. If the division finds that the application package meets 3.4.19 NMAC's requirements and a tax credit is available, the department shall certify the applicant's geothermal ground-coupled heat pump system and documents the taxpayer as eligible for a tax credit. If a tax credit is not available in the taxable year of certification of the geothermal ground-coupled heat pump system submitted in the application package, the division shall place the taxpayer on a waiting list for inclusion in the following taxable year, if a tax credit remains available. The department shall provide approval through written notification to the applicant. The notification shall include the taxpayer's contact information, taxpayer identification number, system certification number, net system cost eligible for the tax credit, the tax credit amount and, if applicable waiting list status.

E. The division shall report to the taxation and revenue department the information required to verify, process and distribute each tax credit by providing a copy of the department's approval notification. [3.4.19.10 NMAC – N, 09/15/2010]

3.4.19.11 SAFETY, CODES AND STANDARDS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following minimum requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards

that are in effect at the time that the applicant submits the application package including design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6; and

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a geothermal ground-coupled heat pump system is also served by utility electricity or a heating fuel.

B. The application package shall include the following information concerning building codes:

(1) a statement that the building code authority's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, that the geothermal ground-coupled heat pump system was installed in full compliance with all applicable codes; or

(2) if the applicant is unable to obtain a signed and dated statement from the building code authority's authorized representative on the system installation form, then the applicant may provide one of the following instead:

(a) a photograph or copy of the permit tag clearly identifying the building code authority's authorized representative's signature, the date and the permit number;

(b) an official document from the building code authority that includes the:

(i) agency's name;

(ii) authorized representative's name, title, telephone number and signature;

(iii) date of authorized representative's signature; and

(iv) permit number; or

(c) a web-based application the building code authority approves.

[3.4.19.11 NMAC - N, 09/15/2010]

3.4.19.12 S Y S T E M APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following requirements:

(1) be made of new equipment, components and materials;

(2) have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions;

(a) the warranty provided by the contractor on each specific piece of

equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship; and

(b) the owner of the geothermal ground-coupled heat pump system may bear the actual cost of shipping the product for the repair and replacement;

(3) be a complete system that collects and distributes geothermal energy to the residence, business or agricultural enterprise in New Mexico that it serves; and

(4) be a minimum one-ton system size.

B. Geothermal ground-coupled heat pump systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that would be present if the geothermal ground-coupled heat pump system was not installed;

(2) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(3) a system not serving an end use energy load; or

(4) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a tax credit.

C. System components and installation processes that the department may include in the cost calculation and certify include:

(1) the system applications of geothermal space heating, geothermal air heating, geothermal process heating, geothermal space cooling or combinations of geothermal system applications, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode;

(2) collectors;

(3) pumps;

(4) fans;

(5) storage tanks;

(6) buffer tanks;

(7) expansion tanks;

(8) expansion valves;

(9) valves;

(10) "txv" valves;

(11) three-way valves;

(12) refrigerant compressors;

(13) chill water tanks;

(14) refrigerant reversing valves;

(15) controllers;

(16) heat exchangers;

(17) compressors;

(18) compressor gas;

(19) flow center circulators;

(20) tubing;

(21) tubing u-bend connections;
(22) tubing connections and fittings;

(23) manifolds;

(24) supply headers;

(25) expansion metering devices;

(26) desuperheaters;

(27) hot water tanks;

(28) heat exchange refrigerant;

(29) reverse return headers;

(30) thermostats;

(31) evaporators;

(32) borehole grout;

(33) borehole backfill sand or other medium;

(34) turnarounds; and

(35) air handlers;

(36) above-ground fluid coolers;

(37) thermal conductivity testing;

and

(38) all materials and costs associated with vertical well drilling and horizontal trenching including well casing and tubing.

[3.4.19.12 NMAC - N, 09/15/2010]

3.4.19.13 CALCULATING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP SYSTEM COST:

A. The cost of a geothermal ground-coupled heat pump system the department certifies shall be the cost of acquiring the system but shall not include the following:

(1) expenses, including but not limited to:

(a) unpaid labor or the applicant's labor;

(b) unpaid equipment or materials;

(c) land costs or property taxes;

(d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a geothermal ground-coupled heat pump system were not installed;

(e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) fees for use permits or variances;

(i) membership fees;

(j) financing costs or loan interest;

(k) marketing, promotional or advertising costs;

(l) repair, operating or maintenance costs;

(m) extended warranty costs;

(n) system visual barrier costs;

(o) adjacent structure modification costs;

(p) vegetation maintenance costs;

and

(2) income, including:

(a) payments the installer or other

parties provide that reduce the system cost, including rebates, discounts and refunds with the exception of federal, state and local government and utility company incentives;

(b) services, benefits or material goods the installer or other parties provide by the same or separate contract, whether written or verbal; and

(c) other financial incentives provided for geothermal ground-coupled heat pump system installation, if applicable.

B. The division shall make the final determination of the net cost that the department certifies is eligible for a tax credit.
[3.4.19.13 NMAC - N, 09/15/2010]

3.4.19.14 CLAIMING THE TAX CREDIT:

A. To claim the tax credit, a taxpayer owning a geothermal ground-coupled heat pump system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the certificate of eligibility the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved and any other information the taxation and revenue department requires.

B. If the amount of tax credit claimed exceeds the taxpayer's corporate income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.

[3.4.19.14 NMAC - N, 09/15/2010]

HISTORY OF 3.4.19 NMAC:

Pre-NMAC History: None.

History of Repealed Material: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an emergency amendment to Section 8 of 8.139.500 NMAC; effective 10/01/2010.

8.139.500.8 BASIS OF ISSUANCE

A. Income standards: Determination of need in the food stamp program is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act [42 USC 9902(2)].

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands is 130 percent (130%) of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent (130%) of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by 130%, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 contiguous states and the District of Columbia.

E. Issuance table: The issuance table lists applicable income guidelines used to determine food stamp (FS) eligibility based on household size. Some amounts are increased to meet the needs of certain categorically eligible households. Some of the net income amounts listed are higher than the income limits for some household sizes. Households not categorically eligible for FS benefits must have income below the appropriate gross income limit for household size.

Household Size	Maximum Gross Monthly Income Categorical Eligibility at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum Allotment (benefit amount)
1	\$1,490	\$1,174	\$ 903	\$200
2	\$2,004	\$1,579	\$1,215	\$367
3	\$2,518	\$1,984	\$1,526	\$526
4	\$3,032	\$2,389	\$1,838	\$668
5	\$3,547	\$2,794	\$2,150	\$793
6	\$4,061	\$3,200	\$2,461	\$952
7	\$4,575	\$3,605	\$2,773	\$1,052
8	\$5,089	\$4,010	\$3,085	\$1,202

\$Each Additional Member	+\$515	+\$406	+\$312	+\$150
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F. Deductions and standards:

(1) **Determination:** Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) **Yearly adjustment:** The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st.

(3) Expense deductions and standards table:

Standard Deduction for Household Size of 1 through 3	[\$141.00] <u>\$142.00</u>
Standard Deduction for Household of 4	\$153.00
Standard Deduction for Household Size of 5	\$179.00
Standard Deduction for Household Size of 6 or more	\$205.00
Earned Income Deduction (EID)	20%
Dependent Care Deduction	Actual Amount
Heating/Cooling Standard Utility Allowance (HCSUA)	[\$278.00] <u>\$261.00</u>
Limited Utility Allowance (LUA)	\$101.00
Telephone Standard (TS)	[\$ 32.00] <u>\$ 36.00</u>
Excess Shelter Cost Deduction Limit for Non-Elderly/Disabled Households	[\$459.00] <u>\$458.00</u>
Homeless Household Shelter Standard	\$ 143.00
Minimum Allotment for Eligible One-and Two-Person Households	\$ 16.00

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98, 11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A/E, 10/01/2006; A/E, 10/01/2007; A/E, 10/01/2008; A/E, 04/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 04/01/2010; A/E, 10/01/2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

8.315.4 NMAC, Personal Care Option Services, filed June 16, 2004, is repealed and replaced by 8.315.4 NMAC, Personal Care Option Services, effective September 15, 2010.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 315 OTHER LONG TERM CARE SERVICES PART 4 PERSONAL CARE OPTION SERVICES

8.315.4.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.315.4.1 NMAC - Rp, 8.315.4.1 NMAC, 9-15-10]

8.315.4.2 SCOPE: The rule applies to the general public.
[8.315.4.2 NMAC - Rp, 8.315.4.2 NMAC, 9-15-10]

8.315.4.3 STATUTORY AUTHORITY: The New Mexico Medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act,

as amended and by the state human services department pursuant to state statute. See NMSA 1978, Section 27-2-12 et seq.
[8.315.4.3 NMAC - Rp, 8.315.4.3 NMAC, 9-15-10]

8.315.4.4 DURATION: Permanent
[8.315.4.4 NMAC - Rp, 8.315.4.4 NMAC, 9-15-10]

8.315.4.5 EFFECTIVE DATE: September 15, 2010, unless a later date is cited at the end of a section.
[8.315.4.5 NMAC - Rp, 8.315.4.5 NMAC, 9-15-10]

8.315.4.6 OBJECTIVE: The objective of this rule is to provide policies for the service portion of the New Mexico Medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.
[8.315.4.6 NMAC - Rp, 8.315.4.6 NMAC, 9-15-10]

8.315.4.7 DEFINITIONS: [RESERVED]

8.315.4.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico and to assure low income and individuals with disabilities in New Mexico equal participation in the life of their communities.
[8.315.4.8 NMAC - Rp, 8.315.4.8 NMAC, 9-15-10]

8.315.4.9 PERSONAL CARE OPTION SERVICES: Personal care option (PCO) services have been established by the New Mexico human services department (HSD), medical assistance division (MAD) to assist individuals 21 years of age or older who are eligible for full Medicaid coverage. PCO services are for qualified individuals who satisfy Medicaid program requirements and meet the nursing facility level of care criteria pursuant to Attachment II of 8.312.2-UR, *long term care services utilization review instructions for nursing facilities*. These utilization review instructions can be obtained from MAD. These regulations describe program service options and corresponding eligible providers, eligible populations, covered PCO services, non-covered services, the assessment and utilization review process, transfer process, discharge process and provider reimbursement, when appropriate, state designee(s) or contractors. Personal care services for individuals under the age of 21 are reimbursed by the New Mexico Medicaid program through the early periodic screening, diagnostic and treatment (EPSDT) services described in 8.323.2 NMAC, *EPSDT Personal Care Services*.

A. The goals of PCO services are to avoid institutionalization, maintain or increase the individual's functional level and maintain or increase the individual's independence. The PCO program does not provide services 24 hours a day.

B. An individual may be physically capable of performing activities

of daily living (ADLs) or instrumental activities of daily living (IADLs) but may have limitations in performing these activities because of a cognitive impairment. PCO services may be required because a cognitive impairment prevents an individual from knowing when or how to carry out the task. In such cases, personal care may include cueing along with supervision to ensure that the individual performs the task properly. PCO is a medicaid service, not a medicaid category of assistance, and services under this option are delivered pursuant to an individual plan of care (IPoC). PCO services include a range of services to consumers who are unable to perform some/all ADLs or IADLs because of a disability or a functional limitation(s). PCO services permit an individual to live in his or her residence rather than an institution and allow him or her to maintain or increase independence. These services include, but are not limited to, bathing, dressing, grooming, eating, toileting, shopping, transporting, caring for assistance animals, cognitive assistance and communicating.

C. Individuals eligible for PCO services have the option of choosing the consumer-directed personal care model or the consumer-delegated personal care model. Under both models, the consumer may select a family member (except a spouse), friend, neighbor or other individual as the attendant. The consumer-directed model allows the consumer to act as the employer, and oversee his/her own service care delivery, and requires the consumer to work with a fiscal intermediary agency to process all financial paperwork to medicaid or its designee, coordination of long-term services (CoLTS) managed care organization (MCO). Under the consumer-delegated model, the consumer chooses the agency to perform all employer-related tasks and the agency is responsible for ensuring all service delivery to the consumer.

D. The third-party assessor (TPA) or medicaid's CoLTS MCO, or other medicaid designee is responsible for explaining both models to each individual initially and annually thereafter, assessing each individual applying for PCO services, making a medical level of care (LOC) determination and allocating PCO services based on that individual's needs. Medicaid-eligible individuals or their personal representatives (as defined in 8.300.2.7 NMAC) may contact their TPA to apply for PCO services.

[8.315.4.9 NMAC - Rp, 8.315.4.9 NMAC, 9-15-10]

8.315.4.10 CONSUMER-DIRECTED PERSONAL CARE: HSD has established consumer-directed personal care for PCO services to allow consumers the option of directing their own care.

The consumer or the consumer's personal representative retains responsibility for performing certain employer-related tasks.

A. The consumer's or their personal representative's responsibilities include:

(1) interviewing, hiring, training, terminating and scheduling personal care attendants; this includes, but is not limited to:

(a) verifying that the attendant possesses a current/valid driver's license if there are any driving-related activities listed on the IPoC; a copy of the current driver's license must be maintained in the attendant's personnel file at all times; if no driving-related activities are listed on the IPoC, the PCO agency must keep a copy of a valid state ID in the attendant's personnel file at all times;

(b) verifying that the attendant has proof of current liability automobile insurance if the consumer is to be transported in the attendant's vehicle at any time; a copy of the current proof of insurance must be maintained in the attendant's personnel file at all times; and

(c) identifying training needs; this includes training his or her own attendant(s) or arranging for training for the attendant(s);

(2) developing a list of attendants who can be contacted when an unforeseen event occurs that prevents the consumer's regularly scheduled attendant from providing services; making arrangements with attendants to ensure coverage and notifying the agency when arrangements are changed;

(3) verifying that services have been rendered by completing, dating, signing and submitting documentation to the agency for payroll; a consumer or his/her personal representative is responsible for ensuring the submission of accurate timesheets/logs; payment shall not be issued without appropriate documentation;

(4) notifying the agency, within one working day, of the date of hire or the date of termination of his/her attendant and ensure that all relevant employment paperwork and other applicable paperwork is completed and submitted; this may include, but is not limited to: employment application, verification of employee abuse registry, criminal history screening, doctor's release to work (when applicable), photo identification, proof of eligibility to work in the United States (when applicable), copy of driver's license, and proof of insurance;

(5) notifying and submitting a report of an incident to the agency within 24 hours of such incident, so that the agency can submit an incident report as directed in the standards manual on behalf of the consumer; the consumer or his/her personal representative is responsible for completing the incident report;

(6) ensuring that the elected individual for hire has submitted to a request for a nationwide caregiver criminal history screening, pursuant to 7.1.9 NMAC and in accordance with NMSA 1978, Section 29-17-2 et seq. of the Caregivers Criminal History Screening Act, within 20 calendar days of the individual beginning employment; the consumer must work with the elected agency to complete all paperwork required for submitting the nationwide caregiver criminal history screening; the consumer may conditionally (temporarily) employ the individual contingent upon the receipt of written notice of the nationwide caregiver criminal history screening; a consumer may not continue employing an attendant who does not successfully pass a nationwide criminal history screening;

(7) obtaining from the attendant a signed agreement, in which the attendant agrees that he or she will not provide PCO services while under the influence of drugs or alcohol and, therefore, acknowledges that if he or she is under the influence of drugs or alcohol while providing PCO services he or she will be immediately terminated; the consumer or his personal representative shall not employ an attendant who has previously been terminated from employment for use of drugs or alcohol while providing PCO services;

(8) ensuring that if the attendant is the consumer's legal guardian or attorney-in-fact and is the elected individual for hire, prior approval has been obtained from MAD or its designee; any PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the PCO agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; the consumer is responsible for immediately informing the agency if the consumer has appointed or elects a legal guardian or attorney-in-fact any time during the plan year;

(9) taking the medical assessment form (MAD 075) or successor document once a year to his or her doctor and submitting it to the TPA or alternative medicaid designee for review; this must be done 60 days prior to his or her level of care (LOC) expiring to ensure that there will be no break in services; a consumer who does not submit a timely MAD 075 may experience a break in service.

B. The consumer-directed personal care agency's responsibilities include:

(1) furnishing services to medicaid consumers that comply with all specified medicaid participation requirements outlined in 8.302.1 NMAC, *General Provider*

Policies;

(2) verifying every month that all consumers are eligible for full medicaid coverage prior to furnishing services pursuant to Subsection A of 8.302.1.11 NMAC, *provider responsibilities and requirements*; PCO agencies must document the date and method of eligibility verification; possession of a medicaid card does not guarantee a consumer's financial eligibility because the card itself does not include financial eligibility, dates or other limitations on the consumer's financial eligibility; PCO agencies must notify consumers who are not financially eligible and inform the consumer that he or she cannot authorize employment for his or her attendant(s) until financial eligibility is resumed; PCO agencies cannot bill medicaid or its designee for PCO services rendered to the consumer if he or she is not financially eligible;

(3) maintaining appropriate recordkeeping of services provided and fiscal accountability as required by the provider participation agreement (PPA), also known as the MAD 335;

(4) maintaining records, as required by the PPA, also known as the MAD 335 and as outlined in 8.302.1 NMAC, *General Provider Policies*, that are sufficient to fully disclose the extent and nature of the services furnished to the consumers;

(5) passing random and targeted audits, conducted by the department or its audit agent, that ensure agencies are billing appropriately for services rendered; the department or its designee will seek recoupment of funds from agencies when audits show inappropriate billing or inappropriate documentation for services;

(6) providing either the consumer-directed or the consumer-delegated models, or both models;

(7) furnishing their consumers, upon request, with information regarding each model; if the consumer chooses a model that an agency does not offer, the agency must refer the consumer to an agency that offers that model; the TPA is responsible for explaining each model in detail to consumers on an annual basis;

(8) ensuring that each consumer receiving PCO services has a current, approved IPoC on file;

(9) performing the necessary nationwide caregiver criminal history screening, pursuant to 7.1.9 NMAC and in accordance with NMSA 1978, Section 29-17-2 et seq. of the Caregivers Criminal History Screening Act, on all potential personal care attendants; nationwide caregiver criminal history screenings must be performed by an agency certified to conduct such checks; the agency must work with the consumer to ensure the paperwork is submitted within the first 20 calendar days of hire; consumers under the consumer-directed model may

conditionally (temporarily) employ an attendant until such check has been returned from the certified agency; if the attendant does not successfully pass the nationwide caregiver criminal history screening, the consumer may not continue to employ the attendant;

(10) obtaining from the consumer or his or her personal representative a signed agreement with the attendant in which the attendant agrees that he or she will not provide PCO services while under the influence of drugs or alcohol and acknowledges that if he or she is under the influence of drugs or alcohol while providing PCO services he or she will be immediately terminated; the agency must maintain a copy of the signed agreement in the attendant's personnel file, for the consumer;

(11) obtaining a signed agreement from each consumer accepting responsibility for all aspects of care and training not included under the consumer-directed option; mandatory training in CPR and first aid for all attendants, competency testing, TB testing, hepatitis B immunizations and supervisory visits are not included in the consumer-directed option; a copy of the signed agreement must be maintained in the consumer's file;

(12) verifying that the consumer has elected the consumer's legal guardian or attorney-in-fact as the attendant, the consumer has obtained prior approval from MAD or its designee; any personal care services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; the agency must inform the consumer that if the consumer is appointed or elects a legal guardian or attorney-in-fact any time during the plan year, the consumer must notify the agency immediately and the agency must ensure appropriate documentation is maintained in the consumer's file;

(13) producing reports or documentation as required by the department or its designee;

(14) verifying that consumers will not be receiving services through the following programs while they are receiving PCO services: a medicaid home and community-based services waiver (HCBSW) except for CoLTS (c) waiver services, formerly known as the Disabled and Elderly (D&E) HCBS waiver, medicaid certified nursing facility (NF), intermediate care facility/mentally retarded (ICF/MR), program of all-inclusive care for the elderly (PACE), or aging and long term services

department (ALTSD) adult protective services (APS) attendant care program; an individual residing in a NF or ICF/MR or receiving community-based services is eligible to apply for PCO services; all individuals must meet the financial/medical eligibility requirements to receive PCO services; the TPA, medicaid, or its designee must conduct an assessment or evaluation to determine if the transfer is appropriate and if the PCO program would be able to meet the needs of that individual;

(15) processing all claims for PCO services; payment shall not be issued without appropriate documentation;

(16) making a referral to an appropriate social service or legal agency for assistance, if the agency questions whether the consumer is able to direct his/her own care or is non-compliant with medicaid rules and regulations;

(17) establishing and explaining to the consumer the necessary payroll documentation needed for reimbursement of PCO services, such as time sheets/logs and tax forms;

(18) performing payroll activities for the attendants, such as, but not limited to, income tax and social security withholdings;

(19) informing the consumer and his/her attendant on the responsibilities of the agency;

(20) arranging for state of New Mexico workers' compensation insurance for all attendants;

(21) informing the consumer of available resources for necessary training, if requested by the consumer, in the following areas:

(a) hiring, recruiting, training, and supervision of attendants, including advertising and interviewing techniques; and

(b) evaluating methods of attendant competence and effectiveness;

(22) immediately reporting abuse, neglect or exploitation pursuant to NMSA 1978, Section 27-7-30 and in accordance with the Adult Protective Services Act, by fax, within 24 hours of the incident being reported to the agency; reportable incidents may include but are not limited to abuse, neglect and exploitation as defined below:

(a) abuse is defined as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish to a consumer;

(b) neglect is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness to a consumer;

(c) exploitation is defined as the deliberate misplacement or wrongful, temporary or permanent use of a consumer's belongings or money without the voluntary and informed consent of the consumer;

(23) submitting written incident

reports to medicaid or its designee, on behalf of the consumer, within 24 hours of the incident being reported to the PCO agency; the PCO agency must provide the consumer with an appropriate form for completion; reportable incidents may include, but are not limited to:

(a) death:

(i) unexpected death is defined as any death of an individual caused by an accident, or an unknown or unanticipated cause;

(ii) natural/expected death is defined as any death of an individual caused by a long-term illness, a diagnosed chronic medical condition, or other natural/expected conditions resulting in death;

(b) other reportable incidents:

(i) environmental hazard is defined as an unsafe condition that creates an immediate threat to life or health of a consumer;

(ii) law enforcement intervention is defined as the arrest or detention of a person by a law enforcement agency, involvement of law enforcement in an incident or event, or placement of a person in a correctional facility;

(iii) emergency services refers to admission to a hospital or psychiatric facility or the provision of emergency services that results in medical care that is not anticipated for this consumer and that would not routinely be provided by a primary care provider;

(iv) any reports made to APS;

(24) maintaining a consumer file and an attendant personnel file for the consumer for a minimum of six years; and

(25) informing the consumer, within the 90-day time period prior to the IPoC expiring, a minimum of three times, that his/her annual review is due and he/she must submit medical documentation, including the medical assessment form (MAD 075), to the TPA for level-of-care determination and to ensure that a break in services does not occur; documentation must be in the consumer's file demonstrating the consumer was informed.

C. Eligible consumer-directed agencies: PCO agencies must be certified by medicaid or its designee. An agency listing, by county, is maintained by medicaid or its designee. All certified PCO agencies are required to select a county in which to establish and maintain an official office for conducting of business with published phone number and hours of operation; the PCO agency must provide services in all areas of the county in which the main office is located. The PCO agency may elect to serve any county within 100 miles of the main office. The PCO agency may elect to establish branch office(s) within 100 miles of the main office. The PCO

agency must provide PCO services to all areas of any county(ies) selected to provide services. To be certified by medicaid or its designee, agencies must meet the following conditions and submit a packet (contents (1) - (6) described below) for approval to medicaid's fiscal agent or its designee containing the following:

(1) a completed medicaid provider participation application (MAD 335);

(2) copies of successfully passed nationwide caregiver criminal history screenings on employees who meet the definition of "caregiver" and "care provider" pursuant to 7.1.9 NMAC and in accordance with NMSA 1978, Section 29-17-2 et seq., of the Caregivers Criminal History Screening Act;

(3) a copy of a current/valid business license or evidence of non-profit status; after certification, a copy of the business license/evidence of non-profit status must be kept current and submitted annually;

(4) proof of liability and workers' compensation insurance; after certification, proof of liability and workers' compensation insurance must be submitted annually;

(5) a copy of written policies and procedures that address:

(a) medicaid's PCO provider policies;

(b) personnel policies; and

(c) office requirements that include but are not limited to:

(i) contact information, mailing address, physical location if different from mailing address, and hours of operation for the main office and branch offices if any; selected counties for the area(s) of service;

(ii) meeting all Americans with Disabilities Act (ADA) requirements; and

(iii) if PCO agencies have branch offices, the branch office must have a qualified on-site administrator to handle day-to-day operations who receives direction and supervision from the main/central office;

(d) quality improvement program to ensure adequate and effective operation, including documentation of quarterly activity that address, but are not limited to:

(i) service delivery;

(ii) operational

activities;

(iii) quality

improvement action plan; and

(iv) documentation of

activities;

(e) agency operations to furnish services either as a fiscal intermediary or as an agency with choice;

(6) a copy of a current and valid home health license, issued by the department of health, division of health improvement, licensing and certification (pursuant to

7.28.2 NMAC) may be submitted in lieu of requirements (3) and (5) above; after certification, a copy of a current and valid home health license must be submitted annually along with proof of liability and workers' compensation insurance;

(7) after the packet is received and reviewed by medicaid or its designee, the agency will be contacted to complete the rest of the certification process; this will require the agency to:

(a) attend a mandatory medicaid or its designee's provider training session prior to the delivery of PCO services; and

(b) possess a letter from medicaid or its designee changing provider status from "pending" to "active";

(8) any professional authorized to complete the medical assessment form (MAD 075) cannot also become a PCO agency.

D. The consumer-directed personal care attendant responsibilities and requirements include:

(1) being hired by the consumer;

(2) not being the spouse or minor child of the consumer pursuant to 42 CFR Section 440.167 and the centers for medicare and medicaid services (CMS) state medicaid manual section 4480-D;

(3) providing the consumer with proof of and copies of current/valid driver's license and motor vehicle insurance policy if the attendant will be transporting the consumer;

(4) being 18 years of age or older;

(5) ensuring that if the attendant is the consumer's legal guardian or attorney-in-fact and is the elected individual for hire, prior approval has been obtained from MAD or its designee; any PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file;

(6) successfully passing a nationwide caregiver criminal history screening, pursuant to 7.1.9 NMAC and in accordance with NMSA 1978, Section 29-17-2 et seq., of the Caregivers Criminal History Screening Act, performed by an agency certified to conduct such checks; attendants are required to submit to a criminal history screening within the first 20 calendar days of hire; an attendant may be conditionally (temporarily) hired by the consumer contingent upon the receipt of written notice from the certified agency of the results of the nationwide caregiver criminal history screening; attendants who do not successfully pass a nationwide

criminal history screening are not eligible for continued PCO employment; and

(7) ensuring while employed as an attendant he/she will not be under the influence of drugs or alcohol while performing PCO services; the attendant must complete and sign an agreement with the consumer or the consumer's personal representative in which the attendant acknowledges that if he/she is under the influence of drugs or alcohol while providing PCO services he will be immediately terminated; attendants who have been terminated for use of drugs or alcohol while providing PCO services are not eligible for further PCO services.

[8.315.4.10 NMAC - Rp, 8.315.4.10 NMAC, 9-15-10]

8.315.4.11 CONSUMER - DELEGATED PERSONAL CARE:

HSD has established consumer delegated PCO services, to allow consumers the option of selecting an agency to provide services and perform employer related tasks. The agency contracts with medicaid or its designee to perform these tasks. This section defines eligible agencies and the responsibilities of the consumer or the personal representative, attendants and agencies under the delegated model.

A The consumer's or personal representative's responsibilities include:

(1) verifying that services have been rendered by signing accurate time sheets/logs being submitted to the agency for payroll;

(2) taking the medical assessment form (MAD 075) once a year to his/her doctor and submitting it to the TPA or medicaid's alternative designee for review; this must be done as required prior to his/her IPoC LOC expiring to ensure that there will be no break in services; a consumer who does not submit a timely MAD 075 to the TPA or alternative medicaid designee could experience a break in services; in addition, the consumer must allow the alternative medicaid designee to complete assessment visits and other contacts necessary to avoid a break in services; and

(3) complying with all medicaid and program requirements; failure to comply with requirements could result in discontinuation of PCO services.

B. The consumer-delegated agency responsibilities include, but are not limited to the following:

(1) employing, terminating and scheduling qualified attendants;

(2) conducting or arranging for training of all attendants for a minimum of 12 hours per year; initial training must be completed within the first three months of employment and must encompass:

- (a) an overview of PCO services;
- (b) living with a disability or

chronic illness in the community;

(c) cardiopulmonary resuscitation (CPR) and first aid training; and

(d) a written competency test with a minimum passing score of 80 percent or better; expenses for all trainings are to be incurred by the agency; other trainings may take place throughout the year as determined by the agency; the agency must maintain in the attendant's file copies of all trainings, certifications, and specialty training the attendant completed; CPR and first aid certifications must be kept current;

(i) documentation of all training must include at least the following information: 1) name of individual taking training; 2) title; 3) source of instruction; 4) number of hours of instruction; and 5) date instruction was given;

(ii) documentation of competency testing must include at least the following: 1) name of individual being evaluated for competency; 2) date and method used to determine competency; and 3) copy of the attendant's graded and passed competency test in the attendant's personnel file; special accommodations must be made for attendants who are not able to read or write or who speak/read/write a language other than English;

(3) developing and maintaining a procedure to ensure trained and qualified attendants are available as backup for regularly scheduled attendants and emergency situations; complete instructions regarding the consumer's care and a list of attendant duties and responsibilities must be available in each consumer's home;

(4) complete instructions regarding the consumer's care and a list of attendant duties and responsibilities must be available in each consumer's residence;

(5) informing the attendant of the risks of hepatitis B infection per current department of health recommendation and offering hepatitis B immunization at the time of employment at no cost to the attendant; attendants are not considered to be at risk for hepatitis B since only non-medical services are performed; therefore, attendants may refuse the vaccine; documentation of the immunization, prior immunization, or refusal of immunization by the attendant must be in the attendant's personnel file;

(6) obtaining a copy of the attendant's current/valid driver's license or other current/valid photo id, if the consumer is to be transported by the attendant, obtaining a copy of the attendant's current/valid driver's license and current motor vehicle insurance policy; maintaining copies of these documents in the attendant's personnel file at all times;

(7) complying with federal and state regulations and labor laws;

(8) preparing all documentation necessary for payroll;

(9) producing reports and documentation as required by medicaid or its designee;

(10) complying with all specified medicaid participation requirements outlined in 8.302.1 NMAC, *General Provider Policies*;

(11) verifying every month that all consumers are eligible for full medicaid coverage prior to furnishing services pursuant to Subsection A of 8.302.1.11 NMAC, *provider responsibilities and requirements*; agencies must document the date and method of eligibility verification; possession of a medicaid card does not guarantee a consumer's financial eligibility because the card itself does not include financial eligibility, dates or other limitations on the consumer's financial eligibility; agencies that provide PCO services to consumers who are not financially eligible cannot bill medicaid or the consumer for PCO services rendered to the consumer;

(12) maintaining records that are sufficient to fully disclose the extent and nature of the services furnished to the consumers as outlined in 8.302.1 NMAC, *General Provider Policies*; the PCO agency may elect to keep a log/check-off list, in addition to the time sheet, in the consumer's home, describing services provided on a daily basis; if a log/check-off list is maintained, the log must be compared with the weekly time sheet and copies of both the time sheet and the log/check-off list must be kept in the consumer's file;

(13) passing random and targeted audits, conducted by the department or its audit agent, that ensure agencies are billing appropriately for services rendered; medicaid or its alternative designee will seek recoupment of funds from agencies when audits show erroneous billing or insufficient documentation for services;

(14) providing either the consumer-directed or the consumer-delegated models, or both models;

(15) maintaining appropriate record keeping of services provided and fiscal accountability as required by the MAD 335;

(16) ensuring that each consumer served has a current, approved IPoC on file;

(17) performing the necessary nationwide caregiver criminal history screening, pursuant to 7.1.9 NMAC and in accordance with NMSA 1978, Section 29-17-2 et seq., of the Caregivers Criminal History Screening Act; the agency must ensure that the individual has submitted to a request for a nationwide criminal history screening within 20-calendar days of the individual beginning employment; nationwide caregiver criminal history screening must be performed by an agency certified to conduct such checks; agencies under the consumer-delegated model may conditionally (temporarily)

employ an attendant until the national criminal history screening has been returned from the certified agency; if the attendant does not successfully pass a nationwide criminal history screening, the agency may not continue employment;

(18) obtaining from the attendant a signed agreement, in which the attendant agrees that he will not provide PCO services while under the influence of drugs or alcohol and acknowledges that if he is under the influence of drugs alcohol while providing PCO services he will be immediately terminated; the agency shall not employ an attendant who has previously been terminated from employment for use of drugs or alcohol while providing PCO services;

(19) ensuring that if the consumer has elected the consumer's legal guardian or attorney-in-fact as his/her attendant, the agency has obtained prior approval from MAD or its designee; all PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified in writing by the agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; the agency must inform the consumer that if the consumer is appointed or elects a legal guardian or attorney-in-fact any time during the plan year, they must notify the agency immediately;

(20) verifying that consumers will not be receiving services through the following programs, while they are receiving PCO services: all HCBS waivers except CoLTS (c) HCBS waiver, medicaid certified nursing facility (NF), intermediate care facility/mentally retarded (ICF/MR), PACE, or ALTSD APS attendant care program; an individual residing in a NF or ICF/MR or receiving community-based services is eligible to apply for PCO services to facilitate NF discharge; all individuals must meet the financial/medical eligibility requirements under PCO to receive PCO services; the TPA, medicaid, or its designee must conduct an assessment or evaluation to determine if the transfer is appropriate and PCO services would be able to meet the needs of that individual;

(21) processing all claims for PCO services; payment shall not be issued without appropriate documentation;

(22) making a referral to an appropriate social service agency legal agency(s) or medicaid designee for assistance, if the agency questions whether the consumer is able to direct his/her own care;

(23) establishing and explaining to all their consumers and all attendants

the necessary documentation needed for reimbursement of PCO services;

(24) performing payroll activities for the attendants;

(25) informing the consumer and his/her attendant on the responsibilities of the agency;

(26) providing state of New Mexico workers' compensation insurance for all attendants;

(27) immediately reporting abuse, neglect or exploitation pursuant to NMSA 1978, Section 27-7-30 and in accord with the Adult Protective Services Act, by fax, within 24 hours of the incident being reported to the agency; reportable incidents may include, but are not limited to abuse, neglect and exploitation as defined below:

(a) abuse is defined as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish to a consumer;

(b) neglect is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness to a consumer;

(c) exploitation is defined as the deliberate misplacement or wrongful, temporary or permanent use of a consumer's belongings or money without the voluntary and informed consent of the consumer;

(28) submitting written incident reports to medicaid or its designee, on behalf of the consumer, within 24 hours of the incident being reported to the PCO agency; the PCO agency must provide the consumer with an appropriate form for completion; reportable incidents may include, but are not limited to:

(a) death:

(i) unexpected death is defined as any death of an individual caused by an accident, or an unknown or unanticipated cause;

(ii) natural/expected death is defined as any death of an individual caused by a long-term illness, a diagnosed chronic medical condition, or other natural/expected conditions resulting in death;

(b) other reportable incidents:

(i) environmental hazard is defined as an unsafe condition that creates an immediate threat to life or health of a consumer;

(ii) law enforcement intervention is defined as the arrest or detention of a person by a law enforcement agency, involvement of law enforcement in an incident or event, or placement of a person in a correctional facility;

(iii) emergency services refers to admission to a hospital or psychiatric facility or the provision of emergency services that results in medical care that is not anticipated for this consumer and that would not routinely be provided by

a primary care provider; and

(iv) any report made to APS;

(29) conducting face-to-face supervisory visits in the consumer's residence, once a month at a minimum (12 per service plan year); each visit must be sufficiently documented in the consumer's file;

(30) maintaining an accessible and responsive 24-hour communication system for consumers to use in emergency situations to contact the agency;

(31) following current recommendations of the state department of health for preventing the transmission of tuberculosis (TB) for attendants upon initial employment and as needed; and

(32) verifying initially prior to employment, and annually thereafter, that attendants are not on the employee abuse registry pursuant to 8.11.6 NMAC and in accord with Employee Abuse Registry Act.

C. Eligible consumer-delegated agencies: PCO agencies must be certified by medicaid or its designee. A PCO agency listing, by county, is maintained by medicaid or its designee. All certified PCO agencies are required to select a county in which to establish and maintain an official office for conduct of business with published phone number and hours of operation; the PCO agency must provide services in all areas of the county in which the main office is located. The PCO agency may elect to serve any county within 100 miles of the main office. The PCO agency may elect to establish branch office(s) within 100 miles of the main office. The PCO agency must provide PCO services to all areas of any county(ies) selected to provide services. To be certified by medicaid or its designee, agencies must meet the following conditions and submit a packet (contents 1-6 described below) for approval to medicaid's fiscal agent or its designee containing the following:

(1) a completed medicaid provider participation application (MAD 335);

(2) copies of successfully passed nationwide caregivers criminal history screenings on employees who meet the definition of "caregiver" and "care provider" pursuant to 7.1.9 NMAC and in accordance with NMSA 1978, Section 29-17-2 et seq., of the Caregivers Criminal History Screening Act;

(3) a copy of a current/valid business license or evidence of non-profit status; after certification, a copy of the business license/evidence of non-profit status must be kept current and submitted annually;

(4) proof of liability and workers' compensation insurance; after certification, proof of liability and workers' compensation insurance must be submitted annually to

medicaid or its designee;

(5) a copy of written policies and procedures that address:

(a) medicaid's PCO provider policies;

(b) personnel policies; and

(c) office requirements that include but are not limited to:

(i) contact information, mailing address, physical location if different from mailing address, and hours of operation for the main office and branch office(s), if any and selected county(ies) for the PCO agency's service area(s);

(ii) meeting all ADA requirements;

(iii) if PCO agencies have branch offices, the branch office must have a qualified on-site administrator to handle day-to-day operations who receives direction and supervision from the main/central office;

(d) quality improvement program to ensure adequate and effective operation, including documentation of quarterly activity that address, but are not limited to:

(i) service delivery;

(ii) operational activities;

(iii) quality improvement action plan; and

(iv) documentation of activities.

(6) a copy of the agency's written competency test for approval to MAD or its designee; an agency may elect to purchase a competency test or it may develop its own test; the test must address at least the following:

(a) communication skills;

(b) patient/client rights, including respect for cultural diversity;

(c) recording or information for patient/client records;

(d) nutrition and meal preparation;

(e) housekeeping skills;

(f) care of the ill and disabled, including the special needs populations;

(g) emergency response (including CPR and first aid);

(h) universal precautions and basic infection control;

(i) home safety including oxygen and fire safety;

(j) incident management and reporting; and

(k) confidentiality;

(7) a copy of a current and valid home health license, issued by the department of health, division of health improvement, licensing and certification (pursuant to 7.NMAC 28.2) may be submitted in lieu of requirements (3), (5) and (6) of this section; after certification, a copy of a current and valid home health license must be submitted to medicaid or its designee annually along with proof of liability and workers'

compensation insurance;

(8) after medicaid or its designee has received and reviewed the packet, the PCO agency will be contacted to complete the rest of the certification process; this will require the PCO agency to:

(a) attend a mandatory medicaid or its designee's provider training session prior to the delivery of PCO services; and

(b) possess a letter from medicaid or its designee changing provider status from "pending" to "active";

(9) any professional authorized to complete the medical assessment form (MAD 075) under the PCO program cannot also become a personal care agency.

D. The consumer-delegated personal care attendant responsibilities and requirements include:

(1) being hired by the PCO agency;

(2) not being the spouse or minor child of the consumer pursuant to 42 CFR Section 440.167 and CMS state medicaid manual section 4480-D;

(3) providing the PCO agency with proof of and copies of current/valid driver's license or current/valid photo ID and if the attendant will be transporting the consumer, current/valid driver's license and current motor vehicle insurance policy;

(4) being 18 years of age or older;

(5) ensuring that if the attendant is the consumer's legal guardian or attorney-in-fact and is the elected individual for hire, prior approval has been obtained from MAD or its designee; any personal care services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the PCO agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file and submit appropriate documentation of time worked and services performed ensuring that he/she has signed his/her time sheet/log/check-off list verifying the services provided to the consumer;

(6) successfully passing a nationwide caregiver criminal history screening, pursuant to 7.1.9 NMAC and in accordance with NMSA 1978, Section 29-17-2 et seq., of the Caregivers Criminal History Screening Act, performed by an agency certified to conduct such checks; attendants are required to submit to a criminal history screening within the first 20 days of hire; an attendant may be conditionally hired by the agency contingent upon the receipt of written notice from the certified agency of the results of the nationwide criminal history screening; attendants who do not successfully pass a nationwide criminal history screening are not eligible for further

PCO service employment;

(7) ensuring while employed as an attendant he will not be under the influence of drugs or alcohol while performing PCO services; the attendant must complete and sign an agreement with the agency in which the attendant acknowledges that if he is under the influence of drugs or alcohol while providing PCO services he will be immediately terminated;

(8) successfully passing a written personal care attendant competency test with 80 percent or better within the first three months of employment;

(9) completing 12 hours of training yearly; the attendant must obtain certification of CPR and first aid training within the first three months of employment, and the attendant must maintain certification throughout the entire duration of providing PCO services; additional training will be based on the consumer's needs as listed in the IPoC; attendants are not required to be reimbursed for training time; and

(10) following current recommendations of the centers for disease control and prevention (CDC) for preventing the transmission of tuberculosis (TB).

[8.315.4.11 NMAC - Rp, 8.315.4.11 NMAC, 9-15-10]

8.315.4.12 ELIGIBLE POPULATION: Consumers receiving personal care services must meet all of the following criteria:

A. be on a full benefit medicaid category and not be receiving medicaid home and community-based waiver (HCBW) services, (except for CoLTS (c) waiver services), medicaid nursing facility (NF), intermediate care facility/mentally retarded (ICF/MR), PACE, or ALTSD APS attendant care program, at the time PCO services are furnished; an individual residing in a NF or ICF/MR or receiving community-based services is eligible to apply for PCO services to facilitate NF discharge; all individuals must meet the medicaid financial/medical eligibility requirements to receive PCO services; the TPA, medicaid or its alternative designee must conduct an assessment or evaluation to determine if the transfer to PCO is appropriate and if the PCO program would be able to meet the needs of that individual;

B. be age 21 or older; be determined to have met the LOC of care required in a nursing facility by the TPA or medicaid's designee;

C. have an approved IPoC, developed by the consumer or personal representative, in conjunction with PCO agency or medicaid's designee; and

D. comply with all medicaid and program policies and procedures.

[8.315.4.12 NMAC - Rp, 8.315.4.12 NMAC,

9-15-10]

8.315.4.13 C O V E R A G E

CRITERIA: PCO services are defined as those tasks necessary to maintain a consumer's physical, social or cognitive functional ability to avoid institutionalization, maintain or increase the consumer's functional level, and maintain or increase the consumer's independence. PCO services do not provide services 24 hours per day. PCO services are allocated for a reasonable accommodation of tasks, but does not provide 24-hours per day services. Average time for an ADL or IADL will be based on industry average allocation of time for an individual at the same LOC and with similar conditions or primary diagnosis. Services are covered under the following criteria.

A. PCO services are usually furnished in the consumer's place of residence, except as otherwise indicated, and during the hours specified in the consumer's IPOC. If a consumer is a resident in an assisted living facility, shelter home, or room and board facility, the TPA or alternative medicaid designee, will perform an assessment and ensure that the PCO services do not duplicate the services that the facility is providing. The facility must be able to prove that ADLs are not part of the services the resident is paying for and provide a copy of the service contact or admission agreement signed by the consumer, before the need for PCO services can be assessed. Regulations for assisted living facilities may be found at 7.8.2 NMAC, *Requirements for Adult Residential Care Facilities*. Services may be furnished outside the residence only when appropriate and necessary and when not available through other existing benefits and programs, such as home health or other state plan or long-term care services.

B. PCO services are not furnished to an individual who is an inpatient or resident of a hospital, nursing facility, ICF/MR, mental health facility, correctional facility, other institutional settings or an assisted living facility, shelter home or room and board facility that provides assistance with ADLs as determined in Subsection A of 8.315.4.13 NMAC.

C. PCO services are furnished as approved and limited by PCO service regulations and policy to consumers who are unable to perform some/all ADLs or IADLs because of a disability or a functional limitation(s).

D. Consumers who share living space will be assessed and allocated services pursuant to Subsection L of 8.315.4.14 NMAC to avoid unnecessary duplication of services. If a consumer's living situation changes:

(1) such that there is no longer a shared living space with another consumer,

he or she will be re-assessed for services that were allocated between multiple consumers in a shared household; or

(2) such that he or she begins sharing a living space with another consumer(s), all consumers in the new shared living space will be re-assessed to determine the allocation of services shared by all consumers residing in the household.

E. Consumers, who do not live alone, and share a residence with other family members not receiving services under the program will be assessed for, among other factors, the natural supports in the household, to determine if they are eligible to receive services under the specified categories under 8.315.4.14 NMAC.

F. All consumers, regardless of living arrangements, will be assessed for natural supports. PCO services are not intended to replace natural supports. [8.315.4.13 NMAC - Rp, 8.315.4.13 NMAC, 9-15-10]

8.315.4.14 C O V E R E D

SERVICES: PCO services are provided as described in Subsections A through K. Consumers will be assessed both individually and jointly, as appropriate (Subsection L), in each of the following listed service categories. Consumers who are not assessed as having a need in that service category will not be allocated services in that category.

A. **Individualized bowel and bladder services:** These services do not have to be performed by a nurse pursuant to NMSA 1978, Section 61-3-29(J) of the Nursing Practice Act. Bowel and bladder services may be "performed by a personal care provider in a non-institutional setting of bowel and bladder assistance for an individual whom a health care provider certifies is stable, not currently in need of medical care and able to communicate and assess his own needs." Services include:

(1) adult disposable brief changes used for incontinence episodes;

(2) bladder care - cueing consumer to empty bladder at timed intervals to prevent incontinence; elimination; catheter care, including the changing and cleaning of catheter bag; an individual requiring assistance with bladder care must be determined medically stable by his/her physician, and able to communicate his/her bladder care; a consumer who does not have a statement by his/her physician determining he/she is medically stable and able to communicate his/her bladder care needs is not eligible for hours in this category; insertion/extraction of a catheter is not a covered service;

(3) bowel care - evacuation and ostomy care, changing and cleaning of bag and ostomy site skin care; the requirements and limitations from (2) bladder care, regarding medically determined stability and

ability to communicate, apply here; digital stimulation is not a covered service;

(4) perineal care - cleansing of the perineal area and changing of sanitary napkins; and

(5) changing of wet or soiled clothing after incontinence episode or assisting with adjustment of clothing before and after toileting.

B. **Meal preparation and assistance:** At the direction of the consumer or his/her personal representative, prepare meal(s) (includes cutting ingredients to be cooked, cooking of meals, and placing/presenting meal in front of consumer to eat, and cutting up food into bite-sized portions) for the consumer or assist the consumer pursuant to the IPOC. This does not include assistance with eating. This includes provision of snacks and fluids and may include cueing consumer to prepare meals. Services requiring assistance with eating are covered under eating in Subsection G of 8.315.4.14 NMAC below.

C. **Support services:** Provide additional assistance to the consumer in order to promote his/her independence and enhance his/her ability to live in the community and remain in a clean and safe environment, particularly a consumer living alone who may not have adequate support. These services include:

(1) shopping or completing errands for the consumer, with or without the consumer;

(2) transporting and assisting with transfers in/out vehicles to non-medically necessary events; if the consumer's vehicle is used, the consumer must have a copy of his/her motor vehicle insurance policy; PCO agencies are not required to provide escort or transportation services; if the consumer requires transportation and the PCO agency cannot meet this need, the PCO agency must refer the consumer to personal care agencies that can meet this need; the TPA or medicaid designee will assess the consumer's formal and informal support systems and determine the availability of other transportation or other agencies such as a medicaid enrolled transportation provider for transportation to medical services; the TPA or medicaid designee will approve transportation services primarily for non-medical transportation, unless the consumer resides in a rural area and does not have access to a medicaid-enrolled transportation provider for medical-related transports; completes the transfer process to another PCO agency as outlined in 8.315.4.19 NMAC; medically necessary transportation services are not covered as personal care option services.

(3) assistance with feeding and hydrating or cueing consumer to feed and hydrating an assistance animal; a consumer must have an assistance animal and be able to verify the animal is an assistance animal

and not a pet; feeding and hydrating of pets is not an approved service.

D. Hygiene/grooming: The IPoC may include the following tasks to be performed by the attendant. These services include:

(1) bathing - giving a sponge bath/bed bath/tub bath/shower, including transfer in/out, turning bath/shower water off/on, and setting temperature of bath/shower water; bringing in water from outside or heating water for consumer;

(2) dressing - putting on, fastening, removing clothing, and shoes;

(3) grooming - combing or brushing hair, applying make-up, trimming beard or mustache, braiding hair, shaving under arms, legs or face;

(4) oral care with intact swallowing reflex - brushing teeth, cleaning dentures/partials (includes use of floss, swabs, or mouthwash);

(5) nail care - cleaning or filing to trim or do cuticle care except for consumers with a medical condition such as venous insufficiency, diabetes, peripheral neuropathy, or consumers that are documented as medically at risk, which then would be considered a skilled task and not a covered PCO service;

(6) applying lotion to intact skin for routine skin care; and

(7) cueing to ensure appropriate bathing, dressing, grooming, oral care, nail care and application of lotion for routine skin care.

E. Minor maintenance of assistive device(s): Battery replacement and minor, routine wheelchair and durable medical equipment (DME) maintenance or cleaning. A consumer must have an assistive device(s) that requires regular cleaning or maintenance that the consumer cannot clean and maintain to be eligible to receive services under this category.

F. Mobility assistance: Assistance includes:

(1) ambulation - moving around inside or outside the residence or consumer's living area with or without assistive device(s) such as walkers, canes and wheelchairs;

(2) transferring - moving to/from one location/position to another with or without assistive device(s) including in and out of vehicles;

(3) toileting - transferring on/off toilet; and

(4) repositioning - turning or moving an individual to another position who is bed bound to prevent skin breakdown.

G. Eating: Feed or assist feeding consumer a prepared meal with a utensil or with specialized utensils. Eating is the ability to physically put food into mouth, chew and swallow food safely. The attendant shall assist the consumer as determined by the IPoC. This does not

include preparation of food/meals. Eating assistance may include cueing a consumer to ensure appropriate nutritional intake or monitor for choking. Services requiring preparation of food/meals is covered under meal preparation and assistance in Subsection B of 8.315.4.14 NMAC. If the consumer has special needs in this area, the attendant should receive specific instruction to meet that need. Gastrostomy feeding and tube feeding are not covered services.

H. Assisting with self-administered medication: This service is limited to *prompting and reminding only*. The ability to self-administer is defined as the ability to identify and communicate medication name, dosage, frequency and reason for the medication. A consumer who does not meet this definition of ability to self-administer is not eligible for this category. A consumer who needs assistance with taking self-administered medication as a reasonable accommodation under the ADA due to a disability may receive assistance as per the IPoC, if the consumer can self-administer medications as defined above. This assistance does not include administration of injections, which is a skilled/nursing task. Assistance includes:

(1) getting a glass of water or juice as requested by the consumer for the purpose of taking medications;

(2) at the direction of the consumer handing the consumer his/her daily medication box or medication bottle, or cutting/grinding pills;

(3) at the direction of the consumer, helping a consumer with placement of oxygen tubes for consumers who can communicate to the caregiver the dosage/route of oxygen; and

(4) filling of medication boxes is not a covered service.

I. Skin care: The consumer must have a skin disorder documented by a physician, physician assistant, nurse practitioner or a clinical nurse specialist to be eligible to receive services in this category. This service is limited to the attendant's application of over-the counter or prescription skin cream for a diagnosed chronic skin condition that is not related to burns, pressure sores or ulceration of skin as a reasonable accommodation under the ADA. A consumer must meet the definition of "ability to self-administer" defined in Subsection H of this section, to be eligible to receive time for application of a prescription medication as a reasonable accommodation under the ADA. Wound care/open sores and debriding/dressing open wounds are not covered services.

J. Cognitive assistance: Cognitive assistance is intended to keep the consumer on task, and increase or maintain the consumer's safety, for consumer safety, and to increase or maintain independence, and

quality of life (e.g., prevent from wandering). This service is primarily for a consumer with a brain injury, alzheimer's disease, mental illnesses, dementia, developmental delay or a consumer who has suffered a stroke/cerebrovascular accident (CVA); a consumer with medical documentation of moderate to severe cognitive deficits; a consumer who does not have one of these diagnoses is not eligible to receive services in this category; those individuals who require prompting and cueing to complete the ADLs and IADLs are allotted time within a specific service; supervision and companionship are not covered services.

K. Household services: This service assists the consumer in performing interior household activities as needed. Such activities are limited to the maintenance of the consumer's personal living area (i.e., kitchen, living room, bedroom, and bathroom). To maintain a clean and safe environment for the consumer, particularly a consumer living alone who may not have adequate support in his/her residence. Services include:

(1) sweeping, mopping or vacuuming the consumer's carpets, hardwood floors, tile or linoleum;

(2) dusting the consumer's furniture;

(3) changing the consumer's linens;

(4) washing the consumer's laundry;

(5) cleaning the consumer's bathroom (tub or shower area, sink, and toilet);

(6) cleaning the consumer's kitchen and dining area (i.e., washing the consumer's dishes, putting the consumer's dishes away; cleaning counter tops, cleaning the area where the consumer eats, etc.); household services do not include cleaning up after other household members including dependents or pets.

L. Shared households/living space: Two or more consumers living in the same residence, (including assisted living facilities, shelter homes, and other similar living arrangements), who are receiving PCO services will be assessed both individually and jointly to determine services that are shared. Consumers sharing living space will be assessed as follows for services identified in Subsections B, C and K of 8.315.4.14 NMAC:

(1) individually to determine if the consumer requires unique assistance with the service; and

(2) jointly with other household members to determine shared living space and common needs of the household; services will be allocated based on common needs, not based on individual needs, unless it has been assessed by the TPA or medicaid alternative designee, there is an individual

need for provision of the service(s); (common needs may include meals that can be prepared for several individuals; shopping/errands that can be done at the same time; laundry that can be done for more than one individual at the same time; dusting and vacuuming of shared living spaces), PCO services allocated under these categories are based on the assessment of combined needs in the household without replacing natural and unpaid supports identified during the assessment.

[8.315.4.14 NMAC - Rp, 8.315.4.14 NMAC, 9-15-10]

8.315.4.15 NON - COVERED SERVICES: The following services are not covered as New Mexico medicaid PCO services:

A. services that require professional or technical training;

B. services that, due to the consumer's specialized medical needs, must be provided by a person with professional or technical training to avoid placing the consumer at risk;

C. services that are duplicative of other PCO services, such as billing for the individual provision of services to consumers who share living space and are allocated service hours on a proportional basis or other resources, such as hospice, assisted living, shelter home, or room and board facility;

D. services not approved in the consumer's approved IPOC;

E. childcare or personal care for other household members;

F. retroactive services;

G. services provided to a consumer who does not have medicaid eligibility;

H. assistance with finances and budgeting;

I. scheduling of appointment for a consumer; and

J. range of motion exercises.

[8.315.4.15 NMAC - Rp, 8.315.4.15 NMAC, 9-15-10]

8.315.4.16 THIRD - PARTY ASSESSOR (TPA): The TPA is responsible for making LOC determinations based on criteria developed by medicaid according to national standards (see Attachment II of 8.312.2-UR, *long term care services utilization review instructions for nursing facilities*, available upon request from medicaid). The TPA is responsible for making utilization reviews for all PCO fee-for-service consumers and medicaid's CoLTS MCO is responsible for making utilization reviews for all PCO managed care consumers. The TPA (for fee-for-service) (for FFS PCO) or medicaid's CoLTS MCO (for managed care) is responsible for issuing

prior authorizations. Annually, the TPA or other medicaid designee will provide a detailed explanation of the consumer-directed and consumer-delegated models of PCO services delivery. The TPA is not authorized to contract with any medicaid approved PCO agency to carry out TPA responsibilities. The TPA's responsibilities are described below.

A. Level of care (LOC):

To be eligible for PCO services, a consumer must meet the level of care required in a nursing facility; the CoLTS MCO, the TPA, or other medicaid designee, must contact the consumer within a minimum of 90 days, prior to the expiration of the approved LOC. The TPA or other medicaid designee must begin the LOC determination process for PCO services, to ensure the consumer does not experience a break in PCO services, see Attachment II of 8.312.2-UR, *long term care services utilization review instructions for nursing facilities*. A LOC packet is developed and submitted to the TPA, or other medicaid designee and approved by the TPA, or other medicaid designee.

(1) The LOC packet must include:

(a) a current (within the last six months) approved medical assessment form signed by a physician, physician assistant, nurse practitioner or, clinical nurse specialist;

(b) any other information or medical justification documenting the consumer's functional abilities; and

(c) an assessment of the consumers functional needs, performed by either the TPA or CoLTS MCO, or other medicaid designee.

(2) The TPA will use the LOC packet to:

(a) make all LOC determinations for all consumers requesting PCO services;

(b) approve the consumer's LOC for a maximum of one year (12 consecutive months); and a new LOC determination must be made annually to ensure the consumer continues to meet medical eligibility criteria for PCO services; each LOC determination must be based on the consumer's current medical condition and need of service(s) and may not be based on prior year LOC determinations; and

(c) contact consumer within a minimum of 90 days, prior to the expiration of the approved LOC, to begin the re-assessment process for PCO services.

B. In-home assessment:

The TPA or medicaid's CoLTS MCO, or other medicaid designee must:

(1) perform an assessment of the consumer's functional needs, in the consumer's place of residence;

(2) explain both service delivery models, consumer-directed and consumer-delegated to the consumer or his/her personal representative and provide the consumer or his/her personal representative

with informational material, allowing the consumer to make the best educated decision possible regarding which model he/she will elect. A copy of the consumer's or personal representative's responsibilities in Subsection A of 8.315.4.10 NMAC or Subsection A of 8.315.4.11 NMAC must be provided to each consumer or personal representative, at every annual assessment, based on the service delivery model he/she has elected; and

(3) jointly assess consumers that share living space for meal preparation, assistance services, support services and household services and allocate time based on the assessment of common needs of the household; documentation must be submitted and the individual assessment must support the medical or individual need for provision of these services; the TPA, or medicaid's CoLTS MCO, or other medicaid designee must take into consideration natural and unpaid supports for a consumer who resides with other family members and determine if he/she is eligible to receive services pursuant to identified categories under 8.315.4.14 NMAC.

C. A PCO agency that does not agree with the LOC determination made by the TPA or MAD's designee:

(1) may request a re-review or reconsideration pursuant to medicaid oversight policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]; and

(2) is responsible for submitting the additional medical justification to the TPA or MAD's designee and adhering to the timelines as outlined in medicaid oversight policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

D. A consumer that does not agree with the LOC determination made by the TPA, CoLTS MCO or other medicaid designee may request a fair hearing pursuant to 8.352.2 NMAC, *Recipient Hearings*. Consumers enrolled in a CoLTS MCO who disagree with authorized number of hours may also utilize the CoLTS MCO grievance and appeal process.

E. Agencies that have identified a consumer with a declining health condition or whose needs have changed and believe the consumer is in need of more or fewer services should notify the TPA or MAD's designee in writing for an additional assessment or LOC determination.

F. Agencies who are providing PCO services to a consumer who becomes eligible for a HCBS waiver (except for the CoLTS (c) waiver) must coordinate with the consumer's service coordinator to ensure that the consumer does not experience a break in service or that services do not overlap; coordination must include the effective date PCO services are to stop and HCBS waiver services are to begin.

[8.315.4.16 NMAC - Rp, 8.315.4.16 NMAC, 9-15-10]

8.315.4.17 INDIVIDUAL PLAN OF CARE (IPoC):

An IPoC is developed and personal care services are identified, in conjunction with the independent in-home assessment (MAD 075), *The PCO Assessment Form*) or other approved assessment form. The PCO agency develops an IPoC using an authorization, task list, and natural support information provided by the TPA, CoLTS MCO or other medicaid designee. The finalized IPoC contains approved daily tasks, for a period of seven days at a time, to be performed by the attendant based on the consumer's daily needs. Only those services identified as IADLs may be moved to another day within a seven-day IPoC. Any tasks not performed by the attendant for any reason cannot be banked or saved for a later date.

A. The TPA, CoLTS MCO or other medicaid designee will:

(1) provide authorized hours, task and natural support information for the PCO agency to develop an IPoC in conjunction with the consumer or his/her personal representative; participation in the development of an IPoC is not separately reimbursable for consumers or his/her personal representative;

(2) jointly assess consumers that share living space for meal preparation, assistance services, support services and household services and allocate appropriate proportions to each consumer according to the common needs of the household and the number of consumers sharing the services.

B. The PCO agency must:

(1) develop the IPoC and include the following:

(a) a specific description of the attendant's responsibilities, including tasks to be performed by the attendant and any special instructions related to maintaining the health and safety of the consumer; and

(b) a prior authorization (PA) number issued to the agency of the consumer's choice for on-going billing purposes; a healthcare common procedure coding system (HCPCS) code must be tied to the PA based on the consumer's elected model of service delivery;

(2) ensure the consumer has participated in the development of the plan and that the IPoC is reviewed and signed by the consumer or the consumer's personal representative; a signature on the IPoC indicates that the consumer or the consumer's personal representative understands what services have been identified and that services will be provided on a weekly basis for a maximum of one year; if a consumer is unable to sign the IPoC and the consumer does not have a personal representative, a thumbprint or personal mark (i.e., and

"X") will suffice; if signed by a personal representative, the medicaid designee and the agency must have documentation in the consumer's file verifying the individual is the consumer's personal representative;

(3) maintain an approved IPoC for PCO services for a maximum of one year (12 consecutive months), a new IPoC must be developed at least annually, to ensure the consumer's current needs are being met; a consumer's previous year IPoC is not used or considered in developing a new IPoC and allocating services; a new IPoC must be developed independently at least every year based on the consumer's current medical condition and need of services; the tasks and number of hours in the IPoC must match the authorized tasks and number of hours on the authorization;

(4) provide the consumer with a copy of their approved IPoC;

(5) contact consumer within a minimum of 90 days, prior to the expiration of the approved IPoC, to begin the re-assessment process for PCO services, to ensure the consumer does not experience a break in PCO services;

(6) obtain an approved task list/PA from the TPA or medicaid CoLTS MCO designee;

(7) refer consumers to the TPA, or medicaid's CoLTS MCO, or other medicaid designee who do not ensure the consumer has participated in the development of the plan and that the IPoC indicates that the consumer or the consumer's personal representative a signature on the IPoC indicates that the consumer or the consumer's personal representative understands what services have been identified and that services will be provided on a weekly basis for a maximum of one year; if the consumer is unable to sign the IPoC and the consumer does not have a personal representative, a thumbprint or personal mark (i.e., an "X") will suffice; if signed by a personal representative, the medicaid's designee and the agency must have documentation in the consumer's file verifying the individual is the consumer's personal representative; utilize services or the full amount of allocated services on the IPoC for review; documentation must be in the consumer's file demonstrating that a consumer has not utilized the full amount of hours allocated on the IPoC; and

(8) submit a personal care transfer/closure form (MAD 062 or other approved transfer/closure form) to the TPA, CoLTS MCO or other medicaid designee to close out a consumer's PCO who has passed away or who has not received services for 90 consecutive days.

C. PCO services are to be delivered in the state of New Mexico only. Consumers who require PCO services out of the state, for medically necessary reasons only, must obtain ALTSD PCO approval

prior to leaving the state. The following must be submitted for consideration to the program when requesting medically necessary out-of-state services:

(1) a letter from the PCO agency requesting an out-of-state exception and reason for request; the letter must include:

(a) the consumer's name and social security number;

(b) how time sheets/logs/check-off list will be transmitted and payroll checks issued to the attendant;

(c) date the consumer will be leaving the state, including the date of the medical procedure or other medical event, and anticipated date of return; and

(d) where the consumer will be housed after the medical procedure.

(2) a letter or documentation from the physician or surgeon verifying the date of the medical procedure; and

(3) a copy of the consumer's approved IPoC and a proposed adjusted revision of services to be provided during the time the consumer is out-of-state; support services and household services will not be approved unless justified; if the consumer has been approved for services under self-administered medications, a statement from the doctor must be included indicating the consumer will continue to have the ability to self-administer for the duration he/she is out-of-state.

[8.315.4.17 NMAC - N, 9-15-10]

8.315.4.18 PRIOR APPROVAL AND UTILIZATION REVIEW (UR):

All personal care services are subject to utilization review for medical necessity and program compliance. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. All personal care services require prior LOC approval by medicaid's designated TPA/UR contractor; therefore, retroactive services are not authorized. All PCO services provided through a medicaid CoLTS MCO designee shall then be authorized by the MCO in which the consumer is enrolled.

A. The medicaid designated TPA/UR contractor will perform utilization review for medical necessity. The TPA/UR contractor or the medicaid CoLTS MCO designee makes final authorization of PCO services using:

(1) the TPA-approved LOC determination; and

(2) an assessment conducted by the TPA/UR contractor or medicaid CoLTS MCO designee.

B. The PCO agency must obtain an approved task list and prior authorization number from the medicaid designated TPA/UR contractor or medicaid CoLTS MCO designee to ensure the consumer has been approved to receive PCO services.

C. Services for which prior

approval was obtained remain subject to utilization review at any point during the consumer's plan year.

D. Prior approval of services does not guarantee that an individual is eligible for medicaid. PCO agencies must verify monthly all individuals' financial eligibility for medicaid prior to providing services.

E. A PCO agency that does not agree with prior approval, denials or other review decisions made by any medicaid designee:

(1) may request a re-review or reconsideration pursuant to medicaid oversight policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]; and

(2) is responsible for submitting the additional information and medical justification to the medicaid's designated TPA/UR and adhering to the timelines outlined in medicaid oversight policies, (as cited above).

F. A consumer who does not agree with prior approval, denials or other review decisions made by the TPA or medicaid's designee may request a fair hearing pursuant to 8.352.2 NMAC, *Recipient Hearings*. Consumers enrolled with a CoLTS MCO who disagree with authorized number or type of services may also utilize the CoLTS MCO grievance and appeal process. [8.315.4.18 NMAC - Rp, 8.315.4.17 NMAC, 9-15-10]

8.315.4.19 TRANSFER PROCESS FOR PCO SERVICES: A consumer wishing to transfer services to another medicaid approved PCO agency may request to do so. Transfers within the plan year may be requested by the consumer, but must be approved by the medicaid TPA/UR contractor (for FFS PCO) or medicaid CoLTS MCO designee (for managed care) prior to the agency providing PCO services to the consumer. All requests for change of service model from directed to delegated must be approved by medicaid TPA/UR contractor (for FFS PCO) or medicaid CoLTS MCO designee (for managed care) prior to the receiving agency providing services to the consumer. Transfers may only be initiated by the consumer and may not be requested by the attendant as a result of an employment issue. For consumers enrolled in a CoLTS MCO, the transfer process is determined by the MCO and should be initiated by the consumer through the consumer's assigned service coordinator. The consumer must give the reason for the requested transfer.

A. A transfer requested by a consumer may be denied by MAD or its designee for the following reasons:

(1) the consumer is requesting

more hours/services;

(2) the consumer's attendant or family member is requesting the transfer;

(3) the consumer has requested three or more transfers within a six-month period;

(4) the consumer wants their legal guardian, spouse or attorney-in-fact to be their attendant;

(5) the consumer wants an individual to be their attendant who has not successfully passed a nationwide criminal history screening;

(6) the consumer wants an attendant who has been terminated from another agency for fraudulent activities;

(7) the attendant does not want to complete the mandated trainings under the consumer-delegated model;

(8) the consumer does not wish to comply with the medicaid or PCO program policies and procedures; and

(9) there is reason to believe that solicitation has occurred as defined in 8.315.4.22 NMAC, *reimbursement*.

B. The TPA/UR contractor (for FFS PCO) or the medicaid CoLTS MCO designee (for managed care) will notify the consumer, the TPA and both the originating agency and the receiving agency of its decision and has 15-working days after receiving the request from the TPA to make a decision. The consumer must work with the medicaid TPA/UR contractor or medicaid CoLTS MCO designee to verify their request.

C. A consumer who does not agree with the decision may request a fair hearing pursuant to 8.352.2 NMAC, *Recipient Hearings*. The originating agency is responsible for the continuance of PCO services throughout the fair hearing process. Consumers enrolled with a CoLTS MCO who disagree with authorized number of hours may also utilize the CoLTS MCO grievance and appeal process.

D. The following is the process for submitting a transfer request:

(1) The consumer must inform their CoLTS MCO of the desire to transfer PCO agencies; the CoLTS MCO approves or denies requested transfer; if approved, the CoLTS MCO works with both the agency he/she is currently receiving services from (originating agency) and the agency he/she would like to transfer to (receiving agency) about the transfer request to effect the transfer; consumers in FFS PCO must request a PCO agency transfer through the TPA/UR contractor.

(2) Originating agencies are responsible for continuing service provision until the transfer is complete.

(3) Both the originating and receiving PCO agencies are responsible for following approved transfer procedures (either CoLTS MCO or TPA/UR transfer

procedures).

(4) After CoLTS MCO verification of consumer's request, medicaid's CoLTS MCO designee will process the transfer request within 15 working days of receiving the transfer request. For FFS PCO transfer requests, the TPA/UR contractor will verify and process.

(5) Medicaid's CoLTS MCO designee or TPA/UR contractor will issue a new prior authorization number to the receiving agency and make the transfer date effective 10 business days from the date of processing the transfer request with new dates of service and units remaining for the remainder of the IPoC year; medicaid's CoLTS MCO designee or TPA/UR contractor will notify the consumer and the originating and receiving PCO agencies.

[8.315.4.19 NMAC - Rp, 8.315.4.18 NMAC, 9-15-10]

8.315.4.20 CONSUMER DISCHARGE PROCESS BY PCO AGENCY:

The PCO agency may discharge a consumer for a justifiable reason. Prior to initiating discharge, the PCO agency must send a notice to medicaid or its designee for approval. Once approved by medicaid or its designee, the PCO agency may initiate the discharge process by means of a 30-day written notice to the consumer. The notice must include the consumer's right to request a fair hearing and must include the justifiable reason for the agency's decision to discharge.

A. A PCO agency may discharge a consumer for a justifiable reason. A justifiable reason for discharge may include:

(1) staffing problems (i.e., excessive request for change in attendants (three or more in a 30-day period);

(2) a consumer demonstrates a pattern of verbal/physical abuse of attendants or agency personnel, includes use of vulgar/explicit language, verbal or physical sexual harassment, excessive use of force, verbal or physical intimidating threats); the agency or attendant must have documentation demonstrating the pattern of abuse; the agency may also discharge a consumer if the life of an attendant or agency's staff member is believed to be in immediate danger;

(3) a consumer or family member demonstrates a pattern of uncooperative behavior including not complying with agency or medicaid policy; not allowing the PCO agency to enter the home to provide services; and continued requests to provide services not approved on the IPoC;

(4) illegal use of narcotics or alcohol abuse; and

(5) fraudulent submission of timesheets; or

(6) living conditions or environment that may pose a health or safety risk or cause harm to the personal care

attendant, employee of an agency, TPA, or other medicaid designee.

B. The PCO agency must provide the consumer with a current list of medicaid-approved personal care agencies that service the county in which the consumer resides. The PCO agency must assist the consumer in the transfer process and must continue services throughout the transfer process. If the consumer does not select another PCO agency within the 30-day time frame, the current PCO agency must inform the consumer that a break in services will occur until the consumer selects an agency. The discharging agency may not ask the medicaid's designee to terminate the consumer's PCO services.

C. A consumer has a right to appeal the agency's decision to suspend services as outlined in 8.352.2 NMAC, *Recipient Hearings*. A recipient has 90 days from the date of the suspension notice to request a fair hearing.
[8.315.4.20 NMAC - Rp, 8.315.4.19 NMAC, 9-15-10]

8.315.4.21 CONSUMER DISCHARGE PROCESS BY STATE:

Medicaid or its designee reserves the right to exercise its authority to discontinue the consumer's receipt of PCO services due to the consumer's non-compliance with medicaid program requirements. The consumer's discontinuation of PCO services does not affect his/her medicaid eligibility. The consumer may be discharged for a justifiable reason by means of a 30-day written notice to the consumer. The notice will include duration of discharge, which may be permanent, the consumer's right to request a fair hearing, and the justifiable reason for the decision to discharge. A justifiable reason for discharge may include:

A. staffing problems (i.e., excessive request for change in attendants (three or more in a 30-day period, excessive requests for transfers to other agencies or excessive agency discharges;

B. a consumer who demonstrates a pattern of verbal/physical abuse of attendants, agency personnel, or state staff, including use of vulgar/explicit language, verbal or physical sexual harassment, excessive use of force, verbal or physical intimidating threats;

C. a consumer or family member who demonstrates a pattern of uncooperative behavior including, not complying with agency, medicaid program requirements or policies or procedures;

D. illegal use of narcotics or alcohol abuse; and

E. fraudulent submission of timesheets; or

F. unsafe or unhealthy living conditions or environment.
[8.315.4.21 NMAC - N, 9-15-10]

8.315.4.22 REIMBURSEMENT:

A medicaid-approved personal care agency will process billings in accordance with the following:

A. Agencies must submit claims for reimbursement on the HCFA-1500 claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, agencies receive instructions on documentation, billing, and claims processing. Claims must be filed per the billing instructions in the medicaid manual. PCO agencies must use ICD-9-CM diagnosis codes when billing for medicaid services.

B. Reimbursement for PCO services is made at the lesser of the following:

(1) the provider's billed charge;

(2) the MAD fee schedule for the specific service or procedure; or

(3) the agency's billed charge must be its usual and customary charge for services.

(4) "usual and customary charge" refers to the amount an individual provider charges the general public in the majority of cases for a specific service and level of service.

[8.315.4.22 NMAC - Rp, 8.315.4.20 NMAC, 9-15-10]

8.315.4.23 PCO PROVIDER VOLUNTARY DISENROLLMENT:

A medicaid approved PCO agency may choose to discontinue provision of services. Once approved by medicaid or its designee, the PCO agency may initiate the disenrollment process to assist consumers to transfer to another medicaid approved PCO agency. The PCO agency must continue to provide services until consumers have completed the transfer process and the agency has received approval from medicaid or its designee to discontinue services. Prior to disenrollment, the PCO agency must send a notice to medicaid or its designee for approval. The notice must include:

A. consumer notification letter;

B. list of all the medicaid approved personal care agencies serving the county in which the consumer resides; and

C. list of all consumers currently being served by the agency and the MCO in which they are enrolled.

[8.315.4.23 NMAC - N, 9-15-10]

8.315.4.24 SOLICITATION/ADVERTISING:

For the purposes of this section, solicitation shall be defined as any communication regarding PCO services from an agency's employees, affiliated providers, agents or contractors to a medicaid recipient who is not a current client that can reasonably be interpreted as intended to influence the recipient to

become a client of that entity. Individualized personal solicitation of existing or potential consumers by an agency for their business is strictly prohibited. Prohibited solicitation includes but is not limited to the following.

A. Prohibitions under this category include:

(1) contacting a consumer who is receiving services through another PCO program or any another medicaid program;

(2) contacting a potential consumer to discuss the benefits of its agency, including door to door, telephone and email solicitation;

(3) offering a consumer/attendant finder fee, kick back, or bribe consisting of anything of value to the consumer to obtain transfers to its agency; see 8.351.2 NMAC, *Sanctions and Remedies*;

(4) directly or indirectly engaging in door-to-door, telephone, or other cold-call marketing activities by entity's employees, affiliated providers, agents or contractors;

(5) making false promises;

(6) intentional misinterpretation of medicaid policies/procedures/eligibility;

(7) misrepresenting self as having affiliation with another entity; and

(8) distributing PCO related marketing materials.

B. Penalties for engaging in solicitation prohibitions: Agencies suspected of solicitation will be put on moratorium during the investigation or review period. Agencies found to be conducting such activity will be subject to monetary penalty or termination of its provider participation agreement (MAD 335).

C. An agency wishing to advertise or conduct any type of community outreach for PCO service provision, or its agency must first get prior approval from medicaid or its designee before conducting any such activity. Advertising and community outreach materials means materials that are produced in any medium, on behalf of a PCO agency and can reasonably be interpreted as advertising to potential clients. Advertising or community outreach materials must not:

(1) misrepresent the agency as having affiliation with another entity;

(2) use proprietary titles, such as "medicaid PCO".

D. Any PCO agency conducting any such activity without prior approval from medicaid or its designee may be subject to moratorium, a civil monetary penalty or have its medicaid provider participation agreement (MAD 335) terminated for conducting such activity without prior approval. During a moratorium an agency shall not acquire any new consumers but may continue to provide services to its existing consumers.

[8.315.4.24 NMAC - N, 9-15-10]

8.315.4.25 OTHER:

A. An attendant may not act as the consumer's personal representative, in matters regarding medical treatment, financial or budgetary decision making, unless the attendant is the consumer's legal guardian, agent under a power of attorney, conservator, or representative payee. If the agency questions whether the consumer is able to direct his/her own care, an agency must make a referral to an appropriate social service or legal agency(s) for assistance.

B. An agency that is non-compliant with provider requirements or medicaid or program policies or procedures may be placed on moratorium by medicaid or its designee until the PCO agency has demonstrated, to the satisfaction of medicaid or its designee, full compliance with all requirements of policies and procedures.

C. An agency wishing to advertise or conduct any type of community outreach for PCO services or its agency must first get prior approval from MAD or its designee before conducting any such activity. An agency conducting any such activity without prior approval from MAD or its designee may be subject to moratorium, civil monetary penalty or have its medicaid provider participation agreement (MAD 335) terminated for conducting such activity without prior approval. During a moratorium an agency shall not acquire any new consumers but may continue to provide services for its existing consumers.

D. An agency may not deceive or misrepresent information to a potential PCO consumer. An agency conducting any such activity may be subject to moratorium, a civil monetary penalty or termination of its provider participation agreement (MAD 335). Agencies who are suspected of or being investigated or reviewed by MAD or its designee for any of the below activities may be put on moratorium by MAD or its designee during the period of investigation or review. This includes:

- (1) contacting a consumer who is receiving services through another medicaid program, including PCO services;
- (2) any kind of solicitation, including door to door, of potential consumers;
- (3) making false promises;
- (4) misrepresenting medicaid policies/procedures/eligibility; and
- (5) representing itself as an entity to which it has no affiliation.

E. Individualized personal solicitation of existing or potential consumers by an agency for their business is strictly prohibited. Agencies suspected of solicitation will be put on moratorium during the investigation or review period. Agencies found to be conducting such activity will be subject to monetary penalty or termination of

its provider participation agreement (MAD 335). Prohibited solicitation includes but is not limited to:

(1) contacting a consumer who is receiving services through PCO or any other medicaid program;

(2) contacting a potential consumer to discuss the benefits of its agency, including door-to-door, telephone and email solicitation; and

(3) offering a consumer/attendant finder fee, kick back, or bribe consisting of anything of value to the consumer to obtain transfers to its agency. See 8.351.2 NMAC, *Sanctions and Remedies*.

[8.315.4.25 NMAC - Rp, 8.315.4.21 NMAC, 9-15-10]

HISTORY OF 8.315.4 NMAC:**History of Repealed Material:**

8 NMAC 4.MAD.738, Personal Care Services, filed 8/18/1999 - Repealed effective 7/1/2004.

8.315.4 NMAC, Personal Care Option Services, filed 6/16/2004 - Repealed effective 9/15/10.

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.2 NMAC Sections 5 and 8 effective 9-15-2010.

21.32.2.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of a section [or paragraph].

[3-1-99; 21.32.2.5 NMAC - Rn, 21 NMAC 32.2.5, 7-31-2000; A, 09-15-2010]

21.32.2.8 BRANDING OF LIVESTOCK:

A. BRANDING OF CATTLE: All cattle in the state of New Mexico shall be required to be branded with a recorded New Mexico brand, excepting calves with branded mother, registered animals, which are identified by a proper registration mark and whose owner has been issued a certificate of brand exemption for the registered herd, and dairy cattle, which are identified in accordance with the provisions of 21.32.2.9 NMAC, and cattle in a feedlot, which are identified in accordance with the provisions of 21.32.2.10 NMAC.

B. IDENTIFICATION OF EQUINES: All equines shall be required to be branded with a New Mexico recorded brand, or identified by a [permanent] horse identification card (Form 1-H or 1HA) showing individual markings, scars, etc.

C. BRANDING OF SHEEP AND GOATS: All owners of sheep and goats in the state of New Mexico shall be required to have a wool/hair brand registered in the office of the New Mexico livestock

board and such brand is to be the sole property of the recorded owner. The brand may be applied by means of paint, chalk, hot iron, tattoo, or ear tags. Additionally, earmarks may be used as a means of identification and, if used as a means of identification, the earmark must be recorded in conjunction with the recorded brand. The board, at its discretion, may immediately halt the use of earmarks as a means of identification and require branding, tattooing, or ear tagging of all sheep [and/or] and goats.

D. All sheep being moved, transported, driven, or otherwise transferred from one premises to another and/or all of those presented for or requiring inspection, shall be required to bear a recorded means of identification.

E. Sheep and goats destined for show or exhibition shall be exempt from paint, chalk, or fire brand regulations, provided such sheep and goats are properly identified by at least one of the accepted marks of identification (tattoos or ear tags).

F. Nothing herein shall exempt any owner of livestock from possessing necessary bills of sale or proof of ownership for their livestock and presenting proof of ownership upon request.

[3-1-99; 21.32.2.8 NMAC - Rn & A, 21 NMAC 32.2.8, 7-31-2000; A, 9-15-2010]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.3 NMAC by the addition of Section 13 effective 9-15-2010.

21.32.3.13 TRANSPORTATION

PERMITS FOR HORSES: Pursuant to Section 77-9-42 NMSA, 1978 all horses, mules or asses must be accompanied by a brand certificate. Exceptions to the brand certificate may be permitted as follows:

A. form 1-H (permanent hauling permit): an owner's transportation permit issued in lieu of a brand certificate that is valid as long as the horse, mule or ass described in the certificate remains under the ownership of the person to whom the permit was issued;

B. form 1-HA (annual hauling permit): an owner's transportation permit issued in lieu of a brand certificate that is renewable annually and is transferable with the change of ownership subject to issuance of a transfer number issued by the NMLB; the 1-HA will not be valid without a current transfer number, which constitutes a permit when issued by and on file with the NMLB.

[21.32.3.13 NMAC - N, 9/15/2010]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.10 NMAC Sections 5, 8 and 9 effective 9-15-2010 and Section 11 effective 07-01-2011.

21.32.10.5 EFFECTIVE DATE: March 1, 1999, unless a later date is cited at the end of the section ~~[or paragraph]~~.
[3-1-99; 21.32.10.5 NMAC - Rn 21 NMAC 32.10.5, 7-31-2000; A, 9-15-2010]

21.32.10.8 LIVESTOCK INSPECTION FEES: Effective ~~[October 31, 2002]~~ September 15, 2010, the following are the inspection charges for services of the New Mexico livestock board, pursuant to Sections 77-2-29 and 77-2-7, NMSA 1978:

A. Cattle and bison inspection fee \$ 0.50 per head
B. Horse inspection fee \$ 0.50 per head
C. Hide inspection fee \$ 0.50 per hide
D. Sheep and goat inspection fee \$ 0.16 per head
E. Pelt inspection fee \$ 0.12 per pelt
F. Swine inspection fee \$ 1.00 per head
G. Service charge for field inspection ~~[(4) 1 to 10 head — \$ 5.00 per inspection]~~
~~.....(2) 11 head and more] \$ 10.00 per inspection~~

H. Youth exhibition animals congregated at a pre-arraigned site \$5.00 per inspection

~~[(H.)L]~~ Service charge at livestock market \$ 0

~~[(F.)L]~~ The payment, in lieu of fees, on the receipt of livestock at an auction market, pursuant to Sections 77-10-4 and 77-2-29, NMSA 1978, shall be the same as the amounts listed in this ~~[paragraph]~~ section.

~~[(F.)K]~~ Impoundment fee \$10.00 per head per day, pursuant to Section 7-14-36 and Sub-section J of Section 77-2-29 NMSA 1978.

[3-1-99; 21.32.10.8 NMAC - Rn & A, 21 NMAC 32.10.8, 7-31-2000; A, 05-15-2001; A, 07-09-2001; A, 10-31-2002; A, 09-15-2010]

21.32.10.9 TRANSPORTATION PERMITS FOR HORSES: The charge for issuance of a transportation permit ~~[for horses]~~ (form 1-H), pursuant to Section 77-9-42, NMSA 1978, is twenty five dollars (\$25.00). The charge for issuance of an annual transportation permit (form 1-HA) will be fifteen dollars (\$15.00), provided however, that no fee is charged for issuance of a transfer number to a subsequent owner,

which is valid for the unexpired portion of the year for which an annual fee has been paid when a transfer of ownership occurs during the year for which an annual fee has already been paid. There will be a service charge in the amount set by Subsection A of 21.32.10.8 NMAC, for a field inspection, for each form 1-H or form 1-HA issued, regardless of where the inspection occurs. The fee for 1-H reproduction is ten dollars (\$10.00). The 1-HA cannot be reproduced.
[3-1-99; 21.32.10.9 NMAC - Rn & A, 21 NMAC 32.10.9, 7-31-2000; A, 6-14-2001; A, 9-15-2010]

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 ~~[seventy five dollars (\$75.00)]~~ one hundred dollars (\$100.00).

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 ~~[seventy five dollars (\$75.00)]~~ one hundred dollars (\$100.00).

C. The fee for transferring ownership of a recorded brand, pursuant to Sections 77-2-7.1 and 77-2-29, NMSA 1978 is ~~[seventy five dollars (\$75.00)]~~ one hundred dollars (\$100.00).

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; A, 07-01-2011]

NEW MEXICO MINING SAFETY BOARD

This is an amendment to 19.6.2 NMAC, Sections 7 and 11, effective October 1, 2010.

19.6.2.7 DEFINITIONS:

A. "Accident" means accident as defined in Title 30 CFR 50.2(h).

B. "Board" means the state mining safety board.

~~[(B.) C.]~~ "CFR" means Code of Federal Regulations.

D. "Days" means calendar days.

~~[(C.) E.]~~ "Hours worked" means hours reported to MSHA on the 7000-2 form or for an OSHA regulated site on the OSHA form 300-A, for the previous calendar year.

E. "Inspector" means the state mine inspector.

~~[(D.) G.]~~ "Mine" means mine as defined in Title 30 CFR 50.2(a).

H. "Operator" means operator as defined in Title 30 CFR 50.2(c).

I. "Service" means

providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.

[N, 08/31/06; 19.6.2.7 NMAC - Rn, 11.8.2.7 NMAC & A, 9/30/08; A, 1/01/10; A, 10/01/10]

19.6.2.11 FAILURE TO PROVIDE TIMELY NOTICE:

A. The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars (\$100,000) on the operator of a mine if it is determined that the operator failed to give immediate notice as required in 19.6.2.10 NMAC. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by circumstances outside the control of the operator.

B. In determining the amount of the penalty, the inspector shall consider all relevant factors including whether notice was provided at all to the inspector or, if notice was provided, the lateness of such notice and the seriousness of the accident. The inspector shall utilize the penalty structure approved by the mining safety board.

(1) Penalty points for coal mining operators based on coal production.

[Continued on page 817.]

Annual tonnage of coal mine failing to provide timely notice	Penalty points
0 to 15,000	0
Over 15,000 to 30,000	1
Over 30,000 to 50,000	2
Over 50,000 to 100,000	3
Over 100,000 to 200,000	4
Over 200,000 to 300,000	5
Over 300,000 to 500,000	6
Over 500,000 to 800,000	7
Over 800,000 to 1.1 million	8
Over 1.1 million to 2 million	9
Over 2 million	10

(2) Penalty points for coal mining operators based on the coal production in New Mexico of the controlling entity.

Annual coal tonnage produced in New Mexico of controlling entity	Penalty points
0 to 100,000	0
Over 100,000 to 700,000	1
Over 700,000 to 1.5 million	2
Over 1.5 million to 5 million	3
Over 5 million to 10 million	4
Over 10 million	5

(3) Penalty points for metal/non-metal operators based on hours worked.

Annual hours worked at a M/NM mine failing to provide timely notice	Penalty points
0 to 10,000	0
Over 10,000 to 20,000	1
Over 20,000 to 30,000	2
Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

(4) Penalty points for metal/non-metal operators based on annual hours worked in New Mexico by controlling entity of a M/NM mine.

Annual hours worked in New Mexico by controlling entity of a M/NM mine	Penalty points
0 to 60,000	0
Over 60,000 to 400,000	1
Over 400,000 to 900,000	2
Over 900,000 to 3 million	3
Over 3 million to 6 million	4
Over 6 million	5

(5) Penalty points based on operator negligence.

Negligence		
Categories	Penalty points	
	Persons endangered	No endangerment
Low negligence - The operator failed to report the accident within the required 30 minutes but did report within 1 hour.	10	5
Moderate negligence - The operator failed to report the accident for more than 1 hour and less than 4 hours.	15	7

High negligence - The operator failed to report the accident for more 4 hours and less than 12 hours.	20	10
Reckless disregard - The operator failed to report the accident for greater than 12 hours, or the operator was previously fined for failure to report an accident within one year of the occurrence.	25	12

(6) Points based on type of accident.

Type of accident (as prescribed in 30CFR, Part 50.2 h(1) - (12) <i>There could be more than one category where the penalty points are accrued i.e., a fire at a mine that burns for more than 30 minutes and results in a fatality, would equal 40 penalty points.</i>	Penalty points	
	Persons endangered	No endangerment
Fatality	25	N/A
An injury at a mine that has a reasonable potential to cause death	20	N/A
An entrapment of an individual for more than 30 minutes	10	5
An unplanned inundation of a mine by a liquid or gas	10	5
An unplanned ignition or explosion of gas or dust	15	5
An unplanned mine fire not extinguished within 30 minutes of discovery	15	7
An unplanned ignition or explosion of blasting agent or explosive	20	10
An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or, an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage	10	N/A
A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour	15	N/A
An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile, or culm bank	10	N/A
Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes	10	5
An event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs	20	N/A

(7) Penalty amounts based on total points.

Penalty conversion table	
Penalty points	Penalty
0 to 15 points	\$5,000
16 to 25 points	\$10,000
26 to 35 points	\$20,000
36 to 45 points	\$50,000
46 to 55 points	\$65,000
56 to 65 points	\$85,000
66 to 70 points	\$95,000
71 or more points	\$100,000

C. If the state mine inspector determines that notice was not timely provided, the inspector shall within 90 days after notification of an accident or, if notice was not provided to the inspector, after ascertaining that an accident did occur at a mine, mail a notice of violation with a proposed penalty to the operator.

(1) The operator shall pay the penalty within 30 days after receipt of the notice.

(2) If the operator wishes to challenge the violation or request that the penalty be adjusted or waived, the operator must submit a written petition to the inspector within 20 days after receipt of the notice. Filing of a petition stays the requirement to pay the penalty. The operator may also submit written documentation in support of his petition and may request a meeting with the inspector to discuss the circumstances of the violation.

(3) Within 60 days after receipt of a petition, the inspector shall issue a final ~~[decision]~~ order upholding, amending or rescinding the notice of violation and penalty. The inspector may consider actions of the ~~[mining company]~~ operator in response to the violation when considering amending the penalty. ~~[If the final decision contains a penalty, the operator shall pay the penalty within 30 days after receipt of the notice.]~~ The inspector's final order shall include a statement that the operator may file an appeal of the final order with the board. Unless the inspector's final order is appealed to the board in accordance with Subsection E of this section, if the final order contains a penalty, the operator shall pay the penalty within 30 days after receipt of the final order.

D. In determining whether to adjust or waive imposition of the penalty, the inspector may consider factors such as, but not

limited to:

(1) whether the mine was idled for any reason at the time of the accident;

(2) whether the mine operator encountered communications problems that made it impossible to provide timely notice;

(3) whether medical personnel determined that an injury was not considered life threatening immediately after an accident; if injury becomes life threatening, then notice requirements would be triggered when operator learns of a change in status from a medical authority;

(4) whether a fatality of mine personnel that occurs after an accident is associated with a specific accident;

(5) whether the need to provide emergency medical treatment or emergency rescue and recovery efforts reasonably precluded the mine operator from timely providing notice; and

(6) whether the penalty creates an undue financial hardship on the mine.

E. The operator may appeal the inspector's final order to the board pursuant to these rules.

(1) The operator shall file a written notice of appeal of the inspector's final order within twenty days after service of the final order. Unless a timely written appeal is made, the inspector's final order shall be final and not subject to judicial review. The filing of a timely notice of appeal shall stay enforcement of the inspector's final order until the board issues its written decision on the appeal.

(2) The operator shall file the written notice of appeal with the chair of the board or the chair's designee, and include the order number and the name of the operator.

(3) If a timely written notice of appeal is made, the board shall consider the appeal at a hearing held no sooner than thirty days and no more than ninety days after receipt of the written notice of appeal. The board shall notify the operator and the inspector of the date, time and place of the hearing at which the appeal will be considered.

(4) No board member with any financial interest affected or potentially affected by the outcome of an adjudicatory hearing may serve as a hearing officer in that hearing or otherwise participate in the hearing. All board members shall adhere with the Governmental Conduct Act.

(5) The board shall review the record compiled before the inspector and shall allow any party to submit arguments at the hearing.

(6) Within 20 days following the hearing the board shall render a written decision affirming, modifying or reversing the inspector's final order, and stating the reasons for that action. This decision shall be signed by the board chair or the chair's designee, and shall be served on both parties

within 30 days after the decision is rendered and signed. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[N, 08/31/06; 19.6.2.11 NMAC - Rn, 11.8.2.11 NMAC & A, 9/30/08; A, 1/01/10; A, 10/01/10]

NEW MEXICO MINING SAFETY BOARD

This is an amendment to 19.6.4 NMAC, Sections 7, 11 and the addition of sections 12 and 13, effective October 1, 2010.

19.6.4.7 DEFINITIONS:

A. "Board" means the state mining safety board.

[A.] B. "Certificate" means a document issued by the state mine inspector, or certifying agency from another state, allowing the holder to be employed as a coal mine official in the state of origin.

C. "CFR" means Code of Federal Regulations.

D. "Days" means calendar days.

E. "Inspector" means the state mine inspector.

[B.] F. "Mining engineering graduate" means a person having a B.S. degree in mining or mineral engineering from an accredited college or university.

[C.] G. "Official" means coal mine official, including underground mine foreman, mine examiner or surface mine foreman.

H. "Revoke" means to permanently invalidate a certification.

I. "Service" means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.

J. "Suspend" means to invalidate a certification for a specified period of time.

[19.6.4.7 NMAC - N, 09/30/08; A, 10/01/10]

19.6.4.11 CERTIFICATION PERIOD AND RECERTIFICATION PROCESS:

A. Certification of officials shall be issued for a period of five years. All officials certified by the state mine inspector prior to June 15, 2007 shall have their certification period extended five years. Each official is required to have retraining as a qualified/certified person on an annual basis from the mine in which they are employed as required in 30 CFR 75.160, 30 CFR [75.16] 75.161 and 30 CFR 77.107 and 30 CFR 77.107-1. Failure to have retraining as a qualified/certified person on an annual basis may result in suspension of

certification.

B. Each official has the responsibility to notify the state mine inspector of any change in address or change in mine employment within thirty days of such change. Failure to provide current contact information may result in suspension of certification.

C. Certified persons may apply for recertification within twelve months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector [at least thirty days prior to the testing date].

D. Recertification may be done by taking an exam every five years, prior to certification expiration, or an organization may submit an alternative plan for the inspector's approval as follows:

(1) officials taking an exam every five years will follow the same process required for original certification; or

(2) an organization may submit an alternative plan, for the state mine inspector's approval; the alternative plan may be carried out over the five year period; the alternative plan shall include the subjects to be covered, the minimum amount of time per subject, the methods of instruction, and the methods of participant evaluation during process completion; following completion, the applicant shall provide the state mine inspector with verification that all training for the recertification period is current; and

(3) applicants shall submit an application, pay the applicable fee, and provide all appropriate documentation as required by the state mine inspector, before receiving recertification.

E. Mine examiners may fulfill the recertification [testing] requirements for mine examiner by successfully completing the examination for mine foreman certification or recertification. [19.6.4.11 NMAC - N, 09/30/08; A, 10/01/10]

19.6.4.12 REFUSAL TO CERTIFY OR RECERTIFY AND SUSPENSION OR REVOCATION OF CERTIFICATION:

A. The inspector may refuse to certify or recertify or may suspend or revoke any certification held or applied for under 19.6.4 NMAC upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

(3) has failed to maintain certification;

(4) has violated or aided or abetted any person in a violation of the Federal Mine Safety and Health Act of 1977 or the New Mexico mine safety laws; or

(5) has been disciplined in another state that certifies mine personnel.

B. If the inspector contemplates taking any of the actions described in Subsection A of 19.6.4.12 NMAC for any of the reasons provided in that subsection, the inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the inspector has sufficient evidence that, if not rebutted or explained, will justify the inspector in taking the contemplated action, that indicates the general nature of the evidence and that provides the applicant or certified person at least twenty days to submit written evidence to rebut or explain the allegations.

C. If, after the response period ends, the state mine inspector takes any action of a type specified in Subsection B of 19.6.4.12, the inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act 69-8-1 NMSA 1978.

[19.6.4.12 NMAC - N, 10/01/10]

19.6.4.13 APPEAL TO MINING SAFETY BOARD OF CERTIFICATION ACTIONS BY INSPECTOR TO MINING SAFETY BOARD: An appeal of an inspector's action may be made to the board by the person affected by the action.

A. A person affected by the inspector's action shall file a written petition for review of the action within twenty days after service of the action. Unless a timely written appeal for review is made, the action of the inspector shall be final and not subject to judicial review.

B. The petition shall be filed in writing with the chair of the board or the chair's designee, and include the action number and the name of the appellate.

C. If a timely petition is made, the board shall consider the petition at a hearing held no sooner than thirty days and no more than ninety days after receipt of the written petition. The board shall notify the petitioner and the inspector of the date, time and place of the hearing at which the petition will be considered.

D. No board member with any financial interest affected or potentially affected by the outcome of an adjudicatory proceeding may serve as a hearing officer in that proceeding or otherwise participate in the hearing. All board members shall adhere with the Governmental Conduct Act.

E. The board shall review the record compiled before the inspector and

shall allow any party to submit arguments at the hearing.

F. Within 20 days following the hearing the board shall render a written decision affirming, modifying or reversing the action of the inspector, and stating reasons for that action. The decision shall be signed by the board chair or the chair's designee, and shall be served on both parties within 30 days after the decision is rendered and signed. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[19.6.4.13 NMAC - N, 10/01/10]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Repeal

1.18.449 NMAC, Executive Records Retention and Disposition Schedule for the Board of Nursing, is being repealed and replaced with the new 1.18.449 NMAC, Executive Records Retention and Disposition Schedule for the Board of Nursing, effective September 27, 2010. The New Mexico Commission of Public Records at their August 24, 2010 meeting repealed the current rule and approved the new rule.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

August 27, 2010

Leo R. Lucero, Agency Analysis Bureau Chief
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rule:

* 1.18.449 NMAC ERRDS, Board of Nursing

A review of this rule shows that its impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator
SJ/lrl

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.449 NMAC ERRDS, Board of Nursing

1. Subject matter: 1.18.449 NMAC, Executive Records Retention and Disposition Schedule for the Board of Nursing. This rule is new and replaces 1.18.449 NMAC ERRDS, Board of Nursing, an outdated version that was filed on 3/12/2002. This records retention and disposition schedule is a timetable for the management of specific records series created by the Board of Nursing. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the Board of Nursing as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Board of Nursing.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Board of Nursing. Persons and entities normally subject to the rules and regulations of the Board of Nursing may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Board of Nursing

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Board of Nursing entity outside the covered geographical area that conducts business with or through the Board of Nursing may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: 9/27/ 2010.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.449 NMAC ERRDS, Board of Nursing.

Tania Maestas Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to the 1.17.230 NMAC, JRRDS, New Mexico District Courts, Section 7 and Section 8 and adding Section 251 effective September 27, 2010

1.17.230.7 DEFINITIONS:

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).

C. "Audit" means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.

D. "Commission" means the state commission of public records (Section 14-3-2 NMSA 1978).

E. "Drug court" means alternative sentencing program for adult and juvenile offenders who have drug-related offenses.

[F:] E. "Nota bene" stands for

information important for the administration of the retention period.

[F:] G. "Pending litigation" means a proceeding in a court of law whose activity is in progress but not yet completed.

[G:] H. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

[H:] I. "Records retention period" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

[I:] J. "Records retention schedule" means a document prepared as part of a records retention program that lists the period of time for retaining records. [1.17.230.7 NMAC - Rp 1.17.230.7 NMAC, 2/18/2003, A, 9/27/2010]

1.17.230.8 INSTRUCTIONS:

[A.] For records of an administrative nature, refer to the Records Retention and Disposition Schedule for General Administrative Records, 1.15.2 NMAC.

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

C. For records of a personnel nature, refer to the Records Retention and Disposition Schedule for General Personnel Records (interpretive); 1.15.7 NMAC.

D. For records of a medical nature, refer to the Records Retention and Disposition Schedule for General Medical Records, 1.15.8 NMAC.

E. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

F. The descriptions of files are intended to be illustrative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

G. Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

H. Access to confidential documents or confidential files shall be

only by authorization of agency or attorney general or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

I. All records, papers or documents may be photographed, microfilmed, microphotographed or reproduced on film. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. (Sections 14-1-5, 14-1-6 NMSA 1978)

J. Electronic records: Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention and disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). (See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems).]

A. Record retention and disposition schedules identify the types of records maintained by state agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are two types of record retention and disposition schedules created by the state records center and archives. General schedules that list records common to all agencies and executive schedules which are specific to an agency. Each record series will be represented in the format listed below.

(1) Program - describes the function of the records

(2) Maintenance system - describes how an agency files (organizes) records

(3) Description - describes the purpose and content of a record

(4) Retention - The length of time records must be kept before they are eligible for destruction or archival preservation.

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

C. For records of a financial nature, refer to the GRRDS, General

Financial Records Retention and Disposition Schedule, 1.15.4 NMAC.

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

E. For records of a medical nature, refer to the GRRDS, General Medical Records Retention and Disposition Schedule, 1.15.8 NMAC.

F. Retention periods shall be extended until six months after all current or pending litigation; current claims, audit exceptions or court orders involving a record have been resolved or concluded.

G. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

H. Confidentiality is denoted for each file but all materials in a file may be confidential. Refer to note. Where portions of file may be confidential, refer to legal counsel for agency.

I. Access to confidential documents or confidential files shall be only by authorization of agency or attorney general or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

J. Records, papers or documents may be reformatted thorough microphotography. Such reformatted records shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Sections 14-1-5 and 14-1-6 NMSA 1978).

K. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

L. Email messages that contain information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in both general and executive records retention and disposition schedules.

[1.17.230.8 NMAC - Rp, 1.17.230.9 NMAC, 2/18/2003; A, 9/27/2010]

1.17.230.251 JUVENILE DRUG COURT FILE:

A. Program: juvenile drug court

B. Maintenance system: numerical by case number

C. Description: record documents the chronological treatment history and progress of individual juveniles enrolled in the judicial district drug court program. File may contain; referral; intake information; chronological history if involved with CYFD; drug screening results; current probation agreement, mental health evaluations, physiological screening; medication form; photo id of individual enrolled in program; treatment progress, etc.

D. Retention: five years from date juvenile reaches the age of majority

E. Confidentiality: This record is confidential pursuant, but not limited to Section 32A-2-32 NMSA 1978, (i.e., diagnostic evaluations, psychiatric reports, medical reports), Section 5 USC, Section 552a (i.e., social security number) and Section 59A-46-27 NMSA 1978, confidentiality of medical information. [1.17.230.251 NMAC - N, 09/27/2010]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.790 NMAC, ERRDS, Department of Public Safety, adding Section 188 effective 09/27/2010.

1.18.790.188 VEHICLE CONSENT TO SEARCH FORMS:

A. Program: motor transportation

B. Maintenance system: chronological by fiscal year

C. Description: forms used to obtain consent to search a motor vehicle by a law enforcement officer. Form contains name of individual giving consent, vehicle information (i.e., year, make, model, registration number, color, etc.), consent date and time, signature of individual giving consent, etc.

D. Retention: three fiscal years from date consent form signed [1.18.790.188 NMAC - N, 09/27/2010] [If an investigation case is initiated as a result of the search, the original consent form is filed in an investigation case file]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.1 NMAC Section 7, effective 09-15-10.

13.14.1.7 DEFINITIONS "A": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings.

A. Abstract Plant. A title plant meeting the requirements of NMSA 1978 Section 59A-12-13.

B. Actual Charge. A charge approximating the cost of the actual time, equipment, and expenses incurred.

C. Agent. A person licensed as a title insurance agent in New Mexico. This term may also refer to the agent's company or employees.

D. Applicant. The person, firm or organization applying for or requesting that a policy of title insurance be issued.

E. Available Funds.

(1) For purposes of the title insurance article of the New Mexico Insurance Code only (NMSA 1978, Chapter 59A, Article 30), available funds is money deposited in a depository account with a financial institution held in the name of and subject to the control of a title insurance agent, a title insurer, or third party fiduciary for a real estate closing, that can be totally disbursed immediately by cash withdrawal or cashiers checks without relying on the balance created by other deposits in the account not made as part of the real estate closing for which disbursement is being made.

(2) It is prohibited for title insurance agents, title [insurers] insurer or third party fiduciaries to guaranty the collectability of funds or indemnify their financial institutions from loss due to uncollected funds. This prohibition shall not affect the authority of title insurers to issue closing protection letters as authorized under the rules and regulations promulgated by the superintendent of insurance; nor the ability of title insurance agents, title insurers, or third party fiduciaries to endorse without qualification, restriction or limitation, checks, drafts, or other similar items for deposit into its account at any financial institution.

(3) The following funds are "available funds" on the day of deposit:

(a) cash;

(b) received wired funds managed by the federal reserve system;

(c) a cashier's check or certified check which is issued payable to the title

insurance agent, title insurer, or third party fiduciary and has been deposited to its account at the financial institution which issued it and guaranteed by the financial institution for immediate disbursement;

(d) a cashier's check which is payable to and was purchased by the title insurance agent, title insurer or third party fiduciary and has been deposited to its account at a financial institution and guaranteed by the financial institution for immediate disbursement.

(4) The following funds are "available funds" on the next business day after day of deposit:

(a) treasury checks, postal money orders, federal reserve bank checks and federal home loan bank checks;

(b) state of New Mexico and local government checks which have been deposited at a financial institution located in New Mexico using a special deposit slip if required by depository institution for next day availability;

(c) cashier checks, certified checks and ~~tellers~~ teller's checks which have been deposited at a financial institution using a special deposit slip if required by depository institution for next day availability.

(5) All other modes used for the transfer of monies will be made available on the earliest date they are considered "available funds" in accordance with Regulation CC, "Availability of Funds and Collection of Checks" established by the board of governors of the federal reserve system as amended.

(6) Any funds received under the automated clearing house (ACH) network shall not be considered "available funds". [6-16-86...4-1-94; 13.14.1.7 NMAC - Rn, 13 NMAC 14.1.7, 5-15-00; A, 7-1-06; A, 09-15-10]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.5 NMAC Section 9, effective 09-15-10.

13.14.5.9 STANDARD EXCEPTIONS IN SCHEDULE B:

A. All commitments issued on New Mexico property will contain each of the following numbered exceptions verbatim and in the same order stated herein.

(1) Rights or claims of parties in possession not shown by the public records.

(2) Easements, or claims of easements, not shown by the public records.

(3) Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed

by an accurate survey and inspection of the premises.

(4) Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.

(5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy). **note:** Existing inventory of preprinted forms containing the words "dower, curtesy" in standard exception number 5 may be used without penalty until existing supplies are exhausted or the words "dower, curtesy" may be deleted on preprinted forms by crossing them out.

(6) [RESERVED]

(7) "Water rights, claims or title to water."

(8) [RESERVED]

(9) Taxes for the year _____, and thereafter. (See 13.14.5.12 NMAC)

(10) Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of records the estate or interest or mortgage thereon covered by this commitment.

B. Additionally, each commitment may contain the following statement when said commitment is used to commit for both an owner's policy and a loan policy or a loan policy only: "Exceptions numbered _____ will not appear in the loan policy but will appear in the owner's policy, if any." If the commitment is for a construction policy, the following statement must be added: "The construction loan policy will contain an exception limiting its coverage to two years duration pursuant to 13.14.7.18 NMAC."

C. Each commitment shall contain the following statement: Standard exceptions 1, 2, 3, and or 4, [~~6 and/or 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. 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~~] Except for the issuance of a U.S. policy form (NM7 or NM34), any 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 stipulations 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 land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

[6-16-86, 3-1-90, 6-1-97, 6-1-98; 13.14.5.9 NMAC - Rn, 13 NMAC 14.5.9, 5-15-00; A, 8-29-03; A, 7-1-05; A, 8-17-09; A, 9-15-09; A, 09-15-10]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.7 NMAC Sections 8 and 22 and the addition of new Section 26, effective 09-15-10.

13.14.7.8 LOAN POLICIES:

A. All loan policies (standard, leasehold or construction) shall be issued for the face amount of the loan or loans insured. When the land covered in the policy represents only part of the security of the loan or loans, the policy shall be written in the amount of the value of such land or the amount of the loan or loans insured, whichever is the lesser. When requested by the insured, a loan policy may be issued in an amount equal to the original principal amount of the indebtedness plus legal interest (capitalized or otherwise) not to exceed twenty percent (20%) of the said principal amount.

B. All loan policies may insure liens on multiple tracts in the same manner as owner's policies. Whenever any agent or insurer is issuing any policy of title insurance in conjunction with a closing of a transfer of title to property to a new owner or owners, the agent or insurer shall furnish the new owner or owners with a NM form 9, notice of availability of owner's title insurance, containing all of the required information available at that time and shall request said owner or owners to sign said form and indicate whether or not they desire an owner's policy. Said agent or insurer shall maintain copies of said forms with copies of the loan policy for at least two (2) years whenever an owner's policy is declined by the owner(s).

C. A short form residential loan policy, NM form 63, shall be considered a loan policy and shall be subject to the applicable rules and rates relating to loan policies, except as expressly provided in the short form residential loan policy, or in rules expressly referring to the short form

residential loan policy. An insurer may, in its discretion, issue the short form residential loan policy upon request of the proposed insured if the real property encumbered by the lien of the insured mortgage is one to four family residential property. ~~[Each insurer shall establish written instructions and underwriting standards for the issuance of the short form residential loan policy. An insurer may not issue the short form residential loan policy unless it complies with the requirements of the New Mexico Insurance Code, NMSA 1978 Chapter 59A, Article 30 and Title 13, Chapter 14 of the New Mexico Administrative Code relating to available funds. An insurer may not issue the short form residential loan policy if the loan secured by the lien of the insured mortgage is a construction loan.]~~ An insurer may not issue the short form residential loan policy if the loan secured by the lien of the insured mortgage is a construction loan or on a leasehold interest. All standard exceptions that are included in a standard loan policy, are deemed omitted in schedule B of the short form residential loan policy and premiums for deletion of the standard exceptions applicable to a standard loan policy shall apply. Any standard exceptions that are included in a standard loan policy, may be added as exceptions in the schedule B addendum to the short form residential loan policy if required by these rules or if the insurer does not consider the risk acceptable to provide coverages for such omitted standard exceptions. Any of the schedule B affirmative insurance provisions may be removed from or modified in schedule B if the insurer does not consider the risk acceptable by including an exception on the schedule B addendum to the short form residential loan policy. [The following rules shall apply to the standard exceptions when a short form residential loan policy is issued:

(1) all of the standard exceptions that are included in a standard loan policy, except standard exception 9, shall be included in the short form residential loan policy in the schedule B addendum;

(2) the standard exceptions in the short form residential loan policy may be modified or deleted, in whole or in part, in the same manner as they are in the standard loan policy, subject to the same rules and premiums applicable to the standard loan policy.] Each insurer shall establish written instructions and underwriting standards for the issuance of the short form residential loan policy.

[6-16-86; 13.14.7.8 NMAC - Rn, 13 NMAC 14.7.8, 5-15-00; A, 7-1-04; A, 09-15-10]

13.14.7.22 FORECLOSURE [GUARANTEE] TITLE INSURANCE POLICY: A foreclosure [guarantee] title insurance policy (NM form 41) and, if desired, a down date endorsement (NM

form 42) may be issued upon receipt of a bona fide order from an attorney, trustee, mortgagee or their agent in anticipation of the filing of an action to judicially foreclose a mortgage, deed of trust or other lien or security instrument encumbering title to real property in New Mexico, or to non-judicially foreclose a deed of trust. No binder shall be issued in connection with said policy. The amount of coverage shall be equal to the amount of the unpaid principal indebtedness due under the lien or note secured by the security instrument to be foreclosed. The policy shall be furnished solely for the purpose of facilitating the filing of the action referred to in schedule A of the policy. The promulgation of this form shall not preclude, nor affect, the issuance of a title search and report by an agent.

[4-3-95; 13.14.7.22 NMAC - Rn, 13 NMAC 14.7.22, 5-15-00; A, 7-1-04; A, 09-15-10]

13.14.7.26 CLOSING PROTECTION LETTERS: The closing protection letter (NM form 81), closing protection letter - limitations (NM form 81.1), and closing protection letter - single transaction limited liability (NM form 81.2) may be issued with the approval of the underwriter, in addition to issuance of any policy. Unless requested by a party and approved by the underwriter, the closing protection letter (NM form 8) shall be issued. Each insurer shall establish written instructions and underwriting standards preceding the use of these forms.
[13.14.7.26 NMAC - N, 09-15-10]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.8 NMAC Sections 8, 14, 19, repeal of Section 22 and addition of new Sections 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38, effective 09-15-10.

13.14.8.8 USE OF CORRECTION/MULTIPURPOSE ENDORSEMENT: The New Mexico correction/multipurpose endorsement may be used as follows:

A. As any of the other endorsement forms promulgated by the superintendent and specifically listed in 13.14.18.13 NMAC. In such case the exact language contained in the said promulgated endorsement form shall be typed or otherwise printed on the correction/multipurpose endorsement form; all language (if any) not contained in the said promulgated endorsement form but preprinted on the correction/multipurpose form shall be deleted by striking out or

lining through; and, the appropriate form designation required by 13.14.18.12 NMAC shall be typed or otherwise printed on the correction/multipurpose endorsement in order that its use as another form is clearly evident. This regulation grants the option to each insurer to print specific promulgated endorsement forms and/or to use the correction/multipurpose endorsement form for any or all of the other promulgated endorsement forms and also grants the option to an agent to use this form for this purpose either upon instructions from the Insurer or if the preprinted promulgated form is not available.

B. To insert, delete or add to a commitment, binder, policy or endorsement, language required or authorized by any of these regulations when appropriate to do so.

C. To correct errors in the information inserted in the appropriate spaces of any preprinted commitment, binder, policy or endorsement (but not to change, alter or waive the promulgated terms) in the manner following: "This endorsement amends (commitment, policy or endorsement) numbered _____, dated _____ to read as follows: (here insert language identifying the specific item being corrected and the specific correction information such as, 'The name of the insured is John Smith rather than James Smith.' or 'The lot number in the legal description is '3' rather than '30.' or 'item 3' of Schedule A is ABC corporation rather than ABC, inc.') No other amendments are made by this endorsement."

D. To endorse a loan policy [in the manner following: "As to the above numbered loan policy, the Company will not claim that its liability for the payment of any loss or damage, under the terms and provisions of the policy, has been waived or surrendered by the Insured, or has been reduced by the company, solely by reason of the execution of: (Here state whether renewal, extension, reinstatement or modification agreement, or partial release, release of additional collateral or release from personal liability, and then fully describe giving recording information.) The assurance given by this Endorsement is subject to the following (None unless specifically set out here:)" by issuing the NM form 80, the mortgage modification endorsement. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.]
[6-16-86, 3-1-89; 13.14.8.8 NMAC - Rn, 13 NMAC 14.8.8, 5-15-00; A, 09-15-10]

13.14.8.14 CO-INSURANCE: A policy or policies may be written to provide co-ordinate and proportionate coverage by two or more underwriters. Such coverage may be provided either by endorsement

attached to a single policy and executed by or on behalf of the co-insuring underwriters, or by the issuance of separate policies by or on behalf of each of the co-insuring underwriters. In either case, the premium charged for the policy shall be the same as would be charged for the single policy, with the split of the premium between the issuing agents or underwriters to be in accord with the percentage or proportion of loss or cost for which each underwriter or issuing agent's underwriter is liable under the policy or policies. All policies providing co-ordinate and proportionate coverage shall set out the following information:

A. If only one policy is being used, NM form [32] 77 shall be used.

B. If multiple policies are being used, schedule B shall include the following: "This policy is issued contemporaneously with Policies No. _____ of (insert name of other underwriting company or companies) for \$ _____. The liability of the Company hereunder is hereby limited to _____ (insert percentage or proportion) of any loss, but said liability shall not exceed the face amount of this policy." [4-3-95; 13.14.8.14 NMAC - Rn, 13 NMAC 14.8.14, 5-15-00; A, 09-15-10]

13.14.8.19 SAME AS SURVEY [ENDORSEMENT] AND SAME AS PORTION OF SURVEY ENDORSEMENTS: The "same as survey" endorsement, NM form [53] 78, and the "same as portion of survey" endorsement, NM form 79, may be attached to owner's policies and loan policies provided the policy is furnishing survey coverage pursuant to 13.14.6.14 NMAC and the premium in 13.14.10.38 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement. [13.14.8.19 NMAC - N, 5-15-00; A, 5-31-00; A, 09-15-10]

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

[13.14.8.22 NMAC - N, 7-1-03; Repealed, 09-15-10]

13.14.8.29 INDIRECT ACCESS AND ENTRY ENDORSEMENT: The "indirect access and entry" endorsement, NM form 68, may be attached to owner's policies and loan policies provided the premium in 13.14.10.50 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.29 NMAC - N, 09-15-10]

13.14.8.30 UTILITY ACCESS ENDORSEMENT: The "utility access" endorsement, NM form 69, may be attached to owner's policies and loan policies provided the premium in 13.14.10.51 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.30 NMAC - N, 09-15-10]

13.14.8.31 COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT: The "commercial environmental protection lien" endorsement, NM form 70, may be attached to owner's policies and loan policies provided the premium in 13.14.10.52 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.31 NMAC - N, 09-15-10]

13.14.8.32 REVERSE MORTGAGE ENDORSEMENT: The "reverse mortgage" endorsement, NM form 71, may be attached to a loan policy (NM 2) provided the premium in 13.14.10.53 NMAC is paid and provided that (1) the mortgage being insured is a reverse annuity mortgage ("reverse mortgage") securing future advances under the HUD HECM (home equity conversion mortgage) program, Fannie Mae home keeper® program or other similar or private lender program approved by the insurer, (2) proof that each mortgagor is at least 62 years of age and, (3) proof that the mortgagor(s) are residing on the insured property as their principal residence or homestead. This endorsement shall only be issued on properties that are defined as "one-to-four family residential". The loan policy (NM 2) issued on a "reverse mortgage" may be issued in either the total amount of advances or 150% of the total

amount of advances as requested by the lender. Schedule B of the loan policy (NM 2) issued on a "reverse mortgage" shall contain the following special exception: pending disbursement of the full proceeds of the loan secured by the mortgage or deed of trust set forth under schedule A hereof, this policy insures only to the extent of the amount actually disbursed but increases as each disbursement is made, in good faith, and without knowledge of any defect in or objections to, the title, up to the full amount of the policy. The two mortgages or deeds of trust filed on a HUD HECM reverse mortgage loan may be insured on one loan policy if the priority of the mortgages or deeds of trust are disclosed when describing the mortgages or deeds of trust being insured in schedule A. The bracketed language in paragraph 4f of NM form 71 may be deleted from the endorsement with the approval of the underwriter if: (1) the risk is deemed acceptable; and, (2) standard exception No. 4 from schedule B of the underlying loan policy has been deleted, at no extra premium. Otherwise, the brackets themselves shall be removed and the language of paragraph 4f of NM form 71 shall be included in the endorsement. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.32 NMAC - N, 09-15-10]

13.14.8.33 SINGLE TAX PARCEL ENDORSEMENT: The "single tax parcel" endorsement, NM form 72, may be attached to owner's policies and loan policies provided the premium in 13.14.10.54 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.33 NMAC - N, 09-15-10]

13.14.8.34 MULTIPLE TAX PARCEL ENDORSEMENT: The "multiple tax parcel" endorsement, NM form 73, may be attached to owner's policies and loan policies provided the premium in 13.14.10.55 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.34 NMAC - N, 09-15-10]

13.14.8.35 DOING BUSINESS ENDORSEMENT: The "doing business" endorsement, NM form 74, may be attached to loan policies provided the premium in 13.14.10.56 NMAC is paid. This endorsement may not be attached to policies

insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.35 NMAC - N, 09-15-10]

13.14.8.36 SUBDIVISION

ENDORSEMENT: The “subdivision” endorsement, NM form 75, may be attached to owner’s policies and loan policies provided the premium in 13.14.10.57 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.36 NMAC - N, 09-15-10]

13.14.8.37 EASEMENT

DAMAGE OR ENFORCED REMOVAL ENDORSEMENT: The “easement-damage or forced removal” endorsement, NM form 76, may be attached to owner’s policies and loan policies provided the premium in 13.14.10.58 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.37 NMAC - N, 09-15-10]

13.14.8.38 CO-INSURANCE SINGLE POLICY ENDORSEMENT:

The “co-insurance single policy” endorsement, NM form 77, may be attached to owner’s policies and loan policies provided the premium in 13.14.10.59 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.38 NMAC - N, 09-15-10]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.9 NMAC Sections 11 and 28, effective 09-15-10.

13.14.9.11 PAYMENTS OF

PREMIUM TO OTHERS: No portion, split or percentage of any premium shall be paid either directly or indirectly to any person, firm or organization for title insurance, title examination, or determining status of title as set forth above, except a division of premium between an insurer

admitted to do title insurance business in New Mexico and its licensed New Mexico agent pursuant to their agency agreement, or between licensed New Mexico agents (or companies admitted or licensed in New Mexico who do not have agency agreements in a county where some of the property is located) who are cooperating to close a transaction involving New Mexico property situated in more than one county to be insured in a single policy when each licensed agent or admitted company is rendering part of the services included in the premiums as set forth in 13.14.9.10 NMAC. Any agent which has cancelled its agency contract or had its agency contract cancelled by an underwriter may prepare endorsements to existing policies then in force at the time of cancellation upon request by the insured and approval by the underwriter. Said endorsements shall be signed by an officer of the underwriter. The premium for such endorsement shall be collected by the cancelled agent and divided according to the controlling promulgated rates at the time of issuance of said endorsement(s). The payment or receipt of referral fees by or between licensed agents and/or admitted companies is prohibited.

[6-16-86; 13.14.9.11 NMAC - Rn, 13 NMAC 14.9.10, 5-15-00; A, 09-15-10]

13.14.9.28 SINGLE ISSUE FORECLOSURE [GUARANTEE] TITLE INSURANCE POLICY:

The premium for a foreclosure [guarantee] title insurance policy shall be fifty-five percent (55%) of the full basic premium rate according to the schedule in effect as of the date of the policy. If an owner’s policy is issued following completion of the foreclosure, the owner’s policy shall qualify for a re-issue rate of fifty-five percent (55%) of the full basic premium rate. All liability insured above this amount of the foreclosure [guarantee] title insurance policy for a new owner’s policy must be computed at the basic premium rates in the applicable bracket. If the litigation or non-judicial foreclosure is terminated by the security instrument being reinstated, and a new owner’s policy is issued to a new purchaser within one year of the date of the foreclosure [guarantee] title insurance policy, fifty percent (50%) of the premium paid for the foreclosure [guarantee] title insurance policy shall be credited toward the new owner’s policy premium.

[4-3-95; 13.14.9.28 NMAC - Rn, 13 NMAC 14.9.10.9, 5-15-00; A, 7-1-04; A, 09-15-10]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.10 NMAC Sections 18 and 38, repeal of Section 42 and addition of new Sections 50, 51, 52, 53, 54, 55, 56, 57, 58 and 59, effective 09-15-10.

13.14.10.18 DOWN DATE

ENDORSEMENT: The down date (or date down) endorsement to a standard loan policy containing a pending disbursement clause, to a construction loan policy or to a foreclosure [guarantee] title insurance policy shall be issued for a premium of twenty-five dollars (\$25.00).

[6-16-86...4-3-95; 6-1-98; 13.14.10.18 NMAC - Rn, 13 NMAC 14.10.18, 5-15-00; A, 5-31-00; A, 09-15-10]

13.14.10.38 SAME AS SURVEY

ENDORSEMENT: When a “same as survey” endorsement, NM form [53] 78, or a “same as portion of survey” endorsement, NM form 79, is issued pursuant to 13.14.8.19 NMAC, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.

[13.14.10.38 NMAC - N, 5-15-00; A, 5-31-00; A, 09-15-10]

13.14.10.42 [LAST DOLLAR

ENDORSEMENT: When a last dollar endorsement, NM form 59, is issued pursuant to 13.14.8.22 NMAC, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.] [RESERVED]

[13.14.10.42 NMAC - N, 7-1-03; Repealed, 09-15-10]

13.14.10.50 INDIRECT ACCESS

AND ENTRY ENDORSEMENT: When an “indirect access and entry” endorsement, NM form 68, is issued pursuant to 13.14.8.29 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.

[13.14.10.50 NMAC - N, 09-15-10]

13.14.10.51 UTILITY ACCESS

ENDORSEMENT: When a “utility access” endorsement, NM form 69, is issued pursuant to 13.14.8.30 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.

[13.14.10.51 NMAC - N, 09-15-10]

13.14.10.52 COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT: When a “commercial environmental protection lien” endorsement, NM form 70, is issued pursuant to 13.14.8.31 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.52 NMAC - N, 09-15-10]

13.14.10.53 REVERSE MORTGAGE ENDORSEMENT: When a reverse mortgage endorsement (NM form 71) is issued pursuant to 13.14.8.32 NMAC, the premium for the endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.53 NMAC - N, 09-15-10]

13.14.10.54 SINGLE TAX PARCEL ENDORSEMENT: When a “single tax parcel” endorsement, NM form 72, is issued pursuant to 13.14.8.33 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.54 NMAC - N, 09-15-10]

13.14.10.55 MULTIPLE TAX PARCEL ENDORSEMENT: When a “multiple tax parcel” endorsement, NM form 73, is issued pursuant to 13.14.8.34 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.55 NMAC - N, 09-15-10]

13.14.10.56 DOING BUSINESS ENDORSEMENT: When a “doing business” endorsement, NM form 74, is issued pursuant to 13.14.8.35 NMAC on loan policies, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.56 NMAC - N, 09-15-10]

13.14.10.57 SUBDIVISION ENDORSEMENT: When a “subdivision” endorsement, NM form 75, is issued pursuant to 13.14.8.36 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.57 NMAC - N, 09-15-10]

13.14.10.58 EASEMENT - DAMAGE OR ENFORCED REMOVAL ENDORSEMENT: When a “easement-damage or forced removal” endorsement, NM form 76, is issued pursuant to 13.14.8.37 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.58 NMAC - N, 09-15-10]

13.14.10.59 CO-INSURANCE - SINGLE POLICY ENDORSEMENT: When a “co-insurance single policy” endorsement, NM form 77, is issued pursuant to 13.14.8.38 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.59 NMAC - N, 09-15-10]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.16 NMAC Sections 9, 10, 13, 14, 15, 16 and 17, effective 09-15-10.

13.14.16.9 SCHEDULE A - STATEMENT OF INCOME AND EXPENSES:

NEW MEXICO TITLE INSURANCE AGENT’S STATISTICAL REPORT SCHEDULE A - STATEMENT OF INCOME AND EXPENSES For the Calendar Year Ending December 31, 20____.		
AGENCY NAME		
FEDERAL I.D. NUMBER		
ADDRESS		
CONTACT NAME		
Check one:		
<input type="checkbox"/>	INDEPENDENT (NON- AFFILIATED)	Title insurance agencies that are independently owned and write title insurance business for one or more [underwriting companies] title insurance underwriters.
<input type="checkbox"/>	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.] Title insurance agencies with 10% or greater ownership by a title insurance underwriter, including wholly-owned agencies.

	DIRECT	[A direct operation has 100% of its ownership held directly by a title insurance underwriter.] Agency-type operations performed by the home or branch office of a title insurance underwriter. This does NOT include wholly-owned agencies.
Part A: Revenue		
1.	Title insurance written premiums (from Schedule B)	<u>0</u>
2.	Less: Remitted title insurance premiums (from Schedule B)	<u>0</u>
3.	Retained title insurance premiums (from Schedule B)	<u>0</u>
4.	Other income (from Schedule C)	<u>0</u>
5.	Total Revenue	<u>0</u>
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)	<u>0</u>
18.	Accounting and auditing expense	
19.	Public relations expense	
20.	Other expenses (from Schedule E)	<u>0</u>
21.	Total Expenses	<u>0</u>
Part C: Net Income for Ratemaking Purposes		
1.	Income (Loss) from Operations	<u>0</u>
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)	<u>0</u>
10.	Total Excluded Expenses	<u>0</u>
Part E: Net Income		
1.	Net income as reported on the books of the agency	<u>0</u>
Part F: Equity		
1.	Total equity as reported on balance sheet of the agency	

18.		
19.		
20.		
Total (Carry forward to Schedule A, line B-20)		0
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 <u>D-9</u>)		0

[13.14.16.13 NMAC - Rp, 13.14.16.13 NMAC, 7-1-06; A-09-15-10]

Explanation for Difference (if any)	

[13.14.16.16 NMAC - Rp, 13.14.16.15 NMAC, 7-1-06; A, 09-15-10]

13.14.16.17 [SCHEDULE I] SCHEDULE H - IDENTIFICATION OF OWNERS:

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

[13.14.16.17 NMAC - Rp, 13.14.16.16 NMAC, 7-1-06; A, 09-15-10]

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

This is an amendment to 13.14.17 NMAC Sections 9, 10, 11, 12, 13, 14 and 15, effective 09-15-10.

13.14.17.9 FORM 1 - STATEMENT OF INCOME AND EXPENSES:

NEW MEXICO TITLE [INSURERS] 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							
		Direct Operations	Non-Affiliated Agency Operations	Affiliated Agency Operations	Total	NAIC Annual Statement Schedule T	Difference
Part A - Revenue							
1	Direct written premiums				0		0
2	Direct written premiums retained by agent				0		
3	Direct written premiums remitted to underwriter	0	0	0	0		
4	Escrow and settlement service charges				0		
5	Other title fees and service charges				0		
6	Total other income	0	0	0	0		0
7	Total revenue	0	0	0	0		
For underwriters that charge rates below the promulgated rates:						From Form 3	Difference
8	Direct premiums as if they had been written at promulgated rates				0	0	0
Part B - [Home office] Corporate Expenses							
Line 1 as defined per NAIC annual statement, STATEMENT OF INCOME exhibit.							
Lines 2 through 22 as defined per NAIC annual statement, EXPENSES exhibit.							
All entries should show NEW MEXICO expenses only and should NOT include direct charges from direct operations.							
1	Losses and loss adjustment expenses incurred				0		
2	Total personnel costs				0		
3	Total production services purchased outside				0		
4	Advertising				0		
5	Boards, bureaus, and associations				0		
6	Title plant rent and maintenance				0		
7	Claim adjustment services				0		
8	Amounts charged off, net of recoveries				0		
9	Marketing and promotional expenses				0		
10	Insurance				0		
11	Directors' fees				0		
12	Travel and travel items				0		
13	Rent and rent items				0		
14	Equipment				0		

15	Cost or depreciation of EDP equipment and software				0		
16	Printing, stationery, books, and periodicals				0		
17	Postage, telephone, messenger, and express				0		
18	Legal and auditing				0		
19	Total taxes, licenses, and fees				0		
20	Real estate expenses				0		
21	Real estate taxes				0		
22	Aggregate write-ins for miscellaneous expenses				0	[Form-2: Part A	Difference
23	Less: expenses allocated to affiliated agents and direct operations				0	0	0
24]	Total [Home Office]	0	0	0	0		
23	Corporate Expenses						
Part C - Net Income [Before Affiliated and Direct Operations]							
1	Income (Loss) [before-affiliated and direct-operations]	0	0	0	0		
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	0		0	0	0	0
Part E - Net Income from Operations							
1	INCOME (LOSS)	0	0	0	0]		

13.14.17.10

~~[FORM 2 - EXPENSE ALLOCATIONS TO AND FROM AGENTS:~~

NEW MEXICO TITLE INSURERS STATISTICAL REPORT FORM 2 - EXPENSE ALLOCATIONS TO AND FROM AGENTS For the Calendar Year Ending December 31, 20____ NEW MEXICO EXPERIENCE ONLY		
Insurance Company		
PART A: EXPENSES ALLOCATED TO AFFILIATED AND DIRECT AGENTS		
Name of Agency	Type of Agency (see code)	Amount
Total		0

EXPENSES ALLOCATED FROM AFFILIATED AND DIRECT AGENTS		
Name of Agency	Type of Agency (see code)	Amount
Total		0

Type of Agency	Code
Direct	D
Affiliated	A]

~~[RESERVED]~~~~[13.14.17.10 NMAC - Rp, 13.14.17.10 NMAC, 7-1-06; Repealed, 09-15-10]~~

13.14.17.11

~~[FORM 3]~~ **FORM 2 - RESERVES, INVESTMENT GAIN, AND SURPLUS:**

NEW MEXICO TITLE [INSURERS] INSURANCE UNDERWRITERS STATISTICAL REPORT [FORM 3] FORM 2 - RESERVES, INVESTMENT GAIN, AND SURPLUS For the Calendar Year Ending December 31, 20____ COUNTRYWIDE EXPERIENCE		
Insurance Company		
		Countrywide
1	Known claims reserve	
2	Statutory premium reserve	
3	Aggregate of other reserves required by law	
4	Supplemental reserve	

5	Total reserves	0
6	Net investment income earned	
7	Net realized capital gains (losses)	
8	Total net investment gain	0
9	Federal and foreign income taxes incurred	
10	Surplus as regards policyholders	

[13.14.17.11 NMAC - Rp, 13.14.17.11 NMAC, 7-1-06; A, 09-15-10]

13.14.17.12 [FORM 4] FORM 3 - TRANSACTION REPORT:

NEW MEXICO TITLE INSURERS STATISTICAL REPORT [FORM 4] FORM 3 - TRANSACTION REPORT For the Calendar Year Ending December 31, 20__ NEW MEXICO EXPERIENCE ONLY							
Insurance Company							
							For Underwriters That Charge Rates Below the Promulgated Rates
NM Form No.	Trans- action Code	Transaction Type	NMAC Rate Provision	No. of Transactions	Direct Premiums Written	Dependent on Basic Premium Rate?	Direct Premiums As If They Had Been Written at Promulgated Rates
none	0001	Charge for Additional Chain of Title	13.14.9.16			No	
none	0002	Charge for Unplatted Tract of Unusual Complexity	13.14.9.16			Yes	
none	0003	Abstract Retirement Credit	13.14.9.24			Yes	
none	0004	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage With Evidence of Priority	13.14.9.40G			No	
none	0005	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage Without Evidence of Priority	13.14.9.40G			Yes	
none	0006	Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired	13.14.10.9A			No	
none	0007	Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired	13.14.10.9B			Yes	
none	0008	Survey Coverage Endorsement	13.14.10.10			Yes	
none	0009	Duplicate Original Policy	13.14.9.33			No	
none	0010	Navigable Streams, Lakes, etc. - Standard Exception No. 6	13.14.10.29			No	
none	0011	Permissible Modification - Standard Exception No. 7	13.14.10.35			No	
none	0012	Waiver of Arbitration	None			No	
none	0013	Cancellation Fee	13.14.9.19B			No	
none	0014	Permissible Deletion - Standard Exception No. 8	13.14.10.46			No	
1	0101	Owner's Policy	13.14.9.20			Yes	
1	0102	Owner's Policy - With Bulk Rate	13.14.9.23			Yes	
1	0103	Multiple Owners on Same Land - Simultaneous Issue	13.14.9.32			Yes	
1	0104	Replacement Owner's Policy	13.14.9.26			Yes	
1	0110	Owner's Policy - Reissue (10% Discount)	13.14.9.35			Yes	
1	0115	Owner's Policy - Reissue (15% Discount)	13.14.9.35			Yes	

1	0120	Owner's Policy - Reissue (20% Discount)	13.14.9.35			Yes	
1	0125	Owner's Policy - Reissue (25% Discount)	13.14.9.35			Yes	
2	0201	Loan Policy - Single Issue	13.14.9.22			Yes	
2	0202	Loan Policy - Simultaneous Issue with Owner's Policy	13.14.9.30			No	
2	0203	Loan Policy - Second Mortgage or Subsequent Issue	13.14.9.36			Yes	
2	0204	Replacement Loan Policy	13.14.9.26			Yes	
2	0240	Loan Policy - Substitution Rate (less than 2 years - 40%)	13.14.9.39			Yes	
2	0245	Loan Policy - Substitution Rate (more than 2 years, less than 3 - 45%)	13.14.9.39			Yes	
2	0250	Loan Policy - Substitution Rate (more than 3 years, less than 4 - 50%)	13.14.9.39			Yes	
2	0255	Loan Policy - Substitution Rate (more than 4 years, less than 5 - 55%)	13.14.9.39			Yes	
2	0260	Loan Policy - Substitution Rate (more than 5 years, less than 6 - 60%)	13.14.9.39			Yes	
2	0265	Loan Policy - Substitution Rate (more than 6 years, less than 7 - 65%)	13.14.9.39			Yes	
2	0270	Loan Policy - Substitution Rate (more than 7 years, less than 8 - 70%)	13.14.9.39			Yes	
2	0275	Loan Policy - Substitution Rate (more than 8 years, less than 9 - 75%)	13.14.9.39			Yes	
2	0280	Loan Policy - Substitution Rate (more than 9 years, less than 10 - 80%)	13.14.9.39			Yes	
3	0300	Construction Loan Policy	13.14.9.40A			Yes	
6	0600	Commitment for Title Insurance	13.14.9.19A			No	
7	0700	U.S. Policy, ALTA 1963	13.14.9.25			Yes	
9	0900	Notice of Availability of Owner's Title Insurance	None			No	
10	1000	Facultative Reinsurance Agreement	None			No	
11	1101	Construction Loan Extension Endorsement	13.14.9.40B			No	
11	1102	Pending Disbursement Clause - Subsequent Attachment	13.14.9.40F			No	
11	1103	Pending Disbursement Clause - Simultaneous Insertion or Attachment	13.14.9.40F			No	
11	1104	Correction/Multipurpose Endorsement	13.14.8.8			No	
11	1105	Renewal, Extension, Modification & Partial Release Endorsement	13.14.10.20			No	
11	1106	Extension of Commitment for title Insurance	13.14.9.19A			No	
11	1108	Increase in Coverage	13.14.6.8D			Yes	
12	1200	Condominium Endorsement to Loan Policy (ALTA 4)	13.14.10.14			No	
13	1300	Planned Unit Development Endorsement (ALTA 5)	13.14.10.15			No	
14	1400	Variable Rate Mortgage Endorsement (ALTA 6)	13.14.10.12			No	
15	1500	Variable Rate Mortgage Endorsement - Negative Amortization (ALTA 6.1)	13.14.10.12			No	
16	1600	Manufactured Housing Unit Endorsement (ALTA 7)	13.14.10.13			No	
17	1700	Revolving Credit Endorsement	13.14.10.12			No	
18	1800	Construction Loan Policy Endorsement A	13.14.9.40D			Yes	
19	1900	Construction Loan Policy Endorsement D	13.14.9.40E			No	

20	2001	Leasehold Owner's Endorsement (to create policy)	13.14.10.19			No	
20	2002	Leasehold Loan Policy - Simultaneous Issue with Owner's Policy	13.14.9.30			No	
20	2003	Leasehold Loan Policy - Subsequent Issue	13.14.9.31			Yes	
20	2010	Leasehold Owner's Policy - Reissue (10% Discount)	13.14.9.35			Yes	
20	2015	Leasehold Owner's Policy - Reissue (15% Discount)	13.14.9.35			Yes	
20	2020	Leasehold Owner's Policy - Reissue (20% Discount)	13.14.9.35			Yes	
20	2025	Leasehold Owner's Policy - Reissue (25% Discount)	13.14.9.35			Yes	
21	2100	Leasehold Loan Endorsement (to create policy)	13.14.10.19			No	
22	2200	Pending Disbursement Down Date Endorsement	13.14.10.18			No	
23	2300	Pending Improvements Endorsement	13.14.10.23			No	
24	2400	Assignment of Mortgage Endorsement	13.14.10.8			No	
25	2500	Additional Advance Endorsement	13.14.10.11			No	
26	2600	Partial Coverage Endorsement	None			No	
27	2700	U.S. Policy, ALTA 1963 Down Date Endorsement	13.14.10.16			No	
28	2800	Non-Imputation Endorsement	13.14.10.21			Yes	
29	2900	Environmental Protection Lien Endorsement (ALTA 8.1)	13.14.10.22			No	
30	3000	Condominium Endorsement to Owner's Policy	13.14.10.24			No	
31	3100	Owner's Leasehold Conversion Endorsement (to create policy)	13.14.9.38			Yes	
[32]	3200	Coordinate and Proportionate Endorsement	None			No]	
33	3300	Change of Name Endorsement	None			No	
34	3400	U.S. Policy, ALTA 1991	13.14.9.25			Yes	
36	3600	Limited Title Search Policy (LTSP)	13.14.9.27			No	
37	3700	Continuation Endorsement for LTSP	13.14.10.25			No	
38	3800	Revolving Credit, Variable Rate Endorsement for LTSP	13.14.10.26			No	
39	3900	Lender's Creditors' Rights Endorsement	13.14.10.28			No	
40	4000	Owner's Creditors' Rights Endorsement	13.14.10.27			No	
41	4100	Foreclosure Guarantee Policy	13.14.9.28			Yes	
42	4200	Foreclosure Guarantee Policy Down Date Endorsement	13.14.10.18			No	
43	4300	Insuring Around Endorsement	None			No	
44	4400	Revolving Credit, Increased Credit Limit Endorsement	13.14.10.30			No	
45	4500	Residential Limited Coverage Junior Loan Policy	13.14.9.29			No	
46	4600	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.10.32			No	
47	4700	Revolving Credit, Variable Rate Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.10.33			No	
48	4800	Truth-in-Lending Endorsement	13.14.10.31			Yes	
50	5000	Restrictions, Encroachments and Minerals Endorsement - Loan Policy (ALTA 9)	13.14.10.34			Yes	

51	5100	Land Abuts Street Endorsement	13.14.10.36			No	
52	5200	Designation of Improvements, Address Endorsement	13.14.10.37			No	
53	5300	Same as Survey Endorsement	13.14.10.38			No	
54	5400	Contiguity of Single Parcel Endorsement	13.14.10.39			No	
55	5500	Named Insured Endorsement	13.14.10.40			No	
56	5600	Restrictions, Encroachments and Minerals Endorsement - Unimproved Land (ALTA 9.1)	13.14.10.34			Yes	
57	5700	Restrictions, Encroachments and Minerals Endorsement - Improved Land (ALTA 9.2)	13.14.10.34			Yes	
58	5800	First Loss Endorsement	13.14.10.41			No	
59	5900	Last Dollar Endorsement	13.14.10.42			No	
60	6000	Loan Policy Aggregation Endorsement	13.14.10.43			No	
61	6100	Foundation Endorsement	13.14.10.44			No	
62	6200	Assignment of Rents/Leases Endorsement	13.14.10.45			No	
63	6300	Short Form Residential Loan Policy	13.14.9.22			Yes	
64	6400	Zoning Endorsement, Unimproved Land (ALTA 3.0)	13.14.10.47			Yes	
65	6500	Zoning Endorsement, Completed Structure (ALTA 3.1)	13.14.10.48			Yes	
66	6600	Contiguity of Multiple Parcels Endorsement	13.14.10.39			No	
67	6700	Access and Entry Endorsement	13.14.10.49			No	
68	6800	Indirect Access and Entry Endorsement	13.14.10.50			No	
69	6900	Utility Access Endorsement	13.14.10.51			No	
70	7000	Commercial Environmental Protection Lien Endorsement	13.14.10.52			No	
71	7100	Reverse Mortgage Endorsement	13.14.10.53			No	
72	7200	Single Tax Parcel Endorsement	13.14.10.54			No	
73	7300	Multiple Tax Parcel Endorsement	13.14.10.55			No	
74	7400	Doing Business Endorsement	13.14.10.56			No	
75	7500	Subdivision Endorsement	13.14.10.57			No	
76	7600	Easement - Damage or Enforced Removal Endorsement	13.14.10.58			No	
77	7700	Co-Insurance - Single Policy Endorsement	13.14.10.59			No	
78	7800	Same as Survey Endorsement	13.14.10.38			No	
79	7900	Same as Portion of Survey Endorsement	13.14.10.38			No	
<u>2</u>	<u>9240</u>	<u>Loan Policy - Statutory Rate (less than 3 years - 40%)</u>	<u>59A-30-6.1 NMSA 1978</u>			<u>Yes</u>	
<u>2</u>	<u>9250</u>	<u>Loan Policy - Statutory Rate (more than 3 years, less than 5 - 50%)</u>	<u>59A-30-6.1 NMSA 1978</u>			<u>Yes</u>	
<u>2</u>	<u>9260</u>	<u>Loan Policy - Statutory Rate (more than 5 years, less than 10 - 60%)</u>	<u>59A-30-6.1 NMSA 1978</u>			<u>Yes</u>	
<u>2</u>	<u>9280</u>	<u>Loan Policy - Statutory Rate (more than 10 years, less than 20 - 80%)</u>	<u>59A-30-6.1 NMSA 1978</u>			<u>Yes</u>	

TOTAL:

Crosscheck with Form 1:	[0]
Difference:	[0]

Explanation for Difference (if any):

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[13.14.17.12 NMAC - Rp, 13.14.17.12 NMAC, 7-1-06; A, 8-17-09; A, 09-15-10]

13.14.17.13 ~~[FORM-5]~~ FORM 4 - ~~[LIABILITY]~~ PREMIUM DISTRIBUTION BY LIABILITY RANGE:

NEW MEXICO TITLE [INSURERS] INSURANCE UNDERWRITERS STATISTICAL REPORT [FORM-5] <u>FORM 4</u> - PREMIUM DISTRIBUTION BY LIABILITY RANGE For the Calendar Year Ending December 31, 20____ NEW MEXICO EXPERIENCE ONLY TRANSACTIONS THAT ARE DEPENDENT ON THE BASIC PREMIUM RATE Note: Include all transactions listed as "Yes" in the "Dependent on Basic Premium Rate?" column of [Form-4] <u>Form 3</u>			
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		0	0

Crosscheck with [Form-4] <u>Form 3:</u>	[0]
Difference	[0]

Explanation for Difference (if any)	
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[13.14.17.13 NMAC - Rp, 13.14.17.13 NMAC, 7-1-06; A, 09-15-10]

13.14.17.14 ~~[FORM-6]~~ FORM 5 - DIRECT PAID LOSS DEVELOPMENT:

NEW MEXICO TITLE [INSURERS] <u>INSURANCE UNDERWRITERS</u> STATISTICAL REPORT [FORM 6] <u>FORM 5</u> - 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												
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 **direct of reinsurance** and should be **New Mexico** claims only.

	Latest PY-1	Latest PY
Total	0	0
Total payments during Latest PY		0
New Mexico direct losses paid as shown on NAIC Annual Statement Schedule T		
Difference		0

Explanation for Difference (if any)

[13.14.17.14 NMAC - Rp, 13.14.17.14 NMAC, 7-1-06; A, 09-15-10]

13.14.17.15 [FORM 7] FORM 6 - DIRECT CASE BASIS RESERVES:

NEW MEXICO TITLE [INSURERS] INSURANCE UNDERWRITERS STATISTICAL REPORT [FORM 7] FORM 6 - 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												

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** and should be **New Mexico** claims only.

	Latest PY-1	Latest PY
Total	0	0
Increase in reserves during Latest PY		0
Total payments during Latest PY		0

Case incurred loss during Latest PY	0
New Mexico direct losses incurred as shown on NAIC Annual Statement Schedule T	
Difference	0

Explanation for Difference (if any)

[13.14.17.15 NMAC - Rp, 13.14.17.15 NMAC, 7-1-06; A, 09-15-10]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.18 NMAC Sections 13, 21, 25, 26, 27, 28, 29, 40, 41, 49, 51, 60, 68, 73, 76, 78, 79, 80, 81, and the addition of new Sections 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, and 106 effective 09-15-10.

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

NM FORM NO.	ALTA FORM NO. & DATE	NAME OF FORM	NMAC NO.
1	6-17-06	Owner's Policy	13.14.18.14
2	6-17-06	Loan Policy	13.14.18.15
3	10-17-92	Construction Loan Policy	13.14.18.16
6	6-17-06	Commitment for Title Insurance	13.14.18.19
6.1	6-17-06	Plain Language Commitment for Title Insurance	13.14.18.19
7	1963	U.S. Policy	13.14.18.20
[8	3-27-87	Closing Protection Letter] [Reserved]	13.14.18.21
9		Notice of Availability of Owner's Title Insurance	13.14.18.22
10	9-24-94	Facultative Reinsurance Agreement	13.14.18.23
11		Multipurpose Endorsement	13.14.18.24
12	4-06, [6-17-06] 10-16-08	Condominium (Lender's Policy) Endorsement	13.14.18.25
13	5-06, [6-17-06] 10-16-08	[P.U.D.]: Planned Unit Development Endorsement (Loan Policy)	13.14.18.26
13.1	5.1-06, [6-17-06] 10-16-08	[P.U.D.]: Planned Unit Development Endorsement (Owner's Policy)	13.14.18.27
14	6-06, 6-17-06	Variable Rate, [Negative Amortization] Mortgage Endorsement	13.14.18.28
15	6.2-06, 6-17-06	Variable Rate[:] Mortgage - Negative Amortization Endorsement	13.14.18.29
16	7-06, 6-17-06	Manufactured Housing Unit Endorsement	13.14.18.30
16.1	7.1-06, 6-17-06	Manufactured Housing - Conversion (Loan) Endorsement	13.14.18.31
16.2	7.2-06, 6-17-06	Manufactured Housing - Conversion (Owner's) Endorsement	13.14.18.32
17		Revolving Credit Endorsement	13.14.18.33
18	A, Rev. 6-1-87	Construction Loan Policy Endorsement A	13.14.18.34
19	D, Rev. 6-1-87	Construction Loan Policy Endorsement D	13.14.18.35
20	13-06, 6-17-06	Leasehold Owner's Endorsement	13.14.18.36
21	13.1-06, 6-17-06	Leasehold Loan Endorsement	13.14.18.37
22		Pending Disbursement Down Date Endorsement	13.14.18.38
23		Pending Improvements Endorsement	13.14.18.39
24	10-06, 6-17-06	Assignment Endorsement	13.14.18.40
24.1	10.1-06, [6-17-06] 10-16-08	Assignment and [Date Down] Down Date Endorsement	13.14.18.41
25		Additional Advance Endorsement	13.14.18.42
26		Partial Coverage Endorsement	13.14.18.43
27	1963	[ALTA] U.S. Policy Down Date Endorsement	13.14.18.44
28	15-06, 6-17-06	Non-Imputation - Full Equity Transfer Endorsement	13.14.18.45
28.1	15.1-06, 6-17-06	Non-Imputation - Additional Interest Endorsement	13.14.18.46

28.2	15.2-06, 6-17-06	Non-Imputation - Partial Equity Transfer Endorsement	13.14.18.47
29	8.1-06, 6-17-06	Environmental Protection Lien Endorsement	13.14.18.48
30	4.1-06, 6-17-06	Condominium (Owner's Policy) Endorsement	13.14.18.49
31		Owner's Leasehold Conversion Endorsement	13.14.18.50
[32]		Coordinate and Proportionate Endorsement [Reserved]	13.14.18.51
33		Change of Name Endorsement	13.14.18.52
34	1991	U.S. Policy	13.14.18.53
35	Rev. 7-01-08	Notice to Purchaser Insured	13.14.18.54
41		Foreclosure [Guarantee] Title Insurance Policy	13.14.18.60
42		Foreclosure Guarantee Policy Down Date Endorsement	13.14.18.61
43		Insuring Around Endorsement	13.14.18.62
44		Revolving Credit, Increased Credit Limit Endorsement	13.14.18.63
45	10-19-96	Residential Limited Coverage Junior Loan Policy	13.14.18.64
46	10-19-96	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.18.65
47	10-19-96	[Revolving Credit/Variable Rate] Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.18.66
48	2-06, 6-17-06	Truth-in-Lending Endorsement	13.14.18.67
49		Notice of Availability of Future Increase in Coverage <u>and Potential Premium Discounts for Future Policies</u>	13.14.18.68
50	9-06, 6-17-06	Restrictions, Encroachments, Minerals - Loan Policy Endorsement	13.14.18.69
50.1	9.3-06, 6-17-06	Restrictions, Encroachments, Minerals - Loan Policy Endorsement	13.14.18.70
51		Land Abuts Street Endorsement	13.14.18.71
52		[Designation of Improvement, Street Endorsement] <u>Location Endorsement</u>	13.14.18.72
[53]		Same as Survey Endorsement [Reserved]	13.14.18.73
54	19.1-06, 6-17-06	Contiguity Single Parcel Endorsement	13.14.18.74
55		Named Insured Endorsement	13.14.18.75
56	9.1-06, 6-17-06	Restrictions, Encroachments, Minerals - Owner's Policy (Unimproved Land) Endorsement	13.14.18.76
56.1	9.4-06, 6-17-06	Restrictions, Encroachments, Minerals Endorsement (Owner's Policy -- Unimproved Land)	13.14.18.77
57	9.2-06, 6-17-06	Restrictions, Encroachments, Minerals - Owner's Policy (Improved Land) Endorsement	13.14.18.78
57.1	9.5-06, 6-17-06	Restrictions, Encroachments, Minerals (Owner's Policy[:] - Improved Land) Endorsement	13.14.18.79
58	20-06, 6-17-06	First Loss - Multiple Parcel Transactions Endorsement	13.14.18.80
[59]		Last Dollar Endorsement [Reserved]	13.14.18.81
60	12-06, 6-17-06	Aggregation Endorsement	13.14.18.82
61		Foundation Endorsement	13.14.18.83
62		Assignment of Rents/Leases Endorsement	13.14.18.84
63	6-17-06	Short Form Residential Loan Policy	13.14.18.85
64	3-06, Rev. 6-17-06	Zoning - Unimproved Land Endorsement	13.14.18.86
65	3.1-06, Rev. 6-17-06	Zoning - Completed Structure Endorsement	13.14.18.87
66	19-06, 6-17-06	Contiguity - Multiple Parcels Endorsement	13.14.18.88
67	[47] 17.1-06, 6-17-06	Access and Entry Endorsement	13.14.18.89
68	17.1-06	<u>Indirect Access and Entry Endorsement</u>	13.14.18.90
69	17.2-06, 6-17-06	<u>Utility Access Endorsement</u>	13.14.18.91
70	8.2-06, 6-17-06	<u>Commercial Environmental Protection Lien Endorsement</u>	13.14.18.92
71	14.3-06, 10-22-09	<u>Reverse Mortgage Endorsement</u>	13.14.18.93
72	18-06, 6-17-06	Single Tax Parcel Endorsement	13.14.18.94

<u>73</u>	<u>18.1-06, 6-17-06</u>	<u>Multiple Tax Parcel Endorsement</u>	<u>13.14.18.95</u>
<u>74</u>	<u>24-06, 10-16-08</u>	<u>Doing Business Endorsement</u>	<u>13.14.18.96</u>
<u>75</u>	<u>26-06, 6-17-06</u>	<u>Subdivision Endorsement</u>	<u>13.14.18.97</u>
<u>76</u>	<u>28-06, 10-16-08</u>	<u>Easement - Damage or Enforced Removal Endorsement</u>	<u>13.14.18.98</u>
<u>77</u>	<u>23-06, 6-17-06</u>	<u>Co-Insurance – Single Policy Endorsement</u>	<u>13.14.18.99</u>
<u>78</u>	<u>25-06, 6-17-06</u>	<u>Same as Survey Endorsement</u>	<u>13.14.18.100</u>
<u>79</u>	<u>25.1-06, 6-17-06</u>	<u>Same as Portion of Survey Endorsement</u>	<u>13.14.18.101</u>
<u>80</u>	<u>11-06, 6-17-06</u>	<u>Mortgage Modification Endorsement</u>	<u>13.14.18.102</u>
<u>81</u>		<u>Closing Protection Letter</u>	<u>13.14.18.103</u>
<u>81.1</u>		<u>Closing Protection Letter - Limitations</u>	<u>13.14.18.104</u>
<u>81.2</u>		<u>Closing Protection Letter – Single Transaction Limited Liability</u>	<u>13.14.18.105</u>
<u>82</u>		<u>Inter-Underwriter Indemnification Agreement</u>	<u>13.14.18.106</u>

[6-16-86...4-1-96; 6-1-97, 6-1-98; 13.14.18.13 NMAC - Rn, 13 NMAC 14.2.9 & A, 5-15-00; 13.14.18.13 NMAC - A, 8-1-01; A, 3-1-02; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-06; A, 8-1-08; A, 8-17-09; A, 09-15-10]

13.14.18.21 ~~[NM FORM 8: CLOSING PROTECTION LETTER:~~

Closing Protection Letter

Issued By

Blank Title Insurance Company

~~[NM Form 8; ALTA Form Rev. 3-27-87]~~

Date: _____

Name and Address of Addressee:

Re: Closing Protection Letter

Dear _____,

When title insurance of Blank Title Insurance Company is specified for your protection in connection with closings of real estate transactions in which you are to be the lessee or purchaser of an interest in land or a lender secured by a mortgage (including any other security instrument) of an interest in land, the Company, subject to the Conditions and Exclusions set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with such closings when conducted by an Issue Agent (an agent authorized to issue title insurance for the Company) or an Approved Attorney (an attorney upon whose certification of title the Company issues title insurance) and when such loss arises out of:

1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, including the obtaining of documents and the disbursement of funds necessary to establish such status of title or lien, or (b) the obtaining of any other document, specifically required by you, but not to the extent that said instructions require a determination of the validity, enforceability or effectiveness of such other document, or (c) the collection and payment of funds due you, or

2. Fraud or dishonesty of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with such closing.

If you are a lender protected under the foregoing paragraph, your borrower in connection with a loan secured by a mortgage on a one to four family dwelling shall be protected as if this letter were addressed to your borrower.

Conditions And Exclusions

A. The Company will not be liable to you for loss arising out of:

1. Failure of the Approved Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in said binder or commitment shall not be deemed to be inconsistent.

2. Loss or impairment of your funds in the course of collection or which on deposit with a bank due to bank failure, insolvency or suspension except such as shall result from failure of the Issuing Agent or the Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.

3. Mechanics' and materialmens' liens in connection with your purchase or lease or construction loan transactions, except to the extent that

protection against such liens is afforded by a title insurance since commitment or policy of the Company.

B. If the closing is to be conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.

C. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.

D. Any liability of the Company for loss incurred by you in connection with closings of real estate transactions by an Issuing Agent or Approved Attorney shall be limited to the protection provided by this letter. However, this letter shall not affect the protection afforded by a title insurance binder, commitment or policy of the Company.

E. Claims shall be made promptly to the Company at its principal office at _____. When the failure to give prompt notice shall prejudice the Company, then liability of the Company hereunder shall be reduced to the extent of such prejudice.

F. The protection herein offered does not extend to real property transactions in the state of Texas. An Insured Closing Service Letter has been promulgated under the law of the state of Texas.

The protection herein offered will be effective upon receipt by the Company of your acceptance in writing, which may be made on the enclosed copy hereof and will continue until cancelled by written notice from the Company.

Any previous insured closing service letter or similar agreement is hereby cancelled except as to closings of your real estate transactions regarding which you have previously sent or within 30 days hereafter send written closing instructions to the Issuing Agent or Approved Attorney.

BLANK TITLE INSURANCE COMPANY

By: _____, Title: _____

Accepted: _____, 20__

By: _____, Title: _____

Note: The name of a particular issuing agent or approved attorney may be inserted in lieu of references to Issuing Agent or Approved Attorney contained in this text and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent] [Reserved]

[6-16-86; 13.14.18.21 NMAC - Rn, 13 NMAC 14.2.A.9, 5-15-00; Repealed, 09-15-10]

**13.14.18.25 NM FORM 12: CONDOMINIUM ~~[ENDORSEMENT ALL ASSESSMENTS]~~ LENDER'S POLICY
ENDORSEMENT:**

Condominium Endorsement

Attached To Policy No. _____

Issued By

Blank Title Insurance Company

[NM Form 12; ALTA ~~[Form 4]~~ Form 4-06, Rev. ~~[2006]~~ 2008]

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

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. ~~[The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the Title.]~~ As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
4. The priority of any lien for charges and assessments provided for in the condominium statutes and condominium documents at Date of Policy ~~[provided for in the condominium statutes and condominium documents]~~ over the lien of any Insured Mortgage identified in Schedule

A.

5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.

6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.

7. The failure of the Title by reason of a right of first refusal, to purchase the unit and its common elements that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory: _____

[6-16-86...4-1-93; 13.14.18.25 NMAC - Rn, 13 NMAC 14.8.A.9, 5-15-00; A, 8-1-08; A, 8-17-09; A, 09-15-10]

13.14.18.26 NM FORM 13 - PLANNED UNIT DEVELOPMENT ENDORSEMENT [~~ALL ASSESSMENTS~~] (LOAN POLICY):

Planned Unit Development Endorsement (Loan Policy)

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 13; ALTA Form [5] 5-06, Rev. [~~2006~~] 2008]

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

(1) Present violations of any restrictive covenants referred to in Schedule B [~~which~~ that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. [~~The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of the Title.~~] As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

(2) The priority of any lien for charges and assessments [~~at Date of Policy~~] in favor of any association of homeowners [~~which~~ that are provided for in any document at Date of Policy referred to in Schedule B over the lien of any Insured Mortgage identified in Schedule A.

(3) The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

(4) The failure of the Title by reason of a right of first refusal to purchase the Land which was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[6-16-86...4-1-93; 13.14.18.26 NMAC - Rn, 13 NMAC 14.8.A.10, 5-15-00; A, 8-1-08; A, 8-17-09; A, 09-15-10]

13.14.18.27 NM FORM 13.1: PLANNED UNIT DEVELOPMENT ENDORSEMENT ~~[UNPAID ASSESSMENTS]~~ (OWNER'S POLICY):**Planned Unit Development Endorsement (Owner's Policy)**

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 13.1; ALTA Form ~~[5.1, Rev. 2006]~~ 5.1-06, Rev. 2008]

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

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. ~~[The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of the Title.]~~ As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

2. Any charges or assessments in favor of any association of homeowners, ~~[which]~~ that are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.

3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[6-16-86, 5-1-88; 13.14.18.27 NMAC - Rn, 13 NMAC 14.8.A.11, 5-15-00; 13.14.18.27 NMAC - N, 8-1-08; A, 8-17-09; A, 09-15-10]

13.14.18.28 NM FORM 14: VARIABLE RATE, ~~[NEGATIVE AMORTIZATION]~~ MORTGAGE ENDORSEMENT:**Variable Rate, ~~[Negative Amortization]~~ Mortgage Endorsement**

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 14; ALTA Form ~~[6, Rev. 2006]~~ 6-06]

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

1. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from its provisions that provide for changes in the rate of interest.

2. Loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the loan documents secured by the Insured Mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon:

1. usury, or

2. any consumer credit protection or truth in lending law.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[6-16-86, 5-1-88; 13.14.18.28 NMAC - Rn, 13 NMAC 14.8.A.12, 5-15-00; 13.14.18.28 NMAC - Rn, 13.14.18.27 NMAC & A, 8-1-08; A, 09-15-10]

13.14.18.29 NM FORM 15: VARIABLE RATE MORTGAGE - NEGATIVE AMORTIZATION ENDORSEMENT:

Variable Rate Mortgage Negative Amortization Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 15; ALTA Form [6.2, Rev. 2006] 6.2-06]

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

(1) The invalidity or unenforceability of the lien of the Insured Mortgage resulting from its provisions that provide for (a) interest on interest, (b) changes in the rate of interest, or (c) the addition of unpaid interest to the principal balance of the loan.

(2) Loss ~~or~~ of priority of the lien of the Insured Mortgage as security for the principal balance of the loan, including any unpaid interest which was added to principal in accordance with the provisions of the insured mortgage, interest on interest, or interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by (a) changes in the rate of interest, (b) interest on interest, or (c) increases in the unpaid principal balance of the loan resulting from the addition of unpaid interest.

“Changes in the rate of interest”, as used in this endorsement shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the loan documents secured by the Insured Mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon ~~[(a) usury, or (b) any consumer credit protection or truth in lending law].~~

1. usury, or

2. any consumer credit protection or truth in lending law

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[6-16-86, 5-1-88; 13.14.18.29 NMAC - Rn, 13 NMAC 14.8.A.13, 5-15-00; 13.14.18.29 NMAC; A, 8-1-01; A, 7-1-05; 13.14.18.29 NMAC - Rn, 13.14.18.28 NMAC & A, 8-1-08; A, 09-15-10]

13.14.18.40 NM FORM 24: ASSIGNMENT ENDORSEMENT:

Assignment Endorsement

Attached To Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 24; ALTA Form [10, Rev. 2006] 10-06]

1. The name of the Insured is amended to read: _____.

2. The Company insures against loss or damage sustained by the Insured by reason of:

a. The failure of the following assignment to vest title to the Insured Mortgage in the Insured: _____;

b. Any modification, partial or full reconveyance, release, or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____;

This endorsement shall be effective provided that, at Date of Endorsement, (1) the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Insured [at Date of Endorsement], or (2) if the note or notes are transferable records, the insured has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transactions laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Date of Endorsement: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[6-16-86; 13.14.18.40 NMAC - Rn, 13 NMAC 14.8.A.24, 5-15-00; 13.14.18.40 NMAC - Rn, 13.14.18.37 NMAC & A, 8-1-08; A, 09-15-10]

13.14.18.41 NM FORM 24.1: ASSIGNMENT AND ~~[DATE DOWN]~~ DOWN DATE ENDORSEMENT:

Assignment and ~~[Date Down]~~ Down Date Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 24.1; ALTA Form ~~[10.1, Rev. 2006]~~ 10.1-06, Rev. 2008]

1. The name of the Insured is amended to read: _____.

2. The Company insures ~~[the owner of the Indebtedness secured by the Insured Mortgage]~~ against loss or damage sustained by the Insured by reason of:

a. The failure of the following assignment to vest title to the Insured Mortgage in the Insured: _____;

b. Any liens for taxes or assessments that are due and payable on Date or Endorsement, except: _____;

c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except: _____;

d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to Date of Policy in the Public Records and on or prior to Date of Endorsement, except: _____;

e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____.

This endorsement shall be effective provided that, at Date of Endorsement, (1) the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Insured [at Date of Endorsement], or (2) if the note or notes are transferable records, the insured has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transaction laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Date of Endorsement _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[2-6-87; 13.14.18.41 NMAC - Rn, 13 NMAC 14.8.A.25, 5-15-00; 13.14.18.41 NMAC - N, 8-1-08; A, 9-15-09; A, 09-15-10]

13.14.18.49 NM FORM 30: ~~[CONDOMINIUM ENDORSEMENT UNPAID ASSESSMENTS]~~ CONDOMINIUM (OWNER'S POLICY) ENDORSEMENT:**[Condominium Endorsement] Condominium (Owner's Policy) Endorsement****Attached To Policy No. _____****Issued by****Blank Title Insurance Company****[NM Form 30; ALTA Form 4.1, Rev. 2006]**

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

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents[~~The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the Title~~] or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
4. Any charges or assessments provided for in the condominium statutes and condominium documents due and unpaid at Date of Policy.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[6-16-86...4-1-93; 13.14.18.49 NMAC - Rn, 13 NMAC 14.7.D.8 through 14.7.D.11, 5-15-00; Repealed, 7-1-05; 13.14.18.49 NMAC - Rn, 13.14.18.43 NMAC & A, 8-1-08; A, 8-17-09; A, 09-15-10]

13.14.18.51 ~~[NM FORM 32: CO-ORDINATE AND PROPORTIONATE ENDORSEMENT:~~**Co-Ordinate And Proportionate Endorsement****Attach To Policy No. _____****Issued By****Blank Title Insurance Company****[NM Form 32]**

Anything in this policy notwithstanding, each of the insurers respectively shall be liable only for such proportion of loss for which the

insurers may become liable under said policy and the proportion of all costs which the insurers are obligated to pay under the Conditions and Stipulations thereof, as the amount set opposite under each of their names bears to the face amount of said policy.

____ (\$ _____) _____
 Insurer _____ Liability Claims Address

 City _____ State _____ Zip Code _____

____ (\$ _____) _____
 Insurer _____ Liability Claims Address

 City _____ State _____ Zip Code _____

____ (\$ _____) _____

 Insurer _____ Liability Claims Address

 City _____ State _____ Zip Code _____

Whenever, in said policy, the term "the company," is used, such term shall be interpreted to mean the insurers; where proper, the singular number shall be deemed to include the plural.

Paragraph numbered ____ (16 if a loan policy and 17 if an owner's policy) of the Conditions and Stipulations of said policy is hereby amended to add the following:—

"All notices required to be given the Company and statement in writing required to be furnished the Company shall be addressed to each of the Companies at its Home Office as shown above."

Dated: _____

BLANK TITLE INSURANCE COMPANY

By: _____, President

Countersigned By: _____, Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

ATTEST: _____, Secretary] [Reserved]

[4-1-93; 13.14.18.51 NMAC - Rn, 13 NMAC 14.8.A.32, 5-15-00; Repealed, 7-1-05; 13.14.18.51 NMAC - Rn, 13.14.18.45 NMAC, 8-1-08; Repealed, 09-15-10]

13.14.18.60 NM FORM 41 - FORECLOSURE [GUARANTEE] TITLE INSURANCE POLICY:

Cover page.

Foreclosure [~~Guarantee Policy of Title Insurance~~] Title Insurance Policy

Issued By

Blank Title Insurance Company

[NM Form 41]

SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS [~~HERETO ANNEXED AND MADE A PART OF~~] THIS POLICY, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures the insured named in Schedule A against loss [not exceeding the liability amount stated in Schedule A which the insured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records, as of Date of Policy shown in Schedule A] or damage sustained by the Insured in the event that, at Date of Policy:

1. The title to the herein described estate or interest is not vested in the vestee name in Schedule A.
2. Except for the matters shown in Schedule B, there are [~~no~~] defects, liens, encumbrances or other matters affecting title to the estate or interest in the land shown in Schedule A, provided that such matters are not necessarily shown in the order of their priority.

3. The current interest holders claiming some right, title or interest by reason of the matters shown in Schedule B are not shown therein.

THIS FORECLOSURE [GUARANTEE] ~~TITLE INSURANCE~~ POLICY IS FURNISHED SOLELY FOR THE PURPOSE OF FACILITATING THE FILING OF THE ACTION TO FORECLOSE THE MORTGAGE OR ~~LIEN~~ DEED OF TRUST OF THE INSURED OR TO NON-JUDICIALLY FORECLOSE A DEED OF TRUST. IT SHALL NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By: _____

Schedule A.

Order No. _____

Liability _____

Premium \$ _____

Policy/Order No. _____

1. Name of Insured:

2. Date of Policy:

3. This Foreclosure Guarantee Policy is furnished solely for the purpose of facilitating the filing of an action to foreclose the following described mortgage or lien of the insured:

4. The estate or interest in the Land which is covered by this policy is:

5. Title to the estate or interest in the Land is vested in:

6. The Land referred to in this policy is described as follows:

Schedule B.

The title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown:

1.

2.

3.

4.

5.

6.

7.

Conditions and stipulations.

1. Definition of Terms. The following terms when used in the policy mean:

(a) "date": the effective date of the policy shown in Schedule A.

(b) "insured": the party or parties named as the insured mortgagee or lienholder of record in this policy, or on a supplemental writing executed by the Company.

(c) "insured claimant": an insured claiming loss or damage.

(d) "land": the land described or referred to in Schedule A and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A nor any right, title, interest, estate or easement in abutting streets, roads, avenue, alleys, lanes, or waterways.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers of value and without knowledge.

2. Exclusions from Coverage of this policy. The company assumes no liability for loss by reason of the following:

(a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

(b) (1) Unpatented mining claim; (2) reservations or exceptions in patents or in acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded by (1), (2) or (3) are shown by the public records.

(c) Assurances to title to any property beyond the lines of the land expressly described in the description set forth in Schedule A of this policy, or title to streets, roads, avenues, lanes, way or waterways in which such land abuts, or the right to maintain therein vaults, tunnels, ramps, or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.

(d) Defects, liens, encumbrances, adverse claims or other matters (1) whether or not shown by the public records, and which are created, suffered, assumed or agreed to by one or more of the insured; (2) which result in no loss to the insured; or (3) which do not result in the invalidity or potential invalidity of any judicial or nonjudicial proceeding which is within the scope and purpose of assurances provided.

3. Notice of Claim to Be Given by Insured Claimant. An insured shall notify the Company promptly in writing of any claim of title or interest which is adverse to the title to the estate or interest, as state herein, and which might cause loss or damage for which the Company may be liable by virtue of this policy. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. No Duty to Defend or Prosecute. The Company shall have no duty to defend or prosecute any action or proceeding, nor to pay any attorney's fees, costs or expenses incurred in such action or proceeding, to which the insured is a party, notwithstanding the nature of any allegation in such action or proceeding.

5. Company's Option to Defend or Prosecute Actions; Duty of Insured to Claimant to Cooperate. Even though the Company has not duty to defend or prosecute as set forth in Paragraph 4 above:

(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 5(b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the insured, or to prevent or reduce loss or damage to the insured. The company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(b) If the Company elects to exercise its options as stated in Paragraph 5(a), the Company shall have the right to select counsel of its choice (subject to the right of such insured to object for reasonable cause) to represent the insured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not covered by this policy.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this policy permits the Company to prosecute or provide for the defense of any action or proceeding, an insured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for this purpose. Whenever requested by the Company, an insured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate.

6. Proof of Loss or Damage.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided to the company, a proof of loss or damage signed and sworn to by the insured shall be furnished to the Company within ninety (90) days after the insured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this policy which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure to the insured to provide the required proof of loss or damage, the Company's obligation to such insured under the policy shall terminate. In addition, the insured may reasonably be required to submit to examination under oath by any authorized representative of the company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether

bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage.

Further, if requested by any authorized representative of the Company, the insured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy to the insured for that claim.

7. Options to Pay or Otherwise Settle Claims: Termination of Liability. In Case of a claim under this policy, the company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness Secured by the Mortgage.

The Company shall have the option to pay or settle or compromise for or in the name of the insured any claim which could result in loss to the insured within the coverage of this policy or, the Company shall have the option to purchase from said mortgagee or lienholder the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any cost, reasonable attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the policy shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the insured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option(s) provided for in this Section, the Company's obligation to the insured under this policy for the claimed loss or damage, other than to make the payment required, if any, in this Section, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Section 5, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

To pay or otherwise settle with other parties for or in the name of an insured claimant any claim assured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the Option(s) provided for in this Section, the company's obligation to the insured under this policy for the claimed loss or damage, other than to make the payment required, if any, in this Section, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its option(s) under Section 5.

8. Determination and Extent of Liability. This policy is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this policy and only to the extent herein described, and subject to the exclusions stated in Section 2. The liability of the Company under this policy to the insured shall not exceed the least of:

(a) the amount of liability stated in Schedule A;

(b) The amount of the unpaid principal indebtedness secured by the mortgage of an insured mortgagee, as limited or provided under Section 7 of these Conditions and Stipulations or as reduced under Section 10 of these Conditions and Stipulations, at the time the loss or damage assured against by this policy occurs, together with interest thereon;

(c) the difference between the value of the estate or interest covered hereby as state herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this policy; or

(d) the amount of any valid lien or encumbrance asserted against the land in a superior position to the insured's lien and not shown in Schedule B.

9. Limitation of Liability

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the company, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction and disposition of all appeals therefrom, or a settlement consented to by the Company in accordance with Paragraph 9(c), adverse to the title as stated herein.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the proper written consent of the Company.

10. Reduction of Liability or Termination of Liability. All payments under this policy, except payments made for costs, attorneys' fees and expenses pursuant to Section 5, shall reduce the amount of liability by the amount paid.

11. Payment of Loss

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within (3) days thereafter.

12. Subrogation upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated and/or entitled to all rights and remedies which the insured would have against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured shall permit the Company to sue, compromise or settle in the name of the insured and to use the name of the insured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured, the Company shall be subrogated to all rights and remedies of the insured after the insured shall have recovered its principal, interest, and costs of collection.

13. Arbitration.

Unless prohibited by applicable law, either the Company or the Insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. The Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fee only if the law of the state in which the land is located permit a court to award attorneys fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. Liability Limited to This Policy; Policy Entire Contract.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy contract between the insured and the Company. In interpreting any provision of this policy, the policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this policy.

(c) No amendment of, or endorsement to, this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. Notices, Where Sent. All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at: _____.

[6-1-97; 13.14.18.60 NMAC - Rn, 13 NMAC 14.8.A.39, 5-15-00; 13.14.18.60 NMAC - Rn, 13.14.18.54 NMAC, 8-1-08; A, 09-15-10]

13.14.18.68 NM FORM 49: NOTICE OF AVAILABILITY OF FUTURE INCREASE IN COVERAGE AND POTENTIAL PREMIUM DISCOUNT FOR FUTURE POLICIES:

NOTICE OF AVAILABILITY OF FUTURE INCREASE IN COVERAGE AND POTENTIAL PREMIUM DISCOUNTS FOR FUTURE POLICIES

(To be attached to all policies issued on one to four [~~single-family dwellings~~] family residential properties)

(Name, Address, and Telephone Number of Agency/Insurer)

A. Notice of Availability of Future Increase in Coverage.

READ THIS NOTICE TO FAMILIARIZE YOURSELF WITH IMPORTANT INFORMATION REGARDING YOUR TITLE INSURANCE COVERAGE

An Owner's Policy may be endorsed to reflect the current value of the estate insured (upon payment of the current basic [premium] premium according to the [schedule] schedule less the amount previously paid for said policy) if the [insurer's underwriting] insurer's underwriting standards are met; provided, however, that the effective date of the policy shall remain unchanged and no affirmative coverages or down dates shall be added to the policy.

PLEASE KEEP THIS TITLE INSURANCE POLICY. IT IS AN IMPORTANT LEGAL DOCUMENT. AS YOU REVIEW IT FROM TIME TO TIME, BE AWARE THAT YOU MAY INCREASE YOUR TITLE POLICY AMOUNT IF YOU ADD IMPROVEMENTS, OR IF THE VALUE OF YOUR PROPERTY INCREASES OVER TIME, BY REQUESTING AN INCREASE IN COVERAGE AND PAYING THE APPLICABLE PREMIUMS. THIS WILL NOT CHANGE THE TERMS OF THE POLICY OTHER THAN THE AMOUNT.

B. Notice of Potential Premium Discounts for Future Policies.

YOUR TITLE POLICY IS AN IMPORTANT LEGAL DOCUMENT AND SHOULD BE STORED IN A SAFE, SECURE PLACE. YOUR TITLE POLICY MAY ENTITLE YOU TO VALUABLE DISCOUNTS IN THE FUTURE.

New Mexico title insurance premium rates are set every other year or approved by the New Mexico Superintendent of Insurance. These are the rates that must be charged for title insurance policies, title binders, and title policy endorsements by title insurance companies doing business in New Mexico. The Superintendent of Insurance does not regulate other title company charges.

Subject to limited exception, all premiums for title insurance policies are based on the amount of insurance coverage. Larger policies cost more than smaller policies.

In the future, there may be certain discounts from the standard owner's policy rates available to you, if your transaction meets the requirements for any particular discount. These current discounts are summarized below:

Owner Policy Discounts:

Reissue Discount. If you have an existing owner's policy of title insurance on the property when you sell your property, then a discount applies based upon the age of the prior policy and the amount of the prior policy.

Subdivider/Builder Rate. Subject to certain conditions, if you are the seller of multiple lots within the same subdivision, you are entitled to a 25% discount off the standard owner's policy rate.

Quick Resale Rate. If you purchase an owner's policy within 30 days of the issuance of a prior policy on the same property, the cost of the new policy is 30% of the standard owner's policy rate.

Loan Policy Discounts:

General Lender Policy Rate. Loan policies are generally 90% of the cost of the owner's policy, unless one of the discounts available for loan policies applies.

Simultaneous Issue Rate. If a lender title policy is issued simultaneously with the issuance of an owner's policy, the cost of the lender policy (up to the face amount of the owner's policy) is \$30.

Refinance Transactions. If you are refinancing an existing mortgage loan, a discount may apply on the new loan policy. Two discounts called the "regulatory substitution rate" and "statutory refinance rate" may apply in refinance transactions.

Second or Subsequent Mortgages. If you produce an owner's policy of title insurance, you may be entitled to a discount called the "subsequent issue" rate, on future transactions involving second or subsequent mortgages.

ON YOUR NEXT TRANSACTION, ASK YOUR ESCROW OFFICER TO CONFIRM THAT YOU HAVE RECEIVED ANY AND ALL DISCOUNTS TO WHICH YOU ARE ENTITLED UNDER NEW MEXICO'S TITLE INSURANCE LAW AND REGULATIONS.

[13.14.18.68 NMAC - N, 8-1-01; 13.14.18.68 NMAC - Rn, 13.14.18.62 NMAC, 8-1-08; A, 09-15-10]

13.14.18.73 ~~[NM FORM 53- SAME AS SURVEY ENDORSEMENT-]~~

Same as Survey Endorsement
Attached to Policy No. _____
Issued By
Blank Title Insurance Company

[NM Form 53]

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of failure of the land to be the same as that delineated on the plat of a survey made by _____ on _____, designated Job. No. _____, a copy of which is attached hereto and made a part hereof:

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.

Dated: _____

BLANK TITLE INSURANCE COMPANY

BY _____] [Reserved]

[13.14.18.73 NMAC - N, 7-1-03; 13.14.18.73 NMAC - Rn, 13.14.18.66 NMAC, 8-1-08; Repealed, 09-15-10]

13.14.18.81 ~~[NM FORM 59: LAST DOLLAR ENDORSEMENT:~~

Last Dollar Endorsement

Attached To Policy Number _____

Issued By Blank Title Insurance Company

~~[NM Form 59]~~

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

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

~~[Witness clause optional]~~

~~BLANK TITLE INSURANCE COMPANY~~

~~BY: _____] [Reserved]~~

~~[13.14.18.81 NMAC - Rn, 13.14.18.72 NMAC, 8-1-08; Repealed, 09-15-10]~~

13.14.18.90 NM FORM 68: INDIRECT ACCESS AND ENTRY ENDORSEMENT:

Indirect Access and Entry Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 68; ALTA Form 17.1-06]

The Company insures against loss or damage sustained by the Insured if, at Date of Policy, (i) the easement identified in Schedule A (the "Easement") does not provide that portion of the Land identified in Schedule A both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Easement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

~~[Witness clause optional]~~

~~Dated: _____~~

~~BLANK TITLE INSURANCE COMPANY~~

~~Authorized signatory _____~~

[13.14.18.90 NMAC - N, 09-15-10]

13.14.18.91 NM FORM 69: UTILITY ACCESS ENDORSEMENT:**Utility Access Endorsement****Attached to Policy No. _____****Issued by****Blank Title Insurance Company****[NM Form 69; ALTA 17.2-06]**

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services: **[CHECK ALL THAT APPLY]**

_____ Water service _____ Natural gas service _____ Telephone service

_____ Electrical power service _____ Sanitary sewer _____ Storm water drainage

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

- (1) _____ a gap or gore between the boundaries of the Land and the rights-of-way or easements;
- (2) _____ a gap between the boundaries of the rights-of-way or easements ; or
- (3) _____ a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.91 NMAC - N, 09-15-10]

13.14.18.92 NM FORM 70: COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT:**Commercial Environmental Protection Lien Endorsement****Attached to Policy No. _____****Issued by****Blank Title Insurance Company****[NM Form 70; ALTA Form 8.2-06]**

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.92 NMAC - N, 09-15-10]

13.14.18.93 NM FORM 71: REVERSE MORTGAGE ENDORSEMENT:**Reverse Mortgage Endorsement**

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 71; ALTA Form 14.3-06]

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions in the Policy, except Exclusion 3(d), the provisions of the Conditions and the Exceptions contained in Schedule B.

a. "Agreement," as used in this endorsement, shall mean the note or loan agreement repayment of Advances under which is secured by the Insured Mortgage.

b. "Advance," as used in this endorsement, shall mean only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

c. "Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at Date of Policy.

2. The Company insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.

b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.

c. The invalidity or unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness. Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no Indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances, (iv) failure of the Insured Mortgage to state the term for Advances, or (v) failure of the Insured Mortgage to state the maximum amount secured by the Insured Mortgage.

d. The invalidity or unenforceability of the lien of the Insured Mortgage because of the failure of the mortgagors to be at least 62 years of age at Date of Policy.

3. The Company also insures against loss or damage sustained by the Insured by reason of:

a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the principal portion of the Indebtedness.

b. Lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

"Interest," as used in this paragraph 3, shall include lawful interest based on appreciated value.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

a. The invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for any Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor.

b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy.

c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.).

d. Any federal or state environmental protection lien.

e. Usury, or any consumer credit protection or truth-in-lending law. [or

f. Any mechanic's or materialmen's lien.]

5. The Amount of Insurance shall include Advances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision

of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.93 NMAC - N, 09-15-10]

13.14.18.94 NM FORM 72: SINGLE TAX PARCEL ENDORSEMENT:

Single Tax Parcel Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 72; ALTA Form 18-06]

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.94 NMAC - N, 09-15-10]

13.14.18.95 NM FORM 73: MULTIPLE TAX PARCEL ENDORSEMENT:

Multiple Tax Parcel Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 73; ALTA Form 18.1-06]

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

1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel: _____ Tax Identification Numbers: _____

2. the easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes, assessments or other charges imposed on the servient estate by a governmental authority.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.95 NMAC - N, 09-15-10]

13.14.18.96 NM FORM 74: DOING BUSINESS ENDORSEMENT:**Doing Business Endorsement****Attached to Policy No. _____****Issued by****Blank Title Insurance Company****[NM Form 74; ALTA Form 24-06]**

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage on the ground that making the loan secured by the Insured Mortgage constituted a violation of the "doing - business" laws of the State where the Land is located because of the failure of the Insured to qualify to do business under those laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.96 NMAC - N, 09-15-10]

13.14.18.97 NM FORM 75: SUBDIVISION ENDORSEMENT:**Subdivision Endorsement****Attached to Policy No. _____****Issued by****Blank Title Insurance Company****[NM Form 75; ALTA Form 26-06]**

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.97 NMAC - N, 09-15-10]

13.14.18.98 NM FORM 76: EASEMENT - DAMAGE OR ENFORCED REMOVAL ENDORSEMENT:**Easement - Damage or Enforced Removal Endorsement****Attached to Policy No. _____****Issued by****Blank Title Insurance Company****[NM Form 76; ALTA Form 28-06]**

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

(1) damage to an existing building located on the Land, or

(2) enforced removal or alteration of an existing building located on the Land, as a result of the exercise of the right of use or maintenance of the easement referred to in Exception _____ of Schedule B for the purpose for which it was granted or reserved.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.98 NMAC - N, 09-15-10]

13.14.18.99 NM FORM 77: CO-INSURANCE - SINGLE POLICY ENDORSEMENT:

Co-Insurance - Single Policy Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 77; ALTA Form 23-06]

CO-INSURANCE ENDORSEMENT

Attached to and made a part of _____ Company ("Issuing Co-Insurer") Policy No. ____ ("Co-Insurance Policy"). Issuing Co-Insurer and any other coinsurers are collectively referred to as "Co-Insurers."

1. Co-Insurer issues this endorsement as evidence of Co-Insurer's liability under Co-Insurance Policy and directs that this endorsement be attached to the Co-Insurance Policy adopting its Covered Risks, Exclusions, Conditions, Schedules and Endorsements, as follows:

**Co-insuring Name and Policy Number Amount of Percentage of
Companies Address [File Number] Insurance Liability**

Issuing Co-Insurer	\$
Co-Insurer	\$
Co-Insurer	\$
Co-Insurer	\$
Aggregate Amount of Insurance	\$

2. Each Co-Insurer shall be liable to the Insured under the Coinsurance Policy only for the total of the loss and costs multiplied by its Proportion of Liability.

3. Any notice of claim and any other notice or statement in writing required to be given under the Co-Insurance Policy must be given to Co-Insurer at its address set forth above.

4. Any endorsement to the Co-Insurance Policy issued after the date of this Co-Insurance Endorsement must be signed on behalf of the Co-Insurer by its authorized officer or agent.

5. This Co-Insurance Endorsement is effective as of the Date of Policy of the Co-Insurance Policy. This Co-Insurance Endorsement may be executed in counterparts.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[Additional Co-Insurer signatures may be added if needed.]

[13.14.18.99 NMAC - N, 09-15-10]

13.14.18.100 NM FORM 78: SAME AS SURVEY ENDORSEMENT:

Same as Survey Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 78; ALTA Form 25-06]

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by

_____ dated _____, and

designated Job No. _____.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.100 NMAC - N, 09-15-10]

13.14.18.101 NM FORM 79: SAME AS PORTION OF SURVEY ENDORSEMENT:

Same as Portion of Survey Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 79; ALTA Form 25.1-06]

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified as [Example: Parcel A, 8, C or Parcel 1, 2,3] on the survey made by

_____ dated _____, and

designated Job No. _____.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.101 NMAC - N, 09-15-10]

13.14.18.102 NM FORM 80: MORTGAGE MODIFICATION ENDORSEMENT:

Mortgage Modification Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 80; ALTA Form 11-06]

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

1. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title at Date of Endorsement as a result of the agreement dated _____ recorded _____
 ("Modification"); and

2. The lack of priority of the lien of the Insured Mortgage, at Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: [Specify exceptions, if any]

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the Modification being deemed a fraudulent conveyance or fraudulent transfer; or

2. the Modification being deemed a preferential transfer except where the preferential transfer results from the failure

a. to timely record the instrument of transfer; or

b. of such recordation to impart notice to a purchaser for value or to a judgment or Lien creditor.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____

[13.14.18.102 NMAC - N, 09-15-10]

13.14.18.103 NM FORM 81: CLOSING PROTECTION LETTER:

Closing Protection Letter

Issued by

Blank Title Insurance Company

[NM Form 81]

Name and Address of Addressee: _____

Date: _____

Name of Issuing Agent or Approved Attorney (hereafter, "Issuing Agent" or "Approved Attorney", as the case may require):

[Identity of settlement agent and status as either Issuing Agent or Approved Attorney appears here.]

Re: Closing Protection Letter

Dear _____,

Blank Title Insurance Company (the "Company") agrees, subject to the Conditions and Exclusions set forth below, to reimburse you for actual loss incurred by you in connection with closings of real estate transactions conducted by the Issuing Agent or Approved Attorney, provided:

(A) title insurance of the Company is specified for your protection in connection with the closing; and

(B) you are to be the (i) lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land

and provided the loss arises out of:

1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land,

including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or

2. Fraud, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closings to the extent that fraud, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

If you are a lender protected under the foregoing paragraph, your borrower, your assignee and your warehouse lender in connection with a loan secured by a mortgage shall be protected as if this letter were addressed to them.

Conditions and Exclusions

1. The Company will not be liable to you for loss arising out of:

A. Failure of the Issuing Agent or Approved Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in the binder or commitment shall not be deemed to be inconsistent.

B. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or the Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.

C. Defects, liens, encumbrances or other matters in connection with your purchase, lease or loan transactions except to the extent that protection against those defects, liens, encumbrances or other matters is afforded by a policy of title insurance not inconsistent with your closing instructions.

D. Fraud, dishonesty or negligence of your employee, agent, attorney or broker.

E. Your settlement or release of any claim without the written consent of the Company.

F. Any matters created, suffered, assumed or agreed to by you or known to you.

2. If the closing is to be conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.

3. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of this right of subrogation.

4. The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing other closing or settlement services. The Company's liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with a real estate transaction, or the failure of any collateral to adequately secure a loan connected with a real estate transaction. However, this letter does not affect the Company's liability with respect to its title insurance binders, commitments or policies.

5. Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than \$2,000,000. If you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you.

6. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____ . The Company is not liable for a loss if the written notice is not received within one year from the date of the closing.

7. The protection herein offered extends only to real property transactions in [State].

Any previous closing protection letter or similar agreement is hereby cancelled, except for closings of your real estate transactions for which you have previously sent (or within 30 days hereafter send) written closing instructions to the Issuing Agent or Approved Attorney.

NOTE: The Company hereby waives its right to demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Land

Title Association. Nothing herein prohibits the arbitration of an arbitratable matter when agreed to by both the Company and the Addressee.

BLANK TITLE INSURANCE COMPANY

By: _____

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)

[13.14.18.103 NMAC - N, 09-15-10]

13.14.18.104 NM FORM 81.1: CLOSING PROTECTION LETTER - LIMITATIONS:

Closing Protection Letter - Limitations

Issued by

Blank Title Insurance Company

[NM Form 81.1]

Name and Address of Addressee: _____

Date: _____

Name of Issuing Agent or Approved Attorney (hereafter, "Issuing Agent" or "Approved Attorney", as the case may require):

[Identity of settlement agent and status as either Issuing Agent or Approved Attorney appears here.]

Re: Closing Protection Letter

Dear _____,

Blank Title Insurance Company (the "Company") agrees, subject to the Conditions and Exclusions set forth below, to reimburse you for actual loss incurred by you in connection with closings of real estate transactions conducted by the Issuing Agent or Approved Attorney, provided:

(C) title insurance of the Company is specified for your protection in connection with the closing; and

(D) you are to be the (i) lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land

and provided the loss arises out of:

1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or

2. Fraud, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closings to the extent that fraud, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

If you are a lender protected under the foregoing paragraph, your borrower, your assignee and your warehouse lender in connection with a loan secured by a mortgage shall be protected as if this letter were addressed to them.

Conditions and Exclusions

1. The Company will not be liable to you for loss arising out of:

A. Failure of the Issuing Agent or Approved Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in the binder or commitment shall not be deemed to be inconsistent.

B. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or the Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.

C. Defects, liens, encumbrances or other matters in connection with your purchase, lease or loan transactions except to the extent that protection against those defects, liens, encumbrances or other matters is afforded by a policy of title insurance not inconsistent with your closing instructions.

D. Fraud, dishonesty or negligence of your employee, agent, attorney or broker.

E. Your settlement or release of any claim without the written consent of the Company.

F. Any matters created, suffered, assumed or agreed to by you or known to you.

2. If the closing is to be conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.

3. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed; Liability of the Company for reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of this right of subrogation.

4. The protection herein offered shall not extend to any transaction in which the funds you transmit to the Issuing Agent or Approved Attorney exceed \$. The Company shall have no liability of any kind for the actions or omissions of the Issuing Agent or Approved Attorney in that transaction except as may be derived under the Company's commitment for title insurance, policy of title insurance or other express written agreement. Please contact the Company if you desire the protections of this letter to apply to that transaction. This paragraph shall not apply to individual mortgage loan transactions on individual one-to-four-family residential properties (including residential townhouse, condominium and cooperative apartment units).

5. The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing other closing or settlement services. The Company's liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with a real estate transaction, or the failure of any collateral to adequately secure a loan connected with a real estate transaction. However, this letter does not affect the Company's liability with respect to its title insurance binders, commitments or policies.

6 Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than \$2,000,000. If you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you.

7. You must promptly send written notice of a claim under this letter to the Company at its principal office at . The Company is not liable for a loss if the written notice is not received within one year from the date of the closing.

8. The protection herein offered extends only to real property transactions in [State].

Any previous closing protection letter or similar agreement is hereby cancelled, except for closings of your real estate transactions for which you have previously sent (or within 30 days hereafter send) written closing instructions to the Issuing Agent or Approved Attorney.

NOTE: The Company hereby waives its right to demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association. Nothing herein prohibits the arbitration of an arbitratable matter when agreed to by both the Company and the Addressee.

BLANK TITLE INSURANCE COMPANY

By: _____

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)

[13.14.18.104 NMAC - N, 09-15-10]

Closing Protection Letter - Single Transaction Limited Liability
Issued by
Blank Title Insurance Company
[NM Form 81.2]

Name _____ and Address _____ of Addressee: _____

Date: _____

Name of Issuing Agent or Approved Attorney (hereafter, "Issuing Agent" or "Approved Attorney", as the case may require):

[Identity of settlement agent and status as either Issuing Agent or Approved Attorney appears here.]

Transaction (hereafter, "the Real Estate Transaction"):

Re: Closing Protection Letter

Dear _____,

Blank Title Insurance Company (the "Company") agrees, subject to the Conditions and Exclusions set forth below, to reimburse you for actual loss incurred by you in connection with the closing of the Real Estate Transaction conducted by the Issuing Agent or Approved Attorney, provided:

(E) title insurance of the Company is specified for your protection in connection with the closing of the Real Estate Transaction;

(F) you are to be the (i) lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land; and

(G) the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$ _____

and provided the loss arises out of:

1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain

the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or

2. Fraud, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closing to the extent that fraud, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

If you are a lender protected under the foregoing paragraph, your borrower, your assignee and your warehouse lender in connection with a loan secured by a mortgage shall be protected as if this letter were addressed to them.

Conditions and Exclusions

1. The Company will not be liable to you for loss arising out of:

A. Failure of the Issuing Agent or Approved Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in the binder or commitment shall not be deemed to be inconsistent.

B. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.

C. Defects, liens, encumbrances or other matters in connection with the Real Estate Transaction if it is a purchase, lease or loan transaction except to the extent that protection against those defects, liens, encumbrances or other matters is afforded by a policy of title insurance not inconsistent with your closing instructions.

D. Fraud, dishonesty or negligence of your employee, agent, attorney or broker.

E. Your settlement or

release of any claim without the written consent of the Company.

F. Any matters created, suffered, assumed or agreed to by you or known to you.

2. If the closing is conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.

3. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of this right of subrogation.

4. The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing other closing or settlement services. The Company's liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with a real estate transaction, or the failure of any collateral to adequately secure a loan connected with a real estate transaction. However, this letter does not affect the Company's liability with respect to its title insurance binders, commitments or policies.

5. Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than \$2,000,000. If you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you.

6. You must promptly send written notice of a claim under this letter to the

Company at its principal office at _____ . The Company is not liable for a loss if the written notice is not received within one year from the date of the closing
Any previous closing protection letter or similar agreement is hereby cancelled with respect to the Real Estate Transaction.

NOTE: The Company hereby waives its right to demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association. Nothing herein prohibits the arbitration of an arbitratable matter when agreed to by both the Company and the Addressee.

BLANK TITLE INSURANCE COMPANY

By: _____

(The words "Underwritten Title Company" may be inserted in lieu of Issuing Agent)

[13.14.18.105 NMAC - N, 09-15-10]

13.14.18.106 NM FORM 82: INTER-UNDERWRITER INDEMNIFICATION AGREEMENT:

Inter-Underwriter Indemnification Agreement **[NM Form 82]**

In order to expedite the clearance of certain types of title insurance Defects and limit the need to obtain individual letters of indemnity or performance, the companies that now or hereafter become signatories to this Inter-Underwriter Indemnification Agreement ("Agreement") agree, in consideration of the mutual covenants contained in this Agreement to indemnify each other subject to the provisions and limitations contained in this Agreement.

I. Definition of Terms. The following terms when used in this Agreement mean:

- A. "Current Insurer" means the title insurance company that is insuring title to the Land in a Current Policy dated after the Date of Prior Policy.
- B. "Current Policy" means any policy of title insurance issued by the Current Insurer after the effective date, determined in accordance with Section VII, of the Current Insurer's becoming a signatory to this Agreement.
- C. "Date of Prior Policy" means the "Date of Policy" as defined by the Prior Policy.
- D. "Defect" means an alleged item of the type listed in Section IV that was created or existed at the Date of Prior Policy and that may affect the Estate Insured.
- E. "Estate Insured" means the interest in the Land insured by the Prior Insurer in the Prior Policy that is all or a portion of the interest to be insured by the Current Policy.
- F. "Land" means the real property described as "Land" in the Prior Insurer's title insurance policy.
- G. "Prior Insurer" means a title insurance company that has issued a Prior Policy.
- H. "Prior Policy" means a policy of title insurance as set forth in Section V, Paragraphs C or D, issued by Prior Insurer.
- I. "Public Records" means the "Public Records" as defined by the Prior Policy.

II. Indemnification. Subject to the Limitations contained in Section III, the Conditions contained in Section V and the Stipulations contained in Section VI, Prior Insurer hereby indemnifies Current Insurer against loss or damage, including reasonable legal fees, arising from certain Defects listed in Section IV and insured against by the Prior Policy.

III. Limitation of Indemnity. The maximum amount of the indemnity of Prior Insurer provided by this agreement shall not exceed the lesser of:

- 1. the extent of liability of the Prior Insurer under the Prior Policy,
- 2. the amount of insurance as defined in the Prior Policy, or
- 3. \$ [Insert Amount].

IV. Defects. The Indemnification of Section II of this Agreement shall apply only to the following:

- A. Mortgages or Deeds of Trust that have not been effectively released or discharged.
- B. Attachments, judgment liens, child support liens, condominium or community association liens and statutory liens for services, labor or material.
- C. Liens for federal estate taxes or for state estate, transfer or inheritance taxes arising by reason of the death of previous owners of the Land.
- D. Liens for other federal, state or municipal taxes.
- E. Marital rights arising in favor of the spouses of previous owners of the Estate Insured.
- F. Lack of authority or capacity of the grantor to convey the Estate Insured to the current or previous owner of the Land.
- G. Failure of the Estate Insured to be effectively conveyed to the current or previous owner of the Land by reason of a defective judicial or administrative proceeding.
- H. A document affecting the Estate Insured not being properly created, executed, witnessed, sealed, acknowledged, notarized, delivered, or recorded in the Public Records.
- I. Other local liens or issues that the parties choose to be the subject of indemnity.

V. Conditions. The following conditions limit the applicability of this Agreement:

- A. The Agreement is applicable only for title insurance policies insuring title to land within the State of New Mexico.
- B. The Prior Insurer issued a Prior Policy that provides coverage against loss due to a Defect. This Agreement shall not apply if the Prior Policy insures against loss arising from the Defect by affirmative language in its Schedule B exception or by an endorsement that expressly identifies the Defect.
- C. An owner's policy issued by Prior Insurer shall be the basis of indemnity under this Agreement if the Insured covered by the Prior Policy is the seller or borrower in the Current Insurer's transaction.
- D. A loan policy issued by Prior Insurer shall be the basis of indemnity under this Agreement if:
 - 1. the insured, as defined by the Prior Policy, has subsequently acquired the Land by foreclosure or by deed-in-lieu of foreclosure,
 - 2. that insured is the seller in the transaction that will be insured by the Current Policy, and
 - 3. the Current Policy is an owner's policy issued to an unrelated Insured.
- E. The Prior Insurer that issued a loan policy shall be liable only for indemnity under this Agreement for Defects that are monetary liens listed by Section IV in paragraphs A, B, C and D.
- F. This Agreement shall not apply if the Public Records disclose that litigation or foreclosure proceedings arising from the Defect occurred after the Date of Prior Policy, or the Current Insurer has actual knowledge of litigation arising from the Defect.

VI. Stipulations.

- A. This Agreement shall be open to participation by any title insurance company licensed to do business in New Mexico. A title insurance company signing this Agreement must give immediate notice of its signing to all other participating companies in accordance with Section VII. All obligations under this Agreement between a company signing this Agreement and any other participating title insurance company shall become effective one month after the date on which the signatory company becomes a party to this Agreement.
- B. Any insurer that is a signatory to this Agreement may, at any time, by notice sent to another signatory insurer, decline to participate in this Agreement as to such other signatory insurer. If such notice is sent prior to the effective date of the other company's participation in this Agreement (as specified in paragraph A), then the two companies shall have no obligations under this Agreement to each other. If such notice is sent after the effective date of the other company's participation in this Agreement, then the two companies shall have no obligations under this Agreement to each other for any title insurance policies issued after the date of such notice. Any notices sent pursuant to this paragraph are not required to be sent to all signatories to this agreement.
- C. The sole obligation of Prior Insurer under this Agreement is to indemnify Current Insurer arising from Defects as provided by this Agreement.
- D. This Agreement does not affect the rights or obligations of any Insured arising from any Current and Prior Policies.
- E. Nothing contained in this Agreement shall be construed as changing the effective date of any Prior Policy, nor as providing indemnification against defects, liens or encumbrances created or attaching subsequent to the effective date of any Prior Policy.
- F. All notices required or permitted by this Agreement shall be given by mail or by courier to the location shown in Section VII and are effective upon receipt. In addition, a notice of claim to Prior Insurer under this Agreement shall also be mailed to the principal office shown in the Prior Policy.
- G. The Current Insurer shall notify Prior Insurer of any proposed payment or settlement of a claim arising from a Defect and shall give the Prior Insurer reasonable opportunity to investigate the claim at its own expense.
- H. If the Prior Insurer is prejudiced by the failure of the Current Insurer to provide timely notice of a claim, proposed payment or settlement under this Agreement, the Prior Insurer's liability under this Agreement shall be reduced by the extent of the prejudice. Until the Prior Insurer is notified of a claim, Prior Insurer has no obligation under this Agreement to take any action.
- I. Nothing in this Agreement shall be construed to deprive Prior Insurer of any of the rights of Prior Insurer as provided by its Prior Policy, including all rights of subrogation and the right to perfect title as insured by settling or litigating.
- J. The Prior Insurer shall act diligently and promptly to discharge its responsibilities under this Agreement.
- K. The Current Insurer shall reasonably cooperate to enable the Prior Insurer to perform its duties and limit its liability under this Agreement. However, nothing in this Agreement shall be construed to delegate any of the duties or the rights of the Current Insurer to the Prior Insurer. The Current Insurer shall be entitled to administer the claim submitted by the insured under the Current Policy.
- L. This Agreement may be supplemented or superseded by any specific written indemnity agreements by and between any of the parties, and such specific agreements shall not be deemed to suspend, cancel or otherwise terminate any of the rights or obligations between those parties under this Agreement or under any separate Agreement. However, the obligations of a party arising under this Agreement shall not be altered by any separate Agreement to which it is not a party.
- M. The indemnity applies to Prior Policies issued on any date prior or subsequent to the date on which the insurer becomes a signatory to this Agreement. No new right of indemnification or indemnification obligations as defined in Section II of this Agreement shall be created for a party thirty days after notice of cancellation is received by that party.
- N. After a Current Insurer relies upon this Agreement to issue a Current Policy, the duration of the indemnity of Prior Insurer shall continue in force so long as the Current Insurer has liability under the Current Policy or under its indemnities to subsequent insurers for a Defect.
- O. Nothing contained in this Agreement shall be construed to create any rights in non-parties to this Agreement (including, without limitation, the insured under the policies issued by Prior Insurer or Current Insurer) or to give rise to any claim by a non-party that he, she or it is a third-party beneficiary of this Agreement.
- P. It is recognized and agreed by the parties to this Agreement that participation in the Agreement is voluntary and within the sole discretion of each title insurance company licensed to do business in New Mexico; that the sole purpose of a title insurance company's participation in this Agreement is to facilitate real estate transactions where title defects may otherwise pose an impediment and to increase the value received by persons who hold title insurance policies for the protection of their investments in real property; and, that this Agreement may not be used, directly or indirectly, to impede competition between or among title insurance companies licensed to do business in New Mexico.

VII. Parties. One month after the date of signature, each title insurer intends to be bound by this Agreement to the other parties to this Agreement.

<u>Company:</u>	<u>Send notices to:</u>
<u>By</u> <u>Name:</u> <u>Title:</u> <u>Date:</u>	
<u>By</u> <u>Name:</u> <u>Title:</u> <u>Date:</u>	
<u>By</u> <u>Name:</u> <u>Title:</u> <u>Date:</u>	
<u>By</u> <u>Name:</u> <u>Title:</u> <u>Date:</u>	
<u>By</u> <u>Name:</u> <u>Title:</u> <u>Date:</u>	

[13.14.18.106 NMAC - N, 09-15-10]

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.28 NMAC, Sections 6, 7, 8 and 9, effective August 23, 2010. The part name is also amended.

PART 28 DISTRIBUTION OF VOTER INFORMATION [CARDS]

1.10.28.6 OBJECTIVE: The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 336, Laws 2007. The purpose of the amendment is to ensure that the secretary of state shall send a voter information [card] to each active registered voter in each county between sixty (60) and seventy-five (75) days before each general election.
[1.10.28.6 NMAC - N, 9-30-2005; A/E, 3/16/2010; A/E, 4/26/2010; A/E, 8/23/2010]

1.10.28.7 DEFINITIONS:

A. "County" means any county in this state.

B. "County register" means an official file of original certificates of registration.

C. "General election" means the election held pursuant to Article XX, Section 6, constitution of New Mexico.

D. "Voter" means any

person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of New Mexico.

E. "Voter file" means all voter registration information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on data recording media and certified by the county clerk as the source of all information required by the Voter System Records Act (Section 1-5-1 through 1-5-31 NMSA 1978).

F. "Voter's address" means the address where the voter receives mail delivery.

G. "Voter information [card]" means [a—card] information indicating the voter's name; address; and voting precinct and the name of the current county clerk in that county.

[1.10.28.7 NMAC - N, 9-30-2005; A/E, 3/16/2010; A/E, 4/26/2010; A/E, 8/23/2010]

1.10.28.8 VOTER INFORMATION [CARD] MAILING:

A. The secretary of state shall send [a] voter information [card] to each active registered voter in each county between sixty (60) and seventy-five (75) days before each general election, based on information extracted from the county

register and county voter file.

B. The voter information [card] shall be mailed by [first-class mail] the secretary of state to the voter's address.

[1.10.28.8 NMAC - N, 9-30-2005; A/E, 3/16/2010; A/E, 4/26/2010; A/E, 8/23/2010]

**1.10.28.9 SECRETARY OF
STATE REIMBURSEMENT:** The secretary of state shall, pursuant to 1.10.26 NMAC and the National Voter Registration Act of 1993, instruct each county clerk to mark as inactive any voter whose information [card] is returned as undeliverable.

[1.10.28.9 NMAC - N, 9-30-2005; A/E, 3/16/2010; A/E, 4/26/2010; A/E, 8/23/2010]

NEW MEXICO WATER QUALITY CONTROL COMMISSION

20 NMAC 1.3, Adjudicatory Procedures - Water Quality Control Commission (filed 10/15/1996) repealed 10/15/2010.

NEW MEXICO WATER QUALITY CONTROL COMMISSION

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL PART 3 ADJUDICATORY PROCEDURES - WATER QUALITY CONTROL COMMISSION

20.1.3.1 ISSUING AGENCY:
Water Quality Control Commission
("Commission").
[20.1.3.1 NMAC - Rp, 20 NMAC 1.3.I.100,
10/15/2010]

20.1.3.2 SCOPE:
A. This part governs the following adjudicatory proceedings of the water quality control commission:
(1) permit reviews, which include proceedings for the appeal from permitting actions pursuant to the Water Quality Act, NMSA 1978 Section 74-6-5(O);
(2) abatement plan hearings which include proceedings for the appeal of certain abatement plan actions pursuant to commission regulation 20.6.2.4114 NMAC;
(3) variance hearings, which include proceedings for: (a) the consideration of variance requests pursuant to the Water Quality Act, NMSA 1978 Section 74-6-4(G), and (b) the consideration of alternative abatement standards pursuant to commission regulation, Subsection F of 20.6.2.4103 NMAC;

(4) compliance order hearings, which include proceedings for the appeal from compliance orders pursuant to the Water Quality Act, NMSA 1978 Section 74-6-10, and the Utility Operators Certification Act, NMSA 1978 Section 61-33-10; and
(5) any other adjudicatory proceedings under the jurisdiction of the commission to which the commission applies this part.

B. Uniform Licensing Act proceedings: In any commission adjudicatory proceeding conducted under the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 NMSA 1978 et seq. ("ULA"), including the suspension or revocation of a certification under the Utility Operators Certification Act, NMSA 1978

Section 61-33-7, the procedures in the ULA shall govern the proceeding. However, the commission may, in the absence of a specific provision in the ULA governing an action, look to this part for guidance.
[20.1.3.2 NMAC - Rp, 20 NMAC 1.3.I.101,
10/15/2010]

20.1.3.3 STATUTORY AUTHORITY: This part is adopted under the authority of the Water Quality Act, NMSA 1978 Sections 74-6-4, 74-6-5 and 74-6-10, as amended, and the Utility Operators Certification Act, NMSA 1978 Section 61-33-10, as amended.
[20.1.3.3 NMAC - Rp, 20 NMAC 1.3.I.102,
10/15/2010]

20.1.3.4 DURATION:
Permanent.
[20.1.3.4 NMAC - Rp, 20 NMAC 1.3.I.103,
10/15/2010]

20.1.3.5 EFFECTIVE DATE:
10/15/2010, unless a later date is cited at the end of a section.
[20.1.3.5 NMAC - Rp, 20 NMAC 1.3.I.104,
10/15/2010]

20.1.3.6 OBJECTIVE: The objective of this part is to establish procedures that govern the adjudicatory proceedings of the water quality control commission.
[20.1.3.6 NMAC - Rp, 20 NMAC 1.3.I.105,
10/15/2010]

20.1.3.7 DEFINITIONS:
A. General: As used in this part:

(1) "abatement plan action" means those actions that may be appealed to the commission pursuant to 20.6.2.4114 NMAC;
(2) "abatement plan hearing" means a proceeding before the commission initiated by the timely filing of an abatement plan petition filed pursuant to 20.6.2.4114 NMAC;

(3) "act" means, as the context requires:

(a) the Water Quality Act, NMSA 1978 Chapter 74, Article 6 and its subsequent amendments and successor provisions;

(b) the Utility Operators Certification Act, NMSA 1978 Chapter 61, Article 33 and its subsequent amendments and successor provisions; and

(c) any other statute enacted or amended by the legislature that includes authority for adjudicatory proceedings before the commission when the commission applies this part to such proceedings;

(4) "applicant" means the person who is the holder of, or the applicant for, the permit or abatement plan that is the subject of the action to which a permit review petition or abatement appeal petition applies;

(5) "commission" means the water quality control commission or its successor agency under the act;

(6) "compliance order" means a written administrative order issued by the department pursuant to NMSA 1978 Sections 61-33-10 or 74-6-10;

(7) "compliance order hearing" means a proceeding before the commission initiated by the timely filing of a request for compliance order hearing;

(8) "department" means the applicable constituent agency, that, pursuant to its authority under the act, either (a) performed the permitting action or abatement plan action which is the subject of a petition; (b) is charged with implementing the regulations at the site where the variance is sought; or (c) issued the compliance order;

(9) "hearing" means the evidentiary hearing conducted before the commission or a hearing officer on an abatement plan petition, a variance petition or a request for compliance order hearing unless the context requires otherwise;

(10) "hearing clerk" means the person designated to maintain the official record of the proceeding and unless otherwise ordered is the commission administrator;

(11) "hearing officer" means the person designated under this part or appointed by the commission to conduct a proceeding under this part;

(12) "party" means:

(a) for the purposes of a permit review, the petitioner, the applicant if different from the petitioner, the department, and, upon motion to the commission, any person who permitted to intervene in the review pursuant to NMRA 1-024;

(b) for purposes of an abatement plan hearing, the petitioner, the applicant if different from the petitioner, the department, any person who participated in the abatement plan action before the department and who files an entry of appearance, and any constituent agency;

(c) for purposes of a variance hearing, the petitioner, the department, any person who has an interest in the proceeding and files an entry of appearance, and any other constituent agency; and

(d) for purposes of a compliance order hearing, the respondent and the department;

(13) "permit review" means a record review proceeding before the commission initiated by the timely filing of a record review petition filed pursuant to NMSA 1978 Section 74-6-5(O);

(14) "permitting action" means those actions that may be appealed to the commission pursuant to the Water Quality Act, NMSA 1978 Section 74-6-5(O), including the certification of a federal water quality permit;

(15) "petition" means a written

petition (a) for review of a permitting action filed under NMSA 1978 Section 74-6-5(O); (b) for hearing on an abatement plan action filed under 20.6.2.4114 NMAC; or (c) for hearing on a variance filed under NMSA 1978 Section 74-6-4(G) or 20.6.2.1210 NMAC;

(16) "petitioner" means any person who files a timely petition and who is entitled to be a party pursuant to Subparagraphs (a), (b), and (c) of Paragraph (12) of this subsection;

(17) "record proper" means all documents filed by or with the hearing clerk during the proceeding and includes:

(a) the verbatim record of the hearing and all exhibits offered into evidence at the hearing, whether or not admitted;

(b) for a permit review, the administrative record of the department; and

(c) minutes, or an appropriate extract of minutes, of any commission meeting where the commission deliberated or acted on any procedural or substantive issue in the proceeding;

(18) "regulations" means any rules or standards promulgated by the commission to implement the act;

(19) "request for compliance order hearing" means a written request for hearing on a compliance order filed by a respondent pursuant to NMSA 1978 Section 61-33-10(E) or 74-6-10(G);

(20) "respondent" means any person to whom a compliance order has been issued;

(21) "technical evidence" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

(22) "variance hearing" means a proceeding before the commission initiated by the timely filing of a variance petition filed pursuant to NMSA 1978 Section 74-6-4(G), Subsection F of 20.6.2.4103 NMAC or 20.6.2.1210 NMAC.

B. Terms defined in act or regulations: Terms defined in the act or regulations and not defined in this part are used consistent with the meanings given in the act or regulations.

[20.1.3.7 NMAC - Rp, 20 NMAC 1.3.I.108, 10/15/2010]

20.1.3.8 APPLICABILITY OF RULES OF CIVIL PROCEDURE:

In the absence of a specific provision in this part governing an action, the commission may look to the New Mexico Rules of Civil Procedure, SCRA 1986, 1-001 to 1-102 and the New Mexico Rules of Evidence, SCRA 1986, 11-101 to 11-1102 for guidance. Any reference to the Rules of Civil Procedure and the Rules of Evidence shall not be construed to extend or otherwise modify the authority

and jurisdiction of the commission under the act.

[20.1.3.8 NMAC - Rp, 20 NMAC 1.3.I.106, 10/15/2010]

20.1.3.9 CONSTRUCTION; SEVERABILITY SAVINGS CLAUSE:

This part shall be liberally construed to carry out its purpose. If any part or application of this part is held invalid, the remainder of this part, or its application to other persons or situations, shall not be affected.

[20.1.3.9 NMAC - Rp, 20 NMAC 1.3.I.107, 10/15/2010]

20.1.3.10 POWERS AND DUTIES OF THE COMMISSION AND HEARING OFFICER:

A. Commission: The commission shall exercise all powers and duties as prescribed under the act, the regulations and this part, and not otherwise delegated to a staff member, the hearing officer or the hearing clerk.

(1) The commission may issue procedural orders that, based on the nature of the proceeding, either impose additional procedural duties, such as expanded public notice, or simplify the procedures provided in this part, such as foregoing post-hearing submittals or holding the hearing before the full commission. In no event may the commission eliminate any procedural requirements of the act.

(2) The appointment of a hearing officer does not preclude the commissioners from attending or participating in the proceeding.

B. Hearing officer: With respect to abatement plan hearings, variance hearings, and compliance order hearings, the commission may appoint one or more hearing officers to perform the functions described in Paragraph (2) of this subsection. With respect to permit reviews, the commission may appoint a hearing officer to review the record and the arguments of the parties and to recommend a decision to the commission. From the date the petition or request for compliance order hearing is received by the commission, the chair of the commission shall serve as hearing officer until such time as another hearing officer is appointed.

(1) Qualifications: Hearing officer may be an independent contractor or a commissioner, shall be knowledgeable of the laws of the state and of administrative hearing procedures, and shall not be:

(a) an employee of the department, except for the commissioners themselves or their designees, or unless employed by the department as a hearing officer;

(b) a person who has a personal bias or prejudice concerning a party or a party's lawyer or consultant, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the

third degree of relationship, or has a financial interest in the proceeding; or

(c) a person who has performed prosecutorial or investigative functions in connection with the compliance order or permitting action at issue in the hearing.

(2) Functions: The hearing officer shall exercise all powers and duties prescribed or delegated by the commission under the act or this part. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by this part including, but not limited to:

(a) conduct permit reviews or hearings under this part;

(b) rule upon motions and procedural requests that do not seek final resolution of the proceeding and issue all necessary orders;

(c) issue subpoenas, as authorized by the act, for the attendance and testimony of witnesses and the production of documentary evidence as provided for in this part;

(d) administer oaths and affirmations, examine witnesses, and admit or exclude evidence;

(e) require parties to attend conferences for the settlement or simplification of issues, or the expedition of proceedings; and

(f) impose sanctions, subject to review by the commission, on parties who cause undue delay and fail to cooperate in the proceeding.

C. Notice of hearing officer assignment: If a hearing officer other than a commissioner is assigned, the hearing clerk shall notify the parties of the name and address of the hearing officer. The hearing clerk shall also, at that time, forward to the hearing officer copies of all documents filed to date.

[20.1.3.10 NMAC - Rp, 20 NMAC 1.3.I.109, 10/15/2010]

20.1.3.11 EX PARTE DISCUSSIONS:

At no time after the initiation and before the conclusion of a proceeding under this part shall any person discuss ex parte the merits of the proceeding with any commissioner or the hearing officer. This prohibition does not preclude any constituent agency commissioner from conferring with commission counsel, the commission administrator, or agency employees who are not, and have not been, involved in the matter before the commission.

[20.1.3.11 NMAC - Rp, 20 NMAC 1.3.I.110, 10/15/2010]

20.1.3.12 COMPUTATION AND EXTENSION OF TIME:

A. Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which event the time is extended until the end of the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three days is added to the prescribed period. The three day extension does not apply to any deadline under the act.

B. Extension of time: The commission or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.
[20.1.3.12 NMAC - Rp, 20 NMAC 1.3.I.111, 10/15/2010]

20.1.3.13 DOCUMENTS : FILING, SERVICE, FORM AND EXAMINATION:

A. As used in this section, "document" means any pleading, motion, response, memorandum, decision, order or other written material filed in a proceeding under this part, but does not include a cover letter accompanying a document transmitted for filing.

B. Filing of documents:

(1) Except as otherwise provided, the originals of all documents served in the proceeding shall be filed with the hearing clerk.

(2) Except as otherwise provided, a party filing documents shall serve copies thereof upon all other parties. A certificate of service, as shown in appendix A, shall accompany each filed document.

C. Service of documents: Except as otherwise provided, all documents may be served personally, by telefax, by e-mail or by express or first-class mail.

D. Form of documents: Unless otherwise ordered by the hearing officer, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed single-sided, if possible, and where appropriate, the first page of every document shall contain a heading and caption as illustrated in appendix A.

E. Documents issued by commission or hearing officer: All documents issued by the commission or hearing officer shall be filed with the hearing clerk. The hearing clerk shall promptly serve copies of the documents upon all parties.

F. Examination of

documents filed.

(1) Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the hearing clerk, as appropriate.

(2) Cost of duplication: Unless waived by the department, the cost of duplicating documents or tapes filed in any proceeding shall be borne by the person seeking copies of such documents or tapes.
[20.1.3.13 NMAC - Rp, 20 NMAC 1.3.I.112, 10/15/2010]

20.1.3.14 NOTICE OF DOCKETING:

A. Docketing notice: The hearing clerk shall, as soon as practicable after initiation of a proceeding under this part, issue and serve upon the parties and each commissioner a notice of docketing, containing the caption and docket number of the case, and the date upon which the petition or request for compliance order hearing was received by the hearing clerk. A copy of this part shall be included with a notice of docketing sent to a petitioner, applicant or respondent.

B. Untimeliness: The hearing clerk shall docket any petition or request for compliance order hearing, without regard to whether it appears to be timely; but the commission or any party may move to dismiss an untimely petition or request for compliance order hearing.
[20.1.3.14 NMAC - Rp, 20 NMAC 1.3.I.113, 10/15/2010]

20.1.3.15 MOTIONS:

A. General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, state the relief sought and state whether it is opposed or unopposed. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.3.13 NMAC.

B. Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

C. Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

D. Response to motions: Any party upon whom an opposed motion is served shall have (15) days after service of the motion to file a response. A non-moving party failing to file a timely response shall be

deemed to have waived any objection to the granting of the motion.

E. Reply to response: The moving party may, but is not required to, submit a reply to any response within 10 days after service of the response.

F. Decision: All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer. The hearing officer shall refer any motion that would effectively dispose of the matter and may refer any other motion to the commission for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling.

[20.1.3.15 NMAC - Rp, 20 NMAC 1.3.I.114, 10/15/2010]

20.1.3.16 PERMIT REVIEW:

A. Initiation and conduct of permit review: A permit review shall be initiated by the filing of a permit review petition under Paragraph (1) of Subsection A of 20.1.3.16 NMAC.

(1) Timing and contents: A permit review petition shall:

(a) be filed with the commission within 30 days from the date notice is received of the permitting action;

(b) identify the petitioner, and state that the petitioner has standing under NMSA 1978 Section 74-6-5(O) or 20.6.2.3112 NMAC to file the petition;

(c) identify the permitting action to be reviewed;

(d) specify the portions of the permitting action to which petitioner objects;

(e) include a statement of the issues to be raised and the relief sought;

(f) have a copy of the permitting action attached;

(g) be signed under oath or affirmation and attest to the truth of the information contained therein; and

(h) be filed with the commission and a copy served on the department, the applicant or permittee, if the petitioner is not the applicant or permittee, and on any person who submitted evidence, data, views or arguments in the proceeding before the constituent agency.

(2) Filing of administrative record by the department: The department shall within 15 days after receipt of the petition:

(a) file with the commission the administrative record of the permitting action which is the subject of the petition, including the transcript or audio recording of any public hearing held on the application or draft permit and the action taken; the department shall serve only the index to the record on other parties; the parties may stipulate that only specific portions of the record be filed with the commission; and

(b) deliver to the hearing clerk a list of all persons who have expressed in writing an interest in the facility or the permitting action that is the subject of the petition or who registered with the hearing clerk as a participant at a public hearing on the permitting action.

(3) Remand to the department. A party may request the commission to remand the matter to the department. A request for remand must be filed simultaneously with the permit review petition. If a party shows to the satisfaction of the commission that there was no reasonable opportunity to submit comment or evidence on an issue being challenged, the commission shall order that additional comment or evidence be taken by the department. Based on the additional evidence, the department may revise the decision and shall promptly file with the commission the additional evidence received and the action taken.

(4) Briefing by the parties.

(a) Within 25 days of the department filing the administrative record or 25 days of the department filing additional evidence received and the action taken after a remand, whichever is applicable, the petitioner and any parties in support of the petitioner shall file opening briefs which shall contain a summary of the proceedings before the department and an argument with respect to each issue presented by the petitioner. The opening brief may include proposed findings of fact and conclusions of law. All statements of fact shall contain citations to the administrative record before the department. The opening brief shall not exceed 30 pages.

(b) Within 25 days of the petitioner filing an opening brief, the department and any parties in support of the department shall file answer briefs. The answer brief shall conform to the requirements of the opening brief, except that a summary of proceedings shall not be included unless deemed necessary by the party filing an answer brief.

(c) Within 10 days of the department filing an answer brief, the petitioner and any parties in support of the petitioner may file reply briefs.

(5) The failure to file a timely permit review petition shall be grounds for dismissal of the appeal.

B. Scheduling the permit review:

(1) Review date: The permit review shall be scheduled to begin no later than 90 days after the date a permit review petition is received or 90 days after the date the department files the additional evidence received and action taken after a remand, whichever is applicable, unless a stipulated or unopposed motion is filed requesting that the 90 day deadline be waived. The motion must be filed prior to the expiration of the 90 day deadline.

(2) Scheduling order: Unless the 90 day deadline has been waived, the hearing officer shall, no later than 30 days prior to the deadline, issue an order setting the date, time and location of the review by the commission, which the hearing clerk shall send to the parties by certified mail. The order shall provide information on whether the commission will hear oral argument from the parties. The order may include other procedural matters. The parties may, jointly or singly, submit to the hearing officer, prior to the issuance of the scheduling order, requests regarding the date and location of the review and other procedural matters, including the assignment of a non-commissioner hearing officer. The hearing officer may consult with the commission on procedural matters at a commission meeting.

C. Public notice of permit review.

(1) Content: The hearing clerk shall, upon direction from the commission or hearing officer, prepare a notice of review setting forth the permit for which the review is sought, the date, time, and location of the permit review, the name and address of the petitioner and where the permit and petition may be viewed.

(2) Distribution: The hearing clerk shall:

(a) no later than 30 days prior to the review date, send copies, with requests for publication, to at least one newspaper of general circulation in the state, and to at least one additional newspaper published or distributed at least weekly in the county where the facility is located; and

(b) mail a copy to each party and to each person who has expressed in writing to the department or the commission an interest in the facility or permitting action that is the subject of the petition.

(3) Certification: After the notice of permit review has been distributed in accordance with this section, the hearing clerk shall file an affidavit certifying how and when notice was given with a copy of the notice of permit review and any affidavits of publication attached.

D. Location of permit review: Unless otherwise ordered by the commission or hearing officer, the review shall be in Santa Fe.

E. Postponement of permit review: No request for postponement of a review or hearing shall be granted except upon consent of all parties or for good cause shown.

F. Conduct of permit review.

(1) Argument before the commission: The commission may, upon request of a party or its own initiative, allow oral argument prior to its deliberations. If oral argument is allowed, the commission

shall specify the time and place for such oral argument after giving due consideration to the convenience of the parties and the need for expeditious resolution of the proceeding. No new evidence will be admitted during oral argument.

(2) The hearing clerk shall audio record any oral argument before the commission. Any party may, at its own expense, have the oral argument stenographically recorded by a certified court reporter. Any party may, at its own expense, have the audio recording or stenographic recording transcribed by a certified court reporter.

(3) Decision: The commission shall consider and weigh only the evidence contained in the record before the department and the recommended decision of the hearing officer, if any, and shall not be bound by the factual findings or legal conclusions of the department. The commission shall sustain, modify or reverse the action of the department based on a review of the evidence, the arguments of the parties and recommendations of the hearing officer. The commission shall set forth in the final order the reasons for its actions.

G. Judicial review: Judicial review of the final order shall be as provided by law. The filing of an appeal does not stay the final order, unless otherwise ordered by the commission or a court.

H. Preparation of record proper: The hearing clerk shall prepare the record proper for any appeal, which shall include a transcript of any oral argument before the commission. The appellant shall make satisfactory arrangements for payment of preparation of the record proper with the hearing clerk, including copying costs and transcription costs. If any oral argument was stenographically recorded by a certified court reporter, the appellant shall have a transcription made at its own expense. If any oral argument was not stenographically recorded by a certified court reporter, the appellant shall have the hearing clerk's audio recording of the oral argument transcribed by a certified court reporter certifying the accuracy of the transcription.

[20.1.3.16 NMAC - N, 10/15/2010]

20.1.3.17 ABATEMENT PLAN HEARING:

A. Initiation of abatement plan hearing: An appeal hearing shall be initiated by the filing of an abatement plan petition under Paragraph (1) of Subsection A of 20.1.3.17 NMAC.

(1) Timing and contents: an abatement plan petition shall:

(a) be filed with the commission within 30 days from the date notice is received of the abatement plan action;

(b) identify the petitioner, and state that the petitioner has standing under

20.6.2.4114 NMAC to file the petition;

(c) identify the abatement plan action being appealed, specify the portions of the abatement plan action to which petitioner objects and generally state the objections;

(d) have a copy of the abatement plan action attached;

(e) be signed under oath or affirmation and attest to the truth of the information contained therein; and

(f) be filed with the commission and a copy served on the department.

(2) Response of the department: If an abatement plan petition is filed under Paragraph (1) of Subsection A of 20.1.3.17 NMAC, the department shall within 30 days after receipt of the petition:

(a) file with the commission the administrative record of the abatement plan action which is the subject of the petition, including the transcript or audio recording of any public hearing held. The department shall serve only the index to the record on other parties. The parties may stipulate that only the relevant portions of the record be filed with the commission;

(b) deliver to the hearing clerk a list of all persons who have expressed in writing an interest in the facility or the abatement plan action that is the subject of the petition or who participated in a public hearing on the abatement plan action; and

(c) file an answer to the petition clearly and directly responding to each of the objections in the petition;

(d) the failure to file a timely abatement plan petition shall be grounds for dismissal of the appeal.

B. Scheduling the hearing.

(1) Hearing date: The hearing shall be scheduled to begin no later than 90 days after the date an abatement plan petition is received unless a stipulated or unopposed motion is filed requesting that the 90 day deadline be waived. The motion must be filed prior to the expiration of the ninety day deadline.

(2) Scheduling order: Unless the 90 day hearing deadline has been waived, the hearing officer shall, no later than 45 days prior to the hearing deadline, issue an order setting the date, time and location of the hearing. The order may include other procedural matters. The parties may, jointly or singly, submit to the hearing officer, prior to the issuance of the scheduling order, requests regarding the date and location of the hearing and other procedural matters, such as the assignment of a non-commissioner hearing officer. The hearing officer may consult with the commission on procedural matters at a commission meeting.

C. Public notice of hearing.

(1) Content: The hearing clerk shall, upon direction from the commission or hearing officer, prepare a notice of hearing setting forth the date, time, and location

of the hearing, a brief description of the petition, and information on the requirements for entry of appearance and the statement of intent to present evidence.

(2) Distribution: The hearing clerk shall:

(a) no later than 30 days prior to the hearing date, send copies, with requests for publication, to at least one newspaper of general circulation in the state, and to at least one additional newspaper published or distributed at least weekly in the county where the facility is located;

(b) mail a copy to each interested participant who has previously filed an entry of appearance, and to each person who has expressed in writing to the department or the commission an interest in the facility or abatement plan action that is the subject of the petition; and

(c) immediately upon receipt of an entry of appearance that is received after the initial mailing, mail a copy to such interested participant.

(3) Certification: After the notice of hearing has been distributed in accordance with this section, the hearing clerk shall file an affidavit certifying how and when notice was given with a copy of the notice of hearing and any affidavits of publication attached.

D. Transcription of hearing: The petitioner shall, at its own expense, have the hearing stenographically recorded and transcribed by a certified court reporter unless, after a showing of substantial financial hardship, the hearing officer orders the department to hire a certified court reporter. The petitioner shall, no later than 30 days prior to the hearing date, file with the hearing clerk a certification that the petitioner has hired a certified court reporter and will deliver 16 copies of the hearing transcript to the hearing clerk or a request that the department hire a certified court reporter.

E. Statement of intent to present technical evidence.

(1) Requirement to file: Any person who wishes to present technical evidence at the hearing shall, no later than 10 days prior to the hearing, file a statement of intent.

(2) Content: The statement of intent to present technical evidence shall include:

(a) the name of the person filing the statement;

(b) indication of whether the person filing the statement supports or opposes the petition at issue;

(c) the name of each witness;

(d) an estimate of the length of the direct testimony of each witness;

(e) a list of exhibits, if any, to be offered into evidence at the hearing; and

(f) a summary or outline of the

anticipated direct testimony of each witness.

F. Participation by the general public: Any person who has not timely filed either an entry of appearance or a statement of intent to present evidence may present a general non-technical statement as follows:

(1) Any member of the general public may testify at the hearing. Any testimony provided will be subject to cross-examination. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.

(2) A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to or at the hearing.

G. Discovery:

(1) Grounds for discovery: Discovery shall only be permitted upon a determination by the hearing officer that:

(a) the type of discovery sought will not unreasonably delay the proceeding, and is neither unreasonably burdensome nor unreasonably expensive; and

(b) the information to be obtained is relevant and is not otherwise reasonably obtainable, may be lost, or may become unavailable.

(2) Order for discovery: Upon motion for discovery by a party and determination by the hearing officer that such motion should be granted, the hearing officer shall issue an order for the taking of such discovery together with the conditions and terms thereof.

H. Hearing: Burden of persuasion: at the hearing, the petitioner has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to justify the relief sought in the petition. Following the establishment of a prima facie case by the petitioner, any person opposed to the relief sought in the petition has the burden of going forward with any adverse evidence and showing why the relief should not be granted.

[20.1.3.17 NMAC - Rp, 20 NMAC 1.3.II.200-207, 10/15/2010]

20.1.3.18 V A R I A N C E HEARING:

A. Initiation of variance hearing:

(1) Variance hearing shall be initiated by the filing of a variance petition. A copy of the petition shall be served on the department.

(2) Contents: A variance petition shall comply with Subsection A of 20.6.2.1210 NMAC or Subsection F of

20.6.2.4103 NMAC, as applicable.

(3) Response of the department: The department shall review each variance petition and, within 60 days after receipt of the petition, file a recommendation with the commission to grant, grant with conditions, or deny the variance request. The recommendation shall include reasons and a copy shall be served on the petitioner by certified mail and on any other party.

B. Hearing requirement: If the department recommends granting the variance request, or any part of the variance request, with or without conditions, the commission shall hold a hearing on those requests recommended for approval. If the department recommends denial of all or part of the variance request, the commission shall only hold a hearing on the variances recommended for denial if the petitioner files a request for hearing within 15 days after receipt of the department's recommendation. If a timely request for hearing is not filed, the recommended denial shall become a final action of the commission and shall not be subject to review.

C. Scheduling the hearing:

(1) Timing of hearing: If a hearing on a variance petition is required, the hearing shall be held within 90 days after the later of the filing of a department recommendation to grant a variance or the filing of a request for hearing by the petitioner, as applicable. The 90 day deadline may be waived upon the filing of a stipulated or unopposed motion prior to the expiration of the deadline.

(2) Scheduling order and public notice: If a hearing on a variance petition is required, a scheduling order shall be issued as provided in Subsection B of 20.1.3.16 NMAC, and public notice shall be given as provided in Subsection C of 20.1.3.16 NMAC.

D. Participation by the general public: Any person who has not timely filed either an entry of appearance or a statement of intent to present evidence may present a general non-technical statement as follows:

(1) Any member of the general public may testify at the hearing. Any testimony provided will be subject to cross-examination. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.

(2) A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to or at the hearing.

E. Transcription of hearing: The petitioner shall, at its own expense, have the hearing stenographically

recorded and transcribed by a certified court reporter unless, after a showing of substantial financial hardship, the hearing officer orders the department to hire a certified court reporter. The petitioner shall, no later than 30 days prior to the hearing date, file with the hearing clerk a certification that the petitioner has hired a certified court reporter and will deliver 16 copies of the hearing transcript to the hearing clerk or a request that the department hire a certified court reporter.

F. Additional procedures: Procedures for statements of intent to present technical evidence, for discovery and for the burden of persuasion in variance hearings shall follow the procedures for abatement plan hearings, Subsection E to Subsection H of 20.1.3.17 NMAC.

[20.1.3.18 NMAC - Rp, 20 NMAC 1.3.III 300-303, 10/15/2010]

20.1.3.19 COMPLIANCE ORDER HEARING:

A. Initiation of compliance order hearing:

(1) Filing of request: A compliance order hearing shall be initiated by the filing of a request for compliance order hearing within 30 days after the compliance order is served. The respondent shall file the original of the request for compliance order hearing with the commission and serve a copy on the department.

(2) Request for compliance order hearing: The request for compliance order hearing shall also serve as an answer to the compliance order and shall:

(a) clearly and directly admit or deny each of the factual assertions contained in the compliance order; but where the respondent has no knowledge of a particular factual assertion and so states, the assertion may be denied on that basis; any allegation of the compliance order not specifically denied shall be deemed admitted;

(b) indicate any affirmative defenses upon which the respondent intends to rely; affirmative defenses not asserted in the request for compliance order hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived;

(c) be signed by a person authorized to do so; and

(d) attach a copy of the compliance order.

B. Scheduling the hearing:

(1) Hearing date: The hearing shall be scheduled to begin no later than 90 days after the date a request for compliance order hearing is received, unless a stipulated or unopposed motion is filed requesting that the 90 day deadline be waived. The motion must be filed prior to the expiration of the 90 day deadline.

(2) Scheduling order and public notice: A scheduling order shall be issued

as provided in Subsection B of 20.1.3.17 NMAC, and public notice shall be given as provided in Subsection C of 20.1.3.17 NMAC.

C. Transcription of hearing: The respondent shall, at its own expense, have the hearing stenographically recorded and transcribed by a certified court reporter unless, after a showing of substantial financial hardship, the hearing officer orders the department to hire a certified court reporter. The respondent shall, no later than 30 days prior to the hearing date, file with the hearing clerk a certification that the respondent has hired a certified court reporter and will deliver 16 copies of the hearing transcript to the hearing clerk or request that the department hire a certified court reporter.

D. General rules regarding discovery:

(1) Discovery request: Except as otherwise provided by the commission, a party requesting discovery shall serve the discovery request directly upon the party from whom discovery is sought and shall file a notice with the hearing clerk, indicating the date of service of the discovery request, the type of discovery sought, and the party from whom discovery is sought.

(2) Response to discovery request: A party responding to a discovery request shall serve the response, including any objections, upon the party making the discovery request and shall file a notice with the hearing clerk, indicating the date of service of the response, the type of discovery request being responded to, and the party upon whom the response was served.

(3) Continuing obligation to supplement responses: Any party from whom discovery is sought has a continuing obligation, subject to any objections interposed and not overruled by the hearing officer, to supplement responses with relevant information obtained after serving of the initial response and any previous supplemental responses. Unless otherwise ordered by the commission or hearing officer, supplemental responses shall be served as soon as practicable but not later than five days from when the information became available. If the new information becomes available less than five days prior to the hearing or during the hearing, it shall be brought to the attention of the hearing officer for direction and ruling on the use of the information.

(4) Protective order: The hearing officer may, upon motion and for good cause shown, issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including that discovery be limited or that a trade secret or other confidential information not be disclosed.

(5) Failure to make discovery; sanctions: Upon motion by a party showing that another party from whom discovery was requested has failed to respond within the required time, the hearing officer may order the response and may impose such sanctions as may be appropriate, including:

(a) refusal to allow the testimony of a witness not identified as required by Subsection E of 20.1.3.20 NMAC;

(b) denial of admission of a document not disclosed as required by Subsection F of 20.1.3.20 NMAC;

(c) drawing of adverse inference against the non-responsive party; and

(d) in an extreme case, dismissal or default judgment against the non-responding party.

E. Identity of witnesses: Except as allowed by the hearing officer, each party shall, 15 days before the hearing, provide the name and address of each person expected to be called as a witness and a description of the general subject matter of the anticipated testimony of each witness, and a list of exhibits, if any, to be offered into evidence at the hearing.

F. Production of documents:

(1) Definition: As used in this section, "document" includes writings, drawings, graphs, charts, photographs, videotapes and other data compilations from which information can be obtained, and if necessary, translated by a party through detection devices into reasonably usable form. In addition, each copy of a document that is not identical in all respects to every other copy shall be considered a separate document.

(2) Request: Any party, upon written request to another party, is entitled to inspect and make copies of any relevant documents in the possession or control of the other party. The request shall specify a reasonable time (not less than 20 days after service of the request), place and manner of making the inspection and copies. The party responding to the request shall also provide a list of privileged documents, identified by title, author and date.

G. Subpoenas: As allowed by the act, the hearing clerk shall, upon request by any party and without the necessity for notice to other parties, prepare a subpoena requiring the attendance and testimony of any witness and the production of any evidence in the possession or under the control of the witness at the hearing or at a deposition authorized by the hearing officer under Subsection I of 20.1.3.19 NMAC, and forward the subpoena to the hearing officer for issuance. A subpoena may be issued with the name and address of the witness blank, to be completed by the requesting party.

H. Request for admissions: Any party may serve upon any other party

a written request for the admission of any statement or opinion of fact or the application of law to fact, including the genuineness of any document. If the request includes a request for admission of the genuineness of a document, the document shall be attached to the request unless it has been otherwise furnished. Each statement shall be deemed admitted unless, within 20 days after service of the request, or such other time prescribed by the hearing officer, the party to whom the Request is directed serves upon the requesting party a sworn written response specifically denying such matter.

I. Other discovery:

(1) Additional discovery not favored: Discovery not specifically provided for under this part, including interrogatories and depositions, is discouraged. Requests for additional discovery may be made by motion to the hearing officer setting forth:

(a) the circumstances and necessity warranting the taking of the discovery;

(b) the nature of the information expected to be discovered; and

(c) the proposed time and place where the discovery will be taken.

(2) Findings for additional discovery: Discovery may be permitted upon determination by the hearing officer that:

(a) such discovery will not unreasonably delay the proceeding;

(b) the information to be obtained is not otherwise reasonably obtainable, may be lost, or may become unavailable because of physical illness or infirmity; and

(c) there is a substantial reason to believe that the information sought will be admissible at the hearing or will be likely to lead to the discovery of admissible evidence.

(3) Order for additional discovery: Upon determining that a motion for additional discovery should be granted, the hearing officer shall issue an order for the taking of such discovery together with any conditions and terms of the additional discovery.

J. Hearing burden of persuasion: At compliance order hearing, the department has the burden of going forward with the evidence and of proving by a preponderance of the evidence that the violation occurred, and that the proposed civil penalty, revocation, or suspension, as the case may be, is appropriate. Following the establishment of a prima facie case, the respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

[20.1.3.19 NMAC - Rp, 20 NMAC 1.3.IV.400-409, 10/15/2010]

**20.1.3.20 G E N E R A L
HEARING PROCEDURES FOR
ABATEMENT PLAN, VARIANCE AND
COMPLIANCE ORDER HEARINGS:**

A. Hearing:

(1) Location of the hearing: Unless otherwise ordered by the commission or hearing officer, the hearing shall be in Santa Fe.

(2) Postponement of hearing: No request for postponement of a hearing shall be granted except upon consent of all parties or for good cause shown.

B. Conduct of hearing:

(1) The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

(2) The hearing officer shall establish the order of testimony except that the party with the burden of persuasion shall present its case first. The hearing officer may allow brief opening or closing statements.

C. Evidence:

(1) General: The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded in the courts under SCRA 1986, 11-408 is not admissible.

(2) Examination of witnesses: Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this part or by the hearing officer. The commission, hearing officer, and parties shall have the right to cross-examine a witness. The hearing officer may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the witness' direct testimony.

(3) Exhibits: All exhibits offered in evidence shall be marked with a designation identifying the person by whom the exhibit is offered, and numbered serially in the sequence in which offered. Large charts and diagrams, models, and other bulky exhibits are discouraged. Exhibits should be limited to 8 1/2 X 11 inches, or be capable of being folded to that size, unless otherwise necessary for adequate presentation of evidence.

(4) Official notice: Official notice may be taken of any matter that may be judicially noticed in the New Mexico courts.

(5) Preponderance of evidence: Each matter of controversy shall be determined upon a preponderance of the evidence.

D. Objections and offers of proof:

(1) Objection: Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the hearing officer on any objection and

the reasons given for it shall be part of the record.

(2) Offer of proof: Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what such evidence would have proved. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded. Where the commission decides that the ruling of the hearing officer in excluding the evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

[20.1.3.20 NMAC - Rp, 20 NMAC 1.3.V.500-503, 10/15/2010]

20.1.3.21 POST-HEARING PROCEDURES FOR ABATEMENT PLAN, VARIANCE AND COMPLIANCE ORDER HEARINGS:

A. Filing the transcript: If post-hearing submittals are allowed, the hearing clerk shall, promptly following receipt of the transcript, transmit a copy to the hearing officer, and notify all parties of its availability. Any person, other than the commission, desiring a copy of a transcript may order a copy from the court reporter.

B. Proposed findings and conclusions: Unless otherwise ordered by the commission, within 30 days after conclusion of the hearing, or within such time as may be fixed by the hearing officer, any party may submit proposed findings of fact and conclusions of law and closing argument. All such submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the hearing officer.

C. Recommended decision: (1) Filing and contents: Unless otherwise ordered by the commission, the hearing officer shall issue a recommended decision within 30 days after the deadline for filing of proposed findings and conclusions under Subsection B of 20.1.3.21 NMAC. The recommended decision shall contain the hearing officer's:

(a) findings of fact;
(b) conclusions regarding all material issues of law or discretion, as well as reasons therefor;

(c) a proposed final order; and
(d) for compliance order hearings, if the hearing officer determines that a violation has occurred, the hearing officer shall review the proposed civil penalty to determine if the department acted within its discretion in setting the penalty amount; if the hearing officer decides to recommend a

penalty different in amount or nature from the department's proposed penalty, the hearing officer shall set forth the reasons for the change.

(2) Comment on recommended decision: At the commission's discretion, any party may file, within 15 days after service of the recommended decision, comments regarding the recommended decision, including arguments to adopt, reject or modify the recommended decision.

(3) Argument before the commission: The commission may, upon request of a party or its own initiative, allow oral argument on the recommended decision. If oral argument is allowed, the commission shall specify the time and place for such oral argument after giving due consideration to the convenience of the parties and the need for expeditious resolution of the proceeding.

D. Final order by commission: The commission shall reach a final decision at a public meeting, but may deliberate on the decision in closed session in accordance with the Open Meetings Act. The commission may circulate a draft order during closed session so long as no final decision is reached during closed session. After reaching a decision, the commission shall direct a member, its counsel or a party to prepare a final order. The commission may approve the order at a meeting or direct the commission chair to sign the order.

(1) Decision: The commission may adopt, modify, or set aside the hearing officer's recommended decision, and shall set forth in the final order the reasons for its actions.

(2) Penalty: For a compliance order hearing, the commission may change the amount and nature of the civil penalty, if any, recommended by the hearing officer and shall set forth the reasons for the change.

(3) The hearing clerk shall send copies of the final order to each party, and to all other persons who have made written requests for notification of the action taken.

E. Payment of civil penalty: The respondent shall pay the full amount of the civil penalty, if any, assessed in the final order within 60 days after receipt of the final order, unless otherwise ordered by the commission. Payment shall be made by forwarding to the hearing clerk a cashier's check or certified check in the amount of the penalty assessed, payable to the fund specified in the act.

F. Judicial review: Judicial review of the final order shall be as provided by law. The filing of an appeal does not stay any action or payment of penalty required by the final order, unless otherwise ordered by the commission or a court.

G. Preparation of record proper: The hearing clerk shall prepare the record proper for any appeal, which shall include a transcript of the hearing before

the commission. The appellant shall make satisfactory arrangements for payment of preparation of the record proper with the hearing clerk, including copying costs and transcription costs.

[20.1.3.21 NMAC - Rp, 20 NMAC 1.3.VI.600-606, 10/15/2010]

20.1.3.22 ALTERNATE RESOLUTION:

A. Summary procedures:

(1) Use of summary procedures: The commission may dispose of an abatement plan petition, variance petition or request for compliance order hearing after an expedited hearing if a party requests that the matter be decided solely on legal arguments presented in written briefs and oral arguments.

(2) Expedited hearing: If the hearing officer determines that the motion or request has a likelihood of success and could fairly expedite the resolution of the proceeding, the hearing officer may submit a recommended decision to the commission based on briefs and oral arguments presented at an expedited hearing. If an expedited hearing is conducted, public notice shall be given in accordance with Subsection C of 20.1.3.17 NMAC, Subsection C of 20.1.3.18 NMAC or Subsection C of 20.1.3.19 NMAC. For abatement plan or variance hearings, the hearing officer shall also:

(a) include in the public notice instructions for persons other than parties who wish to participate in the oral argument to submit a statement of intent equivalent to the statement provided in Subsection E of 20.1.3.17 NMAC; and

(b) allow the public to attend the expedited hearing but may limit presentations at the hearing to oral arguments by parties on the specific issue before the commission.

(3) Commission: Upon a referral of a recommended expedited decision, the commission may either reach a final decision and issue a final order or remand to the hearing officer to proceed with a full hearing under this part.

B. Settlement: The commission encourages the settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the act and regulations.

(1) Compliance order hearing: The commission may approve a stipulated final order signed by all parties. The stipulated final order shall include all the terms and conditions agreed to by the parties, and shall state that, for the purpose of this proceeding, the respondent admits the jurisdictional allegations of the compliance order and consents to the relief specified, including the assessment of the stated civil penalty, if any.

(2) Permit reviews: The commission may approve a settlement that modifies a permitting action only after evidence supporting such modification is

presented at a hearing. The department, however, may withdraw and reissue a modified permitting action under Subsection C of 20.1.3.22 NMAC.

(3) Disapproval of settlement: If the commission disapproves the settlement or stipulated final order, the matter shall proceed as if there had been no settlement or stipulated final order.

C. Withdrawal:

(1) Notice of withdrawal: A petitioner or respondent may withdraw a petition or request for compliance order hearing, or the department may withdraw the compliance order or the permitting action or abatement plan action which is the subject of the proceeding, at any time prior to a decision by the commission by filing a notice of withdrawal with the commission and serving the notice on all other parties. A party may file a written objection to the notice within 10 days after receipt. If an objection is filed, the commission shall rule on the notice.

(2) Effect of withdrawal: An effective notice of withdrawal under this section results in the following:

(a) when a petitioner withdraws an permit review petition, the permitting action becomes final;

(b) when a petitioner withdraws an abatement plan appeal petition, the abatement plan action becomes final;

(c) when a petitioner withdraws a variance petition, the petitioner is barred from petitioning for the same variance without permission from the commission;

(d) when a respondent withdraws a request for compliance order hearing, the compliance order becomes final;

(e) when the department withdraws a compliance order, the request for compliance order hearing is vacated; and

(f) when the department withdraws a permitting action or an abatement plan action, the petition is vacated and the department must issue a new permitting action or an abatement plan action within 60 days unless either the commission approves a different time period, the applicant withdraws its application, or the department determines that a permitting action or abatement plan action is no longer required. Upon issuance of a new permitting action or abatement plan action, the right to file a new petition under the act, Section 74-6-5 (O), or regulations, 20.6.2.4114 NMAC, is available.

[20.1.3.22 NMAC - Rp, 20 NMAC 1.3.VII.700-702, 10/15/2010]

20.1.3.23

APPENDIX A:

[Preferred Format]

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

[A. Petition Hearing]

IN THE MATTER OF THE PETITION FOR

[A VARIANCE FROM _____]

[HEARING ON DISCHARGE PLAN NO. ____]

[HEARING ON ABATEMENT ACTION DATED _____]

**[Name of Petitioner],
Petitioner**

[B. Order Hearing]

**[name of constituent agency issuing Compliance Order],
Complainant**

v.

**[Name of Respondent],
Respondent**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing [name of document] was [hand-delivered] [faxed] [mailed first class to all parties [and interested participants] on [date].

[20.1.3.23 NMAC - Rp, 20 NMAC 1.3.VIII.800, 10/15/2010]

HISTORY OF 20.1.3 NMAC:

Pre-NMAC History: none.

History of Repealed Material:

20 NMAC 1.3, Adjudicatory Procedures - Water Quality Control Commission (filed 10/15/1996) repealed 10/15/2010.

NMAC History:

20 NMAC 1.3, Adjudicatory Procedures - Water Quality Control Commission (filed 10/15/1996) was renumbered, reformatted and replaced by 20.1.3 NMAC, Adjudicatory Procedures - Water Quality Control Commission, effective 10/15/2010.

End of Adopted Rules Section

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Issue Number 3	February 1	February 12
Issue Number 4	February 15	February 26
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
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 16	July 30
Issue Number 15	August 2	August 16
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
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