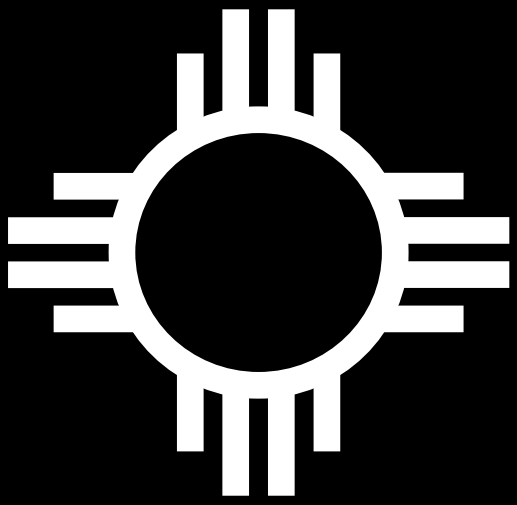
NEW MEXICO REGISTER



Volume XXIII
Issue Number 18
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New Mexico Register

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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2012

New Mexico Register

Volume XXIII, Number 18
September 28, 2012

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Effective Date and Validity of Rule Filings

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

A=***Amended***, E=***Emergency***, N=***New***, R=***Repealed***, Rn=***Renumbered***

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Acupuncture and Oriental Medicine will hold a Rule Hearing on Monday, October 29, 2012. Following the Rule Hearing the New Mexico Board of Acupuncture and Oriental Medicine will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Acupuncture and Oriental Medicine Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the Rule Hearing. The meeting will be held at the Regulation & Licensing Department, 2rd Floor, Rio Grande Conference Room located at 2550 Cerrillos Road, Santa Fe, 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 16.2.1 NMAC -General Provisions; 16.2.2 NMAC – Scope of Practice; 16.2.3 NMAC – Application for Licensure; 16.2.4 NMAC – Examinations; 16.2.5 NMAC – Temporary Licensing; 16.2.6 NMAC – Reciprocal Licensing; 16.2.7 NMAC – Educational Programs; 16.2.8 NMAC – License Renewal; 16.2.9 NMAC – Continuing Education; 16.2.10 NMAC – Fees; 16.2.11 NMAC – Licensee Business Offices and Administrative Requirements; 16.2.12 NMAC – Grounds for Denial; 16.2.13 NMAC – Complaint and Disciplinary Procedures; 16.2.14 NMAC – Externships; 16.2.15 NMAC – Inactive License; 16.2.16 NMAC - Auricular Detoxification; 16.2.17 NMAC – Licensure by Endorsement; 16.2.18 NMAC – Expanded Practice Educational Courses; 16.2.19 NMAC – Expanded Practice Certifications; 16.2.20 NMAC – Expanded Practice Formulary

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 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4630 after September 28, 2012. 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 by close of business day on October 24, 2012. Persons wishing to present their comments at the Rule Hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

A copy of the agenda will be available at least 24 hours prior to the meeting and may be obtained at the Board office located on the 2nd Floor of the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, or by calling the Board office at (505) 476-4630 and will also be posted on our website at www.rld.state.nm.us Acupuncture & Oriental Medicine, under Members and Meetings.

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) 476-4630 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

STATE PARKS DIVISION

NOTICE OF PUBLIC HEARING AND RULEMAKING

STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, STATE PARKS DIVISION

The New Mexico Energy, Minerals and Natural Resources Department, State Parks Division will hold a public hearing on proposed rule amendments at 6:30 p.m. on October 17, 2012 in Porter Hall (first floor), Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico.

The New Mexico Energy, Minerals and Natural Resources Department, State Parks Division is proposing changes to the following rules: 18.17.2 NMAC, Boating Operation And Safety; 18.17.3 NMAC, Construction Visitor Provisions; 19.5.1 NMAC, General Provisions; 19.5.2 NMAC, Park Visitor Provisions; 19.5.3 NMAC, Park Management And Development Plans; 19.5.5 NMAC, Concession Activities; 19.5.6 NMAC, Park Fees; and 19.5.7 NMAC, Filming In State Parks. Proposed changes to 18.17.2 NMAC include, among others, equipment on kayaks, canoes, paddleboards or rubber rafts. Proposed changes to 18.17.3 NMAC include having the State Parks Division collect fees directly for the permitting of community boat docks instead of the Interstate Streams Commission collecting the fees and transferring them to the State Parks Division. Proposed changes to 19.5.1 NMAC include, among others, the addition or amendment of definitions for off-highway motor vehicle, other power driven mobility device, vehicle, and wheelchair. Proposed changes to 19.5.2 NMAC include, among others, use of off-highway motor vehicles and golf cars by those with mobility disabilities, use of firearms and bows, and prohibitions on littering; as well as addition of new rules for, among others, rock collecting, and seaplanes and floatplanes. Proposed changes to 19.5.3 NMAC include the modification of park management and development plans. Proposed changes to 19.5.5 NMAC include, among others, concession contract provisions, outfitters and guides, and special requirements for the San Juan River located in Navajo Lake State Park. Proposed changes to 19.5.6 NMAC include, agreements containing conditions for use of meeting rooms and other facilities such as lodges and visitor centers, and the repeal of the fee for reservations. Proposed changes to 19.5.7 NMAC include activities not requiring a film permit and waiver of fees for individual student non-commercial projects.

Copies of the proposed rule changes are available from the New Mexico Energy, Minerals and Natural Resources Department, State Parks Division, 1220 South Saint Francis Drive, Santa Fe, NM 87505, on its website, http://www.emnrd.state.nm.us/PRD/, or http://www.emnrd.state.nm.us/spd/, or by contacting April Alvarado at 505-476-3360, april.alvarado@state.nm.us.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

Written comments and oral comments will be accepted at the public hearing on October 17, 2012 and written comments will be accepted until October 31, 2012 at 5:00PM by mail or e-mail. Please mail written comments to April Alvarado, EMNRD, State Parks Division, 1220 S. St. Francis Drive, Santa Fe, NM 87505 or submit them by e-mail to april.alvarado@state.nm.us.

Individuals with a disability requiring a reasonable accommodation such as a reader, assistive listening device, licensed Signed Language Interpreter, or any other auxiliary aid may request one by contacting April Alvarado at 505-476-3360 or at april.

alvarado@state.nm.us at least two weeks prior to the hearing. Public documents can also be provided in various accessible formats.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on December 3, 2012 at 9:00 a.m. in Room 307 at the State Capital in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 12-05, the New Mexico Environment Department's ("NMED") proposal to adopt amendments to 20.2.70 NMAC (Operating Permits) and 20.2.74 NMAC (Permits - Prevention of Significant Deterioration (PSD)). The amendments to 20.2.70 NMAC are proposed as revisions to the Title V Operating Permit Program, and the amendments to 20.2.74 NMAC are proposed as revisions to the State Implementation Plan (SIP). The proposed revisions will defer until 2014 the consideration of carbon dioxide emissions from biogenic sources when determining whether a source meets the Title V and PSD applicability thresholds, and establish plantwide applicability limitations (PALs) for greenhouse gas emissions in the PSD rule.

The NMED will host an informational open house on the proposed revisions to 20.2.70 and 20.2.74 NMAC at the NMED Air Quality Bureau Office, 1301 Siler Road, Building B, Santa Fe, New Mexico 87507, from 12:00 p.m. to 3:00 p.m. on November 8, 2012. To attend the informational open house, please contact Kerwin Singleton at (505) 476.4350 or kerwin.singleton@state.nm.us.

The proposed revised regulations may be viewed during regular business hours at the NMED Air Quality Bureau Office, 1301 Siler Road, Building B, Santa Fe New Mexico 87507. Full tect of NMED's proposed revised regulations are available on NMED's website at www.nmenv.state.nm.us, or by contacting Kerwin Singleton at (505) 476.4350 or kerwin.singleton@state.nm.us.

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

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

(1) identify the person for whom the witness(es) will testify;
(2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
(3) include a copy of the direct testimony of each technical witness;
(4) list and attach each exhibit anticipated to be offered by that person at the hearing; and
(5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board no later than 5:00 p.m. on November 13, 2012 and should reference docket number EIB 12-05 and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Felicia Orth, Acting Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room 3056-N
Santa Fe, New Mexico 87502
Phone: (505) 827.0339, Fax: (505) 827.2836

Any member if the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his or her testimony, so long as the exhibit is not unduly repetitious of the testimony.

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 the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of the hearing process should contact Connie Joseph by November 16, 2012 at the NMED Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Dr., Santa Fe, New Mexico 87502, telephone (505) 827.9769. TDY users please access her number via the New Mexico Relay Network at (800) 659.8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED RULE OF THE HEALTH INFORMATION SYSTEM REPORTING REQUIREMENTS FOR HEALTHCARE FACILITIES AND ACCESS TO DATA AND REPORTS 7.1.27.1 THROUGH 7.1.27.23 NMAC

The New Mexico Department of Health (NMDOH) will hold a public hearing on November 1, 2012 at 2:00 p.m., and continuing thereafter as necessary. The hearing will be held at the New Mexico Department of Health, Runnels Building Auditorium, 1190 S. St. Francis Drive, Santa Fe, New Mexico 87505. The auditorium is located in Suite 100.

New Mexico Statute for the Health Information Systems Act (24-14A NMSA 1978) was amended during the 2011 New Mexico Legislative session authorizing the New Mexico Department of Health (NMDOH) to collect, report on and disseminate Hospital Inpatient Discharge Data (HIDD) from non-federal hospitals in the state. These powers and duties were formerly carried out by the New Mexico Health Policy Commission. It is the responsibility of the NMDOH to create rules regarding the collection, use and reporting of these data. The NMDOH is proposing a new administrative code (7.1.27 NMAC). The proposed rule relates to several specific areas, including specific information to be reported by state licensed general and specialty hospitals, the data access policy and public reporting requirements.

The proposed rule relates to several specific areas, including additional information to be reported by state licensed general and specialty hospitals and policy on access to the data and public reports created from the data.

The proposed regulations may be reviewed during regular business hours at the Department of Health's Epidemiology and Response Division, 1190 St. Francis Dr., Suite North-1300, Santa Fe, New Mexico, 87505. Copies of the proposed regulations may be obtained by contacting Noell Stone at (505) 476-3584 or by email at Noell.

Stone@state.nm.us.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 9:00 A.M. on the date of the hearing. Please send comments to:

Noell Stone
NM Department of Health
1190 S. St. Francis Dr., Suite North-1300
P. O. Box 26110
Santa Fe, New Mexico 87505
(505) 476-3584

You may send comments electronically to: Noell.Stone@state.nm.us

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Noell Stone, Project Director, by October 15, 2010. Ms. Stone can be reached at the above address and phone. TDD and TDY users my access this number via the New Mexico Relay Network by dialing 1-800-659-1779.

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF REVISION OF 13.14.9.39 NMAC, "SUBSTITUTION RATE ON LOANS TO TAKE UP, RENEW, EXTEND OR SATISFY AN EXISTING INSURED LOAN" TO REFLECT THE RATES ENACTED IN 2009 AS CODIFIED AT NMSA 1978, 59A-30-6.1 AND ANY NECESSARY REMEDIES TO SERVE THE PUBLIC INTEREST	**)** **)** **)** **)** **)** **)** **)** **)** **)**	**DOCKET NO. 12-00206-IN**

AMENDED NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of the Insurance Division of the New Mexico Public Regulation Commission (Superintendent) proposes to adopt amendments to the title insurance rules codified in the New Mexico Administrative Code (NMAC) at 13.14.9.39. This matter comes before the Superintendent upon his own motion and, having reviewed the record and being duly advised,

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over the subject matter and the parties in this proceeding pursuant to the New Mexico Insurance Code, 1978 NMSA §59A-1-1 *et seq.* (Insurance Code).

2. NMSA 1978 59A-30-6.1 (2009), "Premiums; refinanced property," took effect on May 1, 2009. This amendment to the Insurance Code revised the rates downward for title insurance policies issued in connection with most refinancing transactions of existing mortgages or deeds of trust.

3. The corresponding portion of the New Mexico Administrative Code, "Substitution Rate On Loans to Take Up, Renew, Extend Or Satisfy An Existing Insured Loan," 13.14.9.39 NMAC, predates the effective date of the statutory revision and may be inconsistent with it.

4. Accordingly, proposed amendments to 13.14.9.39 NMAC (Proposed Rule) are attached to and incorporated into this Amended Notice of Proposed Rulemaking (NOPR) as Exhibit A.

5. The Superintendent will accept written comments on the Proposed Rule from any interested person. The public is encouraged to file written comments although oral comments will be accepted at the public hearing in this case. Interested persons shall file their written comments on the Proposed Rule no later than **October 17, 2012**. Any response comments shall be filed no later than **October 24, 2012**. Comments suggesting changes to the Proposed Rule shall state and discuss the particular reasons for the suggested changes, shall cite to any state or federal law, or other materials, referred to in the comment and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the Proposed Rule shall be in legislative format. All pleadings, including comments and suggested changes to the Proposed Rule, shall bear the caption and docket number contained at the top of this NOPR. Any comments already filed in this docket will be accepted as if filed pursuant to the terms of this NOPR.

6. Written comments or written response comments shall be filed by sending original copies to:

Mr. Nick Guillen
NMPRC Records Management Bureau
1120 Paseo de Peralta
P.O. Box 1269
Santa Fe, NM 87504
ATTN: Case No. 12-00253-IN

7. Copies of the Proposed Rule may be downloaded from the New Mexico Public Regulation's web site, www.nmprc.state.nm.us.

8. The Superintendent will review all timely submitted written comments and will hold a public comment hearing beginning **at 1:30 p.m. on November 14, 2012**, at the Superintendent of Insurance, Public Regulation Commission Hearing Room, 4th Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

9. Any person with a disability requiring special assistance in order to participate in a hearing should contact Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the hearing.

10. 1.2.3.7(B) NMAC (Ex Parte Communications) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as ex parte communications. In order to assure compliance with 1.2.3.7(B) NMAC, the Superintendent should set a date on which it will consider the record to be closed. The Superintendent finds that date shall be the earlier of thirty (30) days following the Public Hearing; that is, **December 14, 2012**, or the date a Final Order is issued in this

case. The setting of that record closure date will permit the Superintendent to conduct follow-up discussions with parties who have submitted initial or response comments to the Proposed Rule or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

11. Copies of this NOPR should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The Proposed Rule, attached to this NOPR as Exhibit A, is proposed for adoption as a permanent rule as provided by this NOPR.

B. This NOPR shall constitute due and lawful notice to all potentially interested parties.

C. Initial, written comments on the Proposed Rule must be filed by **October 17, 2012** and written response comments must be filed by **October 24, 2012**. Any comments already filed in this docket will be accepted as if filed by these dates.

D. A public hearing on the Proposed Rule shall be held beginning at **1:30 p.m.** on **November 14, 2012** at the offices of the Superintendent, at the following location:

Superintendent of Insurance
4th Floor - Public Regulation Commission Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. 1-888-4ASK-PRC (1-888-427-5772)

E. Pursuant to 1.2.3.7(B) NMAC, the record in this case will be closed on the earlier of thirty (30) days following the public hearing; that is, November 30, 2012, or the date a Final Order is issued in this case.

F. Persons providing public comment and/or participating in this public hearing are encouraged to provide specific comment on the Proposed Rule and cite specifically to any federal or state laws or other materials referenced in a comment. Those wishing to make comments are also encouraged to address any other topic that may be relevant to this rulemaking.

G. Interested persons should contact the Superintendent to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the public hearing in this case.

H. The Superintendent designates Alan Seeley, Actuary, to preside over this matter and to take all action necessary and convenient thereto within the limits of the hearing officer's authority and consistent with applicable procedural rules.

I. In accordance with NMSA 1978, § 8-8-15(B), this NOPR, including Exhibit A, shall be mailed at least thirty days prior to the first hearing date to all persons who have made a written request for advance notice.

J. In addition, copies of this NOPR, including Exhibit A, shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known. If their e-mail addresses are not known, then the same materials shall be mailed to such persons via regular mail.

K. This NOPR, without Exhibit A, pursuant to NMSA 1978 14.4.7.1.B(1), shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the *New Mexico Register*. Affidavits attesting to the publication of this NOPR as described above shall be filed in this docket.

L. In addition, this NOPR shall be posted on the Superintendent's official Web site.

M. This NOPR is effective immediately.

DONE AND ORDERED this ____ day of September, 2012

JOHN G. FRANCHINI
Superintendent of Insurance

NEW MEXICO STATE RECORDS CENTER AND ARCHIVES

NOTICE OF RULE HEARING

The State Records Administrator of the New Mexico State Records Center and Archives (SRCA) will hold a public hearing on Tuesday, October 23, 2012, at 9:00 a.m. to take public comment regarding the following proposed rulemaking actions:

Amendment
1.13.10 NMAC Records Custody, Access, Storage and Disposition

Copies of the proposed rules are available at the Office of the State Records Administrator, 1205 Camino Carlos Rey, Santa Fe, NM 87507 and on the SRCA website at: www.nmcpr.state.nm.us/index.htm. Proposed rules can also be provided in various accessible formats.

The hearing will be held at the SRCA in the Commission Room, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902. The SRCA requests at least 5 business days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

NOTICE OF CANCELLATION OF PUBLIC HEARINGS

The New Mexico Department of Transportation (NMDOT) had previously scheduled public hearings for the purpose of receiving oral and written public comment on PROPOSED REVISIONS to Rule Number 18.21.5 NMAC, New Mexico Department of Transportation Outdoor Advertising Requirements. The hearings were scheduled for September 19, 2012 in Santa Fe, September 24, 2012 in Las Cruces, and September 27, 2012 in Albuquerque. This is to provide notice that all three hearings have been cancelled and will be rescheduled at a later date. Please contact Michael Otero, Outdoor Advertising Program Manager, New Mexico Department of Transportation, P.O. Box 1149, G.O. Room 201, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5460 if you have any questions or to request a copy of the proposed rule.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

NOTICE OF PUBLIC INFORMATION MEETING

The New Mexico Department of Transportation (NMDOT) will hold a public information meeting for the purpose of receiving oral and written public comment from all interested persons on proposed revisions to Rule Number 18.21.5 NMAC, New Mexico Department of Transportation Outdoor Advertising Requirements. The

purpose of the proposed rule change is to establish procedures and standards for all off-premises outdoor advertising in New Mexico, including the use of changeable electronic variable message signs, to amend the current fee structure, to update and clarify the rule where necessary, including definitions and permit-related processes, correct inconsistencies with federal regulations, and to make formatting, organizational and language changes throughout the rule to conform to New Mexico rulemaking requirements. This public information meeting is not a public hearing under the Department's rulemaking process. Public hearings will be scheduled at a later date.

The public information meeting is scheduled for October 30, 2012 from 4:00 p.m. to 9:00 p.m. at the New Mexico Department of Transportation, District 3 Auditorium, located at 7500 Pan American Blvd., Albuquerque, New Mexico. Please contact Michael Otero, Outdoor Advertising Program Manager, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5460 to request a copy of the proposed rule. The proposed rule is also available on the New Mexico Department of Transportation's website at http://www.dot.state.nm.us/en/Operations.html#b. Interested persons may also present their views by written statements submitted to Michael Otero, Outdoor Advertising Program Manager, New Mexico Department of Transportation, P.O. Box 1149, SB 4, 2nd Floor, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5460.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the meeting, or who needs copies of the proposed rule in an accessible form, may contact Michael Otero at (505) 827-5460 at least ten (10) days before the public information meeting.

End of Notices and Proposed Rules Section

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Adopted Rules

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.3 NMAC, Sections 7, 11, 105, 109, 116, 118, 119, and 121, effective 10/15/12.

20.11.3.7 DEFINITIONS: Terms used but not defined in 20.11.3 NMAC shall have the meaning given to them by the CAA, Titles 23 and 49 U.S.C., other EPA regulations, or other DOT regulations, in that order of priority. In addition to the definitions in Section 20.11.3.7 NMAC, the definitions in 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the definition in 20.11.3 NMAC shall govern.

A. [~~"1-hour ozone NAAQS"~~ ~~means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.~~] Reserved

B. [~~"8-hour ozone NAAQS"~~ ~~means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.~~] Reserved

C. [~~"24-hour PM_{10} NAAQS"~~ ~~means the 24-hour PM_{10} national ambient air quality standard codified at 40 CFR 50.6.~~] Reserved

D. [~~"1997 $PM_{2.5}$ NAAQS"~~ ~~means the $PM_{2.5}$ national ambient air quality standards codified at 40 CFR 50.7.~~] Reserved

E. [~~"2006 $PM_{2.5}$ NAAQS"~~ ~~means the 24-hour $PM_{2.5}$ national ambient air quality standard codified at 40 CFR 50.13.~~] Reserved

F. "Air agency" means the air quality division (AQD) of the city of Albuquerque environmental health department (EHD). The EHD, or its successor agency or authority, as represented by the department director or his designee, is the lead air quality planning agency for Albuquerque-Bernalillo county nonattainment/ maintenance areas. The EHD serves as staff to the AQCB and is responsible for administering and enforcing AQCB regulations.

G. "Albuquerque metropolitan planning area (AMPA)" means the portion of New Mexico state planning and development district 3 that comprises the area for which federal transportation funding allocated for areas of a 200,000 or greater population is expended. The AMPA is described in the MPO's most recent transportation planning documents.

H. [~~"Annual PM$_{10}$ NAAQS"~~ ~~means the annual PM_{10} national ambient air quality standard that EPA revoked on December 18, 2006.~~] Reserved

I. "Applicable implementation plan" is defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

J. "CAA" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

K. "Cause or contribute to a new violation" for a project means:

(1) to cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question if the project were not implemented; or

(2) to contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such an area.

L. "Clean data" means air quality monitoring data determined by EPA to meet the applicable requirements of 40 CFR [~~Part~~] Parts 50 and 58 [~~that~~] and to indicate attainment of [~~the~~] a national ambient air quality standard.

M. "Conformity analysis" means any regional emissions analysis or localized hot-spot computer modeling assessments or any other analyses, which serve as the basis for the conformity determination.

N. "Conformity determination" means the demonstration of consistency with motor vehicle emissions budgets or with the appropriate interim emissions test identified at 20.11.3.118 NMAC for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable implementation plan, which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities shall not:

(1) cause or contribute to any new violations of any standard in any area;

(2) increase the frequency or severity of any existing violation of any standard in any area; or

(3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

O. "Consultation" means the process by which the affected agencies identified in 20.11.3.105 NMAC confer with each other, provide to the agencies all relevant information needed for meaningful input and, prior to taking any action, consider the views of the other agencies and (except with respect to those actions for which only notification is required and those actions subject to Subsection C of 20.11.3.105 NMAC and Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC) respond in writing to substantive written comments in a timely manner prior to any final decision on such action.

P. "Control strategy implementation plan revision" means a revision to the implementation plan that contains specific strategies for controlling emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA Sections 172 (c) , 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A) and 189(d); Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).

Q. "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

R. "Design scope" or "scope" means the design aspects that shall affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

S. "Donut areas" means geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

T. "DOT" means the United States department of transportation.

U. "EPA" means the United States environmental protection agency.

V. "FHWA" means the

federal highway administration of the DOT.

W. "FHWA/FTA project" means any highway or transit project that is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

X. "Fiscally constrained" means, consistent with DOT's metropolitan transportation planning regulations at 23 CFR Part 450.

Y. "Forecast period" means, with respect to a transportation plan, the time period covered by the transportation plan pursuant to 23 CFR Part 450.

Z. "FTA" means the federal transit administration of the DOT.

AA. "Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

BB. "Horizon year" means a year for which the transportation plan describes the envisioned transportation system according to 20.11.3.106 NMAC.

CC. "Hot-spot analysis" means an estimation of likely future localized CO, PM_{10} and $PM_{2.5}$ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

DD. "Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question if the project were not implemented.

EE. "Isolated rural nonattainment and maintenance areas" mean areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

FF. "Lapse" means that the conformity determination for a transportation plan or a TIP has expired, and thus there is no currently conforming transportation plan and TIP.

GG. "Limited maintenance plan" means a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area shall have a design value that is significantly below a given NAAQS, and it shall be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

HH. "Local publicly-owned transit operator" means the current transit operator, the city of Albuquerque.

II. "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

JJ. "Maintenance plan" means an implementation plan under Section 175A of the CAA, as amended.

KK. "Metropolitan planning organization (MPO)" means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

LL. "Mid-region council of governments (MRCOG)" means the association of local governments within New Mexico state planning and development district 3 (Bernalillo, Sandoval, Torrance and Valencia counties) that is designated by the governor of New Mexico, in consultation with the elected officials of the area, as the MPO for the Albuquerque metropolitan planning area.

MM. "Milestone" has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM_{10} nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date when that level shall be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

NN. "Motor vehicle emissions budget (MVEB)" means the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

OO. "National ambient air quality standards (NAAQS)" are those standards established pursuant to Section 109 of the CAA.

PP. "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

QQ. "NEPA process completion" means, with respect to the FHWA and the FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a finding of no significant impact or to issue a record of decision on a final environmental impact statement under NEPA.

RR. "Nonattainment area" means any geographic region of the United States that has been designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

SS. "Project" means a highway project or a transit project.

TT. "Protective finding" means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirement relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

UU. "Public involvement committee (PIC)" means the permanent advisory committee established by the MRCOG to provide proactive public input to the transportation planning process.

VV. "Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws" means any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or federal transit laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers or contractors or entities that are only paid for services or products created by their own employees.

WW. "Regionally significant project" means a transportation project

(other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc. or transportation terminals) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

XX. "Safety margin" means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance.

YY. "Standard" means a national ambient air quality standard.

ZZ. "State implementation plan (SIP)" (see applicable implementation plan).

AAA. "State DOT" means the New Mexico department of transportation or its successor agency or authority, as represented by the department secretary or his designee.

BBB. "Title 23 U.S.C." means Title 23 of the United States Code.

CCC. "Transit" is mass transportation by bus, rail or other conveyance that provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

DDD. "Transit project" means an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules or fares and may consist of several phases. For analytical purposes, a transit project shall be defined inclusively enough to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

EEE. "Transportation conformity technical committee (TCTC)" means the group that provides interagency consultation and consists of transportation, planning and air quality staff of the MPO, local government staff, staff from the state DOT, EPA, FHWA, FTA, and staff from the air agency, and that is responsible for evaluating and establishing the assumptions and circumstances for the application of transportation and air quality models.

FFF. "Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA Section 176(c)(8), that is either one of the types listed in Section 108 of the CAA, or any other measure that reduces emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of 20.11.3 NMAC.

GGG. "Transportation improvement program (TIP)" means a transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

HHH. "Transportation plan" means the official 20-year fiscally constrained intermodal metropolitan transportation plan (MTP) that is developed for the metropolitan planning area through the metropolitan planning process, pursuant to 23 CFR Part 450.

III. "Transportation project" is a highway project or a transit project.

JJJ. "Written commitment" means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

KKK. Acronyms

(1) **AMPA**-Albuquerque metropolitan planning area

(2) **AQCB**-Albuquerque-Bernalillo county air quality control board

(3) **CAA**-Clean Air Act, as amended

(4) **CFR**-code of federal regulations

(5) **CO**-carbon monoxide

(6) **DOT**-U.S. department of transportation

(7) **EHD**-Albuquerque environmental health department

(8) **EPA**-U.S. environmental protection agency

(9) **FHWA**-federal highway administration, DOT

(10) **FTA**-federal transit administration, DOT

(11) **MPO**-metropolitan planning organization

(12) **MRCOG**-mid-region council of governments

(13) **MTB**-metropolitan transportation board

(14) **MTP**-metropolitan transportation plan

(15) **MVEB**-motor vehicle emissions budget

(16) **NAAQS**-national ambient air quality standards

(17) **NEPA**-National Environmental Policy Act

(18) **NO_x** -oxides of nitrogen

(19) **PIC**-public involvement committee

(20) **$PM_{2.5}$**-particulate matter less than or equal to 2.5 micrometers in diameter

(21) **PM_{10}**-particulate matter less than or equal to 10 micrometers in diameter

(22) **SIP**-state implementation plan (applicable implementation plan)

(23) **State DOT**-New Mexico department of transportation

(24) **STIP**-state transportation improvement program

(25) **TCC**-transportation coordinating committee

(26) **TCM**-transportation control measure

(27) **TCTC**-transportation conformity technical committee

(28) **TIP**-transportation improvement program

(29) **VOC**-volatile organic compound

(30) **VMT**-vehicle miles traveled

[7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02; A, 6/13/05; A, 12/17/08; A, 11/15/10; A, 10/15/12]

20.11.3.11 DOCUMENTS: Documents incorporated and cited in 20.11.3 NMAC may be viewed at the Albuquerque environmental health department, one civic plaza NW, [~~room~~] suite 3023, 400 Marquette NW, Albuquerque, NM 87102.

[7/1/98; 20.11.3.11 NMAC - Rn, 20 NMAC 11.03.I.11, 6/1/02; A, 6/13/05; A, 10/15/12]

20.11.3.105 CONSULTATION:

A. General: Transportation plans and programs shall be in conformity with the applicable implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo county. The MRCOG, as the MPO, is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo county. The applicable plans and programs are the TIP and the MTP. The document serving to demonstrate conformity is the transportation/air quality conformity finding. 20.11.3.105

NMAC provides procedures for interagency consultation (federal, state and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the MPO, state DOT and DOT with the air agency and EPA before making conformity determinations and by the air agency and EPA with the MPO, state DOT and DOT in developing applicable implementation plan revisions.

B. Interagency consultation procedures: General factors: The affected agencies shall participate in an interagency consultation process to assure that proposed transportation investments conform with the applicable implementation plan developed pursuant to the CAA. The affected agencies shall participate in a consultation process during the development of the transportation-related elements in the applicable SIP (i.e. TCMs, the MTP, and the TIP under 23 CFR Section 450.314 and 49 CFR Section 613.100), any significant revisions to the preceding documents and all conformity determinations required by 20.11.3 NMAC.

(1) The affected agencies acting in consultation include: EHD; EPA; FHWA; FTA; MPO; state DOT; local publicly-owned transit operator; appropriate local government transportation agencies and land use planning agencies (e.g. city of Albuquerque and Bernalillo county planning departments); and other federal and state agencies as appropriate.

(2) Each lead agency in the consultation process required under Subsection D of 20.11.3.105 NMAC (i.e. the agency responsible for preparing the final document subject to the interagency consultation process) shall provide reasonable opportunity for consultation with the affected agencies identified above. The lead agency shall provide to the affected agencies all information needed for meaningful input and shall consider the views of each agency and respond in writing to substantive written comments submitted during the formal comment period prior to making a final decision on such document. Such written response shall be made part of the record of any decision or action. Roles of these agencies are further described in Paragraph (1) of Subsection C of 20.11.3.105 NMAC below.

(3) Project planning, public involvement, management systems, project development and other requirements for the MPO, state DOT and the local publicly-owned transit operator are covered by the applicable DOT rules and regulations for MPOs and state DOTs (23 CFR Part 450, 500, 626 and 771, 49 CFR 613).

C. Interagency consultation procedures roles and responsibilities:

(1) **Development of transportation plans and programs and associated conformity determinations.**

(a) The MPO, as the lead transportation planning agency, has the primary responsibility in the AMPA for developing the MTP, TIP and technical analyses related to travel demand and other associated modeling, data collection and coordination of consultation for these activities with the agencies specified in Paragraph (1) of Subsection B of 20.11.3.105 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO shall be responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the EHD. Corridor and project-level hot spot and emissions analyses, developed in consultation with the EHD, shall be the responsibility of the project-implementing agency through the NEPA process or similar environmental evaluation process.

(b) The committees and member agencies, identified in the most recent MPO document regarding public involvement procedures for transportation plans and programs, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*, shall participate in the MPO process for the development, monitoring and revision of the MTP and the development of the TIP.

(i) The MPO shall forward a preliminary version of the MTP, the TIP and the draft conformity finding to the AQCB for review with a minimum of 14 calendar days to provide comments. Upon release of the final draft of the MTP and TIP for public review, the MPO shall submit the final drafts of the MTP, TIP and accompanying conformity documents to the AQCB and agencies in Paragraph (1) of Subsection B of 20.11.3.105 NMAC for review and comment before adoption and final approval by the MTB. Following review of the conformity determination, the AQCB shall state whether the TIP, the MTP or both are in compliance with the applicable implementation plan. The MPO shall provide a review and comment period consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613). Briefings to the AQCB shall be provided upon request.

(ii) The MPO shall provide information and appropriate advance notification of meeting places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on transportation and air quality to each of the agencies specified in Paragraph (1) of Subsection B of 20.11.3.105 NMAC in accordance with the public involvement process adopted by the MPO, consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613) and described in the MRCOG's public involvement document, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*. The MPO's compliance with the New Mexico Open Meetings Act is documented annually. Resolution of conflicts shall follow the provisions of Subsection E of 20.11.3.105 NMAC.

(2) **Development of applicable implementation plans:** Within the nonattainment/maintenance area, the EHD, in consultation with the MPO, shall be responsible for developing the transportation-related components for the applicable SIP, air quality modeling, general emissions analysis, emissions inventory, all related activities and coordination of these tasks with the agencies specified in Paragraph (1) of Subsection B of 20.11.3.105 NMAC through the TCTC as described in Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC. Upon release of the final draft of the SIP revision for public review, the EHD shall submit the final draft document to the MTB and agencies in Paragraph (1) of Subsection B of 20.11.3.105 NMAC for review and comment before final adoption by the AQCB. The EHD shall provide at least a 30 day review and comment period consistent with CAA requirements. Briefings to the MTB shall be provided upon request.

(3) The organizational level of regular consultation is described in Subsection B of 20.11.3.105 NMAC and Subsection C of 20.11.3.105 NMAC. All correspondence concerning consultation related to the transportation conformity SIP shall be addressed to the designated points of contact below:

(a) EPA: regional administrator or designee;

(b) FHWA: division administrator or designee;

(c) FTA: regional administrator or designee;

(d) State DOT: secretary of transportation or designee;

(e) MPO: MRCOG executive director or designee;

(f) EHD: director or designee;

(g) local publicly-owned transit operator: chief administrative officer or designee;

(h) local governments within the nonattainment/maintenance area: chief administrative officer or equivalent or designee.

(4) The MPO shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC regarding the MTP, TIP and related conformity determinations The project implementing agencies shall respond in writing to substantive written

comments regarding projects in accordance with the provisions of 20.11.3 NMAC. The EHD shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC regarding the transportation components of the applicable implementation plan for the nonattainment/maintenance area, in accordance with the provisions of 20.11.3 NMAC. All formal comments (e.g. those received during the public comment period) and responses to those comments shall be included within final documents before they are forwarded for review and final approval by the FHWA/FTA or EPA, as appropriate.

(5) Prior to AQCB adoption of a TCM in the applicable implementation plan, the MPO shall, in consultation and coordination with the agencies identified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC, develop the proposed TCM in a manner consistent with the MTP and TIP transportation development processes. After approval of a TIP, MTP or both, the AQCB shall incorporate all proposed TCMs into the applicable implementation plan. The necessary TCMs shall be specifically described in the applicable implementation plan. TCMs shall also be cross-referenced to the approved TIP, MTP or both. EHD shall coordinate the necessary efforts to achieve inclusion of the proposed TCM into the applicable implementation plan. The TCMs approved by the AQCB and subsequently by the EPA as part of the applicable implementation plan shall receive priority funding for implementation in a manner consistent with funding and phasing schedules specified in the MPO's TIP or MTP or both.

(a) In the event that implementation of a TCM is infeasible in the time frame for that measure in the applicable implementation plan (as defined in Subsection D of 20.11.3.7 NMAC), the parties in the interagency consultation process established pursuant to Paragraph (1) of Subsection D of 20.11.3.105 NMAC shall assess whether such a measure continues to be appropriate. When the MPO and the AQCB concur that a TCM identified in the applicable implementation plan is no longer appropriate, the agencies may initiate the process described in Subparagraph (b) through Subparagraph (e) of Paragraph (5) of Subsection C of 20.11.3.105 NMAC to identify and adopt a substitute TCM.

(b) **Substitution of TCMs**. Any TCM that is specified in the applicable implementation plan may be replaced or added to the implementation plan with alternate or additional TCMs without an implementation plan revision if the proposed measure meets the following provisions:

(i) upon request by the MPO, the EHD shall convene the TCTC to identify and evaluate possible substitute and additional measures; consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 6;

(ii) the substitute TCM shall provide for equivalent or greater emissions reductions than the TCM to be replaced in the applicable implementation plan, as demonstrated by an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced TCM in the implementation plan;

(iii) the substitute TCM shall be implemented in accordance with a schedule that is consistent with the schedule provided for the TCM contained in the applicable implementation plan; or if the implementation plan date for implementation of the TCM to be replaced has already passed, a TCM selected pursuant to 20.11.3 NMAC that requires funding shall be included in the first year of the next MTP and TIP adopted by the MPO; however, the substituted TCM shall be implemented as soon as possible, but not later than one year from the date of the original TCM, and in no case, later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iv) in order for the AQCB to adopt substitute and additional TCMs, there shall be evidence of adequate personnel, funding and authority under state or local law to implement, monitor and enforce the control measures; commitments to implement the substitute TCMs shall be made by the agency with legal authority for implementation;

(v) the TCMs substituted under 20.11.3.105 NMAC for purposes of the applicable implementation plan shall receive priority funding for implementation within the MPO's MTP and TIP funding processes; and

(vi) no TCM shall be replaced until the substitute TCM has been adopted and the existing TCM in the applicable implementation plan has been rescinded by the AQCB; adoption of a substitute TCM by the AQCB formally rescinds the previously applicable TCM and adopts the substitute TCM.

(c) **Public participation:** After the concurrence required under Subparagraph (a) of Paragraph (5) of Subsection C of 20.11.3.105 NMAC, the AQCB shall conduct a public hearing and comment process, in accordance with 40 CFR 52.102, on the proposed substitute TCM(s). The hearing can only be held after a reasonable public notice and comment period, which begins at least 30 days prior to the hearing date. The AQCB shall ensure that:

(i) the public is notified by prominent advertising in the area affected announcing the time, date and place of the hearing;

(ii) each proposed plan or revision is available for public inspection in at least one location in the applicable area;

(iii) the MPO, EPA, affected local agencies and other interested parties are notified; and

(iv) a description of the TCM(s), analysis supporting the proposal, assumptions and methodology are available to the public, the MPO and EPA for at least 30 days before the public hearing and at least 30 days prior to the close of the public comment period.

(d) **Concurrence process for substitute TCMs:**

(i) before initiating any public participation process, the AQCB, MPO and EPA shall concur with the appropriateness and equivalency of the substitute or additional TCM;

(ii) the AQCB shall respond to all public comments and submit to EPA a summary of comments received during the public comment period along with the responses following the close of the public comment period;

(iii) the EPA shall notify the AQCB within 14 days if EPA's concurrence with the substitution TCM has changed as a result of public comment;

(iv) all substitute TCMs shall be adopted by the AQCB following the public comment period and EPA's concurrence described in Subparagraph (d) of Paragraph (5) of Subsection C of 20.11.3.105 NMAC; if not adopted, the substitute TCM cannot replace the existing TCM.

(e) **Technical information:** The analysis of substitute TCMs shall be consistent with methodology used for evaluating TCMs in the nonattainment or maintenance plan. Where emissions models or transportation models have changed since those used for purposes of evaluating measures in the nonattainment or maintenance plan, the TCM to be replaced and the substitute TCMs shall be evaluated using the latest modeling techniques for purposes of demonstrating equivalency or greater emissions reductions. The key methodology and assumptions shall be consistent with EPA approved regional and hot-spot emissions models (for CO, PM_{10} and $PM_{2.5}$), the area's transportation model, and population and employment growth projections.

(f) **Record keeping:** The AQCB shall maintain documentation of approved TCM substitutions. The documentation shall provide a description of the substitute and replaced TCMs, including requirements and schedules. The documentation shall also provide a description of the substitution process including the public and agency participation and coordination with the

TCTC, the public hearing and comment process, EPA concurrence and AQCB adoption. The documentation shall be submitted to EPA following adoption of the substitute TCMs by the AQCB, and made available to the public as an attachment to the applicable implementation plan.

(g) **Adoption:**

(i) concurrence by the metropolitan planning organization, the state air pollution control agency and the administrator as required by Subparagraph (i) of Paragraph (d) of Subsection C of 20.11.3.105 NMAC, shall constitute adoption of the substitute or additional control measures so long as the requirements of Paragraph (b) of Subsection C of 20.11.3.105 NMAC are met;

(ii) once adopted, the substitute or additional control measures become, by operation of law, part of the state implementation plan and become federally enforceable;

(iii) within 90 days of its concurrence under Subparagraph (i) of Paragraph (d) of Subsection C of 20.11.3.105 NMAC, the state air pollution control agency shall submit the substitute or additional control measure to the administrator for incorporation in the codification of the applicable implementation plan; notwithstanding any other provision of the Clean Air Act, no additional state process shall be necessary to support such revision to the applicable plan.

(h) **No requirement for express permission**. The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of 20.11.3.105 NMAC and the funding or approval of such a control measure shall not be contingent upon the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(i) **No requirement for new conformity determination**. The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of 20.11.3.105 NMAC shall not require:

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

D. Interagency consultation procedures: Specific processes.

(1) Interagency consultation procedures for the Bernalillo county nonattainment/maintenance area, in accordance with Subsection C of 20.11.3.105 NMAC, shall involve the MPO (transportation, land use and transit members from within the AMPA), state DOT, EPA, FHWA, FTA and the air agency. The TCTC's role in interagency consultation for the specific processes is described below. The TCTC shall include representatives as described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC. The TCTC shall be established by the air agency in cooperation with the MPO. The TCTC shall meet on an as-needed basis. The air agency, in consultation with the MPO, shall be responsible for convening meetings and establishing meeting agendas.

(a) The TCTC shall evaluate and participate in establishing the circumstances for the application of a transportation or air quality model (or models). Committee review shall include VMT forecasting and associated methods and assumptions to be used in: 1) hot-spot and regional emissions analysis for establishing motor vehicle emissions budgets; 2) developing the MTP and the TIP; 3) developing implementation plan revisions directly applicable to transportation, and 4) making the conformity determinations and planning assumptions identified in 20.11.3.110 NMAC. The TCTC shall also review assumptions, analyses and results of the conformity and fiscal constraint determinations and other applicable implementation plan revisions or actions affecting the MTP and transportation programs. The TCTC shall function as a cooperative interagency effort to share mobile source modeling and transportation and air quality modeling information, and to evaluate modeling assumptions through interagency consultation. Regional modeling shall be the responsibility of the MPO and the air agency as appropriate. Hot-spot analysis shall be the responsibility of the lead agency of the project requiring the analysis. Before new models used in hot-spot or regional emissions analyses are adopted for general use, the TCTC shall be provided an opportunity to review and comment. This process also applies to consultation on the design, schedule and funding of research and data collection efforts regarding regional transportation models developed by the MPO (e.g. household travel transportation surveys) described in 20.11.3.110 NMAC. New modeling information shall be presented by the air agency and the MPO in regularly scheduled meetings.

(b) The TCTC shall determine which minor arterials and other transportation projects shall be considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects shall be considered to have a significant change in design concept, timing and scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the appropriate agencies identified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC to assess the impact of this project change on the conformity determination. The MPO shall redetermine transportation conformity for air quality if a significant change occurs within the transportation network that is likely to lead to a meaningful increase in a pollutant for which the nonattainment area exceeds the NAAQS, or for an area that is designated as attainment and is subject to a maintenance plan.

(c) The TCTC shall evaluate whether projects otherwise exempt from meeting the regional or hot-spot conformity analysis requirements shall be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The MPO's conformity documents shall include a list of transportation projects exempted from inclusion in a regional conformity determination. Exempt projects are identified in 20.11.3.126 NMAC and 20.11.3.127 NMAC. The process used to reach a determination of exemption shall include an evaluation of whether or not the exempt project shall interfere with or impede the implementation of TCMs in the applicable implementation plan. If no substantive comments related to air quality impacts are received as part of the TIP review process, the lead agency for the project may proceed with implementation of the exempt project. If substantive air quality impact comments are received which indicate that an exempt project may adversely affect air quality, the lead agency for the project shall consult with the air agency and the MPO to determine the appropriate action necessary to address the adverse air quality impacts.

(d) If TCMs are included in the SIP, the MPO shall give maximum priority to approval or funding of those TCMs, report to the AQCB annually whether those TCMs are on schedule and, if not, what delays have been encountered, what obstacles to implementation have been identified and whether or not these obstacles are likely to be overcome. The AQCB shall also consider whether delays in TCM implementation necessitate a SIP revision to remove, substitute, or modify TCMs or identify other reduction measures. If substitute TCMs or other reduction measures beyond those already in the SIP are deemed necessary through the consultation process specified in 20.11.3.105 NMAC, the MPO shall work with the members of the TCTC to identify and coordinate appropriate modifications to the MTP, TIP and conformity determination. All revisions to the MTP, TIP and conformity determination shall be made as part of the MPO's transportation planning process.

(e) The MPO shall, through its transportation planning process, notify the agencies represented on the TCTC regarding

revisions and amendments to the MTP and TIP that merely add or delete exempt projects identified in 20.11.3.126 NMAC.

(f) If Bernalillo county is designated nonattainment for PM_{10} or $PM_{2.5}$, the consultative process as specified in Subsection D of 20.11.3.105 NMAC shall be used to coordinate the identification of projects located at sites that have vehicle and roadway emission and dispersion characteristics which are similar to those sites that have violations verified by monitoring. A quantitative PM_{10} hot-spot analysis shall be required for these projects in accordance with Subsection B of 20.11.3.123 NMAC. The air agency, in consultation with the MPO, shall advise the appropriate lead agency responsible for project development of the projects identified and the basis for their identification.

(g) The MPO shall provide written notification to all agencies in the MTP, TIP and conformity determination processes, including the AQCB, of plan revisions or plan amendments that merely add or delete exempt projects identified in 20.11.3.126 NMAC.

(h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas shall be governed by Subparagraph (c) of Paragraph (2) of Subsection [~~N~~] G of 20.11.3.109 NMAC.

(2) Interagency consultation procedures shall include the agencies specified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC. These agencies shall participate in the following processes.

(a) In addition to the triggers defined in 20.11.3.105 NMAC, the air agency may request a new conformity determination when an emergency project involves substantial functional, location or capacity changes, or when the project may otherwise adversely affect the transportation conformity determination.

(b) If an adjacent area is designated nonattainment and the area includes another MPO, the agencies involved shall cooperatively share the responsibility for conducting conformity determinations for transportation activities that cross borders of the MPOs or nonattainment areas. An agreement shall be developed between the MPOs and other appropriate local and state government agencies to address the responsibilities of each for regional emissions analysis.

(3) Although the metropolitan planning area may not include all of the nonattainment/ maintenance area of Bernalillo county, the MPO (which is also the regional planning organization for all of Bernalillo county), in coordination with the state DOT, shall be responsible for conducting conformity analyses and conformity determinations for transportation activities for the entire nonattainment/ maintenance area that is located within the MPO's area of planning responsibility.

(4) **Interagency consultation on regionally significant non-FHWA/FTA projects:**

(a) Any group, entity or individual planning to construct a regionally significant transportation project that is not a FHWA/ FTA project (including a project for which alternative locations, design concept and scope, or the no-build option is still being considered), including projects planned by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, shall ensure that these plans are disclosed to the MPO on a regular basis through the MTP and TIP development processes, or as soon as they are identified, and shall notify the MPO immediately of any changes to an existing plan so that these transportation projects can be incorporated into the regional emissions analysis and modeling for the nonattainment/ maintenance area. Any member of the TCTC may request that the TCTC make a determination regarding whether a project is regionally significant. Upon receipt of a written request stating the reasons why the TCTC should make a determination, the EHD in coordination with the MRCOG shall convene a meeting of the TCTC to make a determination regarding regional significance. If the TCTC determines that the non-FHWA/FTA project is not regionally significant, no further actions by the TCTC are required. If the TCTC determines that the non-FHWA/FTA project is regionally significant, the TCTC will follow the requirements of 20.11.3 NMAC and the MPO will incorporate the project into the regional emissions analysis, the TIP and the MTP.

(b) The sponsor of any regionally significant project, and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, who knows about any such project through applications for approval, permitting, funding or otherwise gains knowledge of a regionally significant project, shall promptly disclose the project to the MPO. Such disclosures shall be made not later than the first occasion on which any of the following actions is sought: any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent upon the completion of a regionally significant project. At the earliest opportunity, the MPO shall apprise the agencies participating in the consultation process identified above in Paragraph (1) of Subsection D of 20.11.3.105 NMAC of these projects and include them in the conformity analysis networks.

(c) **Procedures to address non-conforming regionally significant projects not in the TIP or MTP or both.** When an regionally significant project has not been included in the TIP or MTP or both, the TCTC shall participate in the air quality evaluation of a non-conforming regionally significant project to ensure that the project is integrated into the regional emissions analysis, the TIP and the MTP in a manner consistent with the MPO's transportation planning process, the requirements of 20.11.3 NMAC and other applicable federal requirements. Section 23 CFR 450.316 lists factors that shall be considered as part of the planning process. Among the factors that shall be considered is an analysis of the effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the funding source. Therefore, a regionally significant project funded entirely with local funding is subject to the planning requirements of Section 23 CFR 450.316. The analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing and employment. Another factor that shall be considered is the overall social, economic, energy and environmental effects of transportation decisions (including consideration of the effects and impacts of the transportation plan on the human, natural and man-made environment and consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems in support of 23 U.S.C. 109(h) and Section 14 of the Federal Transit Act (49 U.S.C. 1610), Section 4(f) of the DOT Act (49 U.S.C. 303) and Section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)). All projects, including regionally significant projects not yet included in a TIP or MTP or both, shall follow the requirement in 23 CFR 450.316 that calls for a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs and that provides for involvement of local, state and federal environment resource (e.g., EPA, EHD) and permit agencies as

appropriate.

(d) If a regionally significant project has not been disclosed in a timely manner to the MPO and other agencies involved in the consultation process, then, for the purposes of 20.11.3.121 NMAC, the regionally significant project shall not qualify as a conforming project until the project complies with the requirements of 20.11.3 NMAC. When a regionally significant project has not been included in the regional emissions analysis for the current conforming TIP or MTP or both, proceeding toward implementing the project without complying with 20.11.3.105 NMAC and 20.11.3.121 NMAC may be inconsistent with federal and local laws including, but not limited to the following.

(i) **23 U.S.C. Section 109(i).** This requires that the secretary of transportation for the DOT consult with the administrator for the EPA to develop and promulgate guidelines to assure that highways constructed pursuant to Title 23 of the U.S. Code are consistent with the applicable implementation plan pertaining to a nonattainment area or an attainment area subject to a maintenance plan. 20.11.3 NMAC is part of the applicable implementation plan.

(ii) **23 CFR Section 450.312, metropolitan transportation planning: Responsibilities, cooperation, and coordination.** This prohibits the MRCOG from approving any transportation plan or program that does not conform to the applicable implementation plan. Regionally significant projects are required to be included in the regional emissions analysis for the transportation plan or program.

(iii) **23 CFR Section 450.324, transportation improvement program: General.** This requires that the TIP include all regionally significant projects to be funded with non-federal funds in the air quality analysis for nonattainment areas and areas subject to a maintenance plan.

(iv) **20.11.3 NMAC, *Transportation Conformity*.** This regulation requires that regionally significant projects be included in the transportation plans and the regional emissions analysis. Failure to include a regionally significant project in a transportation plan violates 20.11.3 NMAC and jeopardizes approval of the regional MTP and the TIP.

(e) **Consequences of implementing a non-conforming regionally significant project:** Violations of 20.11.3 NMAC may result in criminal, civil and administrative penalties, including a potential administrative penalty of $15,000 per day of non-compliance. In addition, the EPA may determine that implementing a nonconforming regionally significant project violates the applicable implementation plan, and the EPA may impose federal sanctions that would jeopardize the receipt of federal transportation funds to the affected area, including Title 23, U.S.C. or Federal Transit Act funds. In addition, the FHWA must periodically review the transportation planning process used by the MRCOG, and failure to follow federal requirements may adversely affect FHWA's certification of the MRCOG process.

(f) For the purposes of 20.11.3.105 NMAC and 20.11.3.121 NMAC, the phrase "adopt or approve a regionally significant project" means the first time any action necessary to authorize a project occurs, such as any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

(5) When there is insufficient information to model the projects described in Paragraph (4) of Subsection D of 20.11.3.105 NMAC, the MPO, in consultation with the lead agency for the project, shall make assumptions about the location, timing, design concept and scope for those projects that are disclosed to the MPO as required in Paragraph (4) of Subsection D of 20.11.3.105 NMAC.

(6) The MPO or other consulting agencies shall provide copies of adopted documents and supporting information on the approved MTP or TIP conformity determination or adopted SIP revisions to all agencies listed in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

E. Resolving conflicts:

(1) The air agency and the MPO (or state DOT when applicable) shall make a good-faith effort to address the major concerns of the other party and reach a resolution. Every reasonable effort shall be made to resolve differences. In the event that the parties cannot reach agreement, the conflict shall be escalated to the governor.

(2) In the event that the parties agree that every reasonable effort has been made to address major concerns but no further progress is possible, the MPO shall promptly notify the director of the air agency in writing of the inability to resolve concerns or agree upon the final decision or action. Notification shall be provided within 30 days and shall be provided by registered mail. The MPO shall cite this paragraph in any such notification to the air agency.

(3) The air agency has 14 calendar days from the date of receipt of notification as required in Paragraph (2) of Subsection E of 20.11.3.105 NMAC to appeal to the governor. Notification shall be provided by registered mail. The air agency shall cite this paragraph in any notification of a conflict that requires action by the governor or his designee. If the air agency appeals to the governor, the final conformity determination shall have the concurrence of the governor. The governor or his designee may issue a written decision on the appeal within 30 calendar days of receipt of the appeal. If the air agency does not appeal to the governor within 14 calendar days from receipt of written notification, the MPO may proceed with the final conformity determination. The governor may delegate his role in this process, but not to the members or staff of: the AQCB, director of the city or county EHD, secretary of the environment department, chief of the state air quality bureau, manager of the city of Albuquerque's air quality division, the environmental improvement board, secretary of the DOT, state highway commission or an MPO.

F. Public consultation procedures: Affected agencies making conformity determinations on transportation plans, programs and projects shall establish a proactive public involvement process that provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying shall be consistent with the fee schedule contained in 49 CFR 7.43 and NMSA 14-2-9.B.3. In addition, these agencies shall specifically address in writing all public comments stating that known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis that supports a proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

[20.11.3.105 NMAC - Rn & A, 20.11.3.202 NMAC, 11/15/10; A, 10/15/12]

20.11.3.109 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL:

A. In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT shall demonstrate that the applicable criteria and procedures in 20.11.3 NMAC are satisfied. The MPO and DOT shall comply with all applicable conformity

requirements of implementation plans and court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs and FHWA/FTA projects), the relevant pollutant(s) and the status of the implementation plan.

B. Table 1 in Subsection B of 20.11.3.109 NMAC indicates the criteria and procedures in 20.11.3.110 NMAC through 20.11.3.119 NMAC, which apply for transportation plans, TIPs and FHWA/FTA projects. Subsection C [~~through Subsection K~~] of 20.11.3.109 NMAC explains when the budget, and interim emissions [~~and hot-spot~~] tests are required for each pollutant and NAAQS. Subsection D of 20.11.3.109 NMAC explains when a hot-spot test is required. Subsection [~~L~~] E of 20.11.3.109 NMAC addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection [~~M~~] F of 20.11.3.109 NMAC addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection [~~N~~] G of 20.11.3.109 NMAC addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

TABLE 1. CONFORMITY CRITERIA

All Actions at all times:	
20.11.3.110 NMAC	Latest planning assumptions
20.11.3.111 NMAC	Latest emissions model
20.11.3.112 NMAC	Consultation
Transportation Plan:	
Subsection B of 20.11.3.113 NMAC	TCMs.
20.11.3.118 or 20.11.3.119 NMAC	Emissions budget or interim emissions
TIP:	
Subsection C of 20.11.3.113 NMAC	TCMs.
20.11.3.118 or 20.11.3.119 NMAC	Emissions budget or interim emissions
Project (from a conforming plan and TIP):	
20.11.3.114 NMAC	Currently conforming plan and TIP
20.11.3.115 NMAC	Project from a conforming plan and TIP
20.11.3.116 NMAC	CO, PM10 and PM 2.5 hot-spots
20.11.3.117 NMAC	PM10 and PM2.5 control measures
Project (Not From a Conforming Plan and TIP):	
Subsection D of 20.11.3.113 NMAC	TCMs.
20.11.3.114 NMAC	Currently conforming plan and TIP
20.11.3.116 NMAC	CO, PM10 and PM2.5 hot-spots
20.11.3.117 NMAC	PM10 and PM2.5 control measures
20.11.3.118 or 20.11.3.119 NMAC	Emissions budget or interim emissions

C. [~~1-hour ozone NAAQS nonattainment and maintenance areas~~] Regional conformity test requirements for all nonattainment and maintenance areas: [~~Subsection C of 20.11.3.109 NMAC applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e.~~] This provision applies one year after the effective date of EPA's nonattainment designation for a NAAQS in accordance with Subsection D of 20.11.3.2 NMAC and until the effective date of [~~any~~] revocation of [~~the 1-hour ozone~~] such NAAQS for an area [~~.~~]. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such [~~ozone~~] nonattainment and maintenance areas, conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:

(1) In all [~~1-hour ozone~~] nonattainment and maintenance areas for a NAAQS the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations for such NAAQS made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for [~~the 1-hour ozone~~] such NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) [~~In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.~~] Prior to Paragraph (1) of Subsection C of 20.11.3.109 NMAC applying for a NAAQS, in a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS of the same pollutant, the following tests must be satisfied:

(a) if the nonattainment area covers the same geographic area as another NAAQS of the same pollutant, the budget test as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

(b) if the nonattainment area covers a smaller geographic area within an area for another NAAQS of the same pollutant, the budget test as required by 20.11.3.118 NMAC for either:

(i) the nonattainment area, using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets

for that other NAAQS, where such portion(s) can reasonably be identified through the interagency consultation process required by 20.11.3.105 NMAC; or

(ii) the area designated nonattainment for that other NAAQS, using the approved or adequate motor vehicle emissions budgets for that other NAAQS. If additional emissions reductions are necessary to meet the budget test for the nonattainment area for a NAAQS in such cases, these emissions reductions must come from within such nonattainment area;

(c) if the nonattainment area covers a larger geographic area and encompasses an entire area for another NAAQS of the same pollutant, then either Item (i) or (ii) of Subparagraph (c) of Paragraph (2) of Subsection C of 20.11.3.109 NMAC must be met:

(i) the budget test as required by 20.11.3.118 NMAC for the portion of the nonattainment area covered by the approved or adequate motor vehicle emissions budgets for that other NAAQS; and 2. the interim emissions tests as required by 20.11.3.119 NMAC for one of the following areas: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multistate nonattainment or maintenance area;

(ii) the budget test as required by 20.11.3.118 NMAC for the entire nonattainment area using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

(d) if the nonattainment area partially covers an area for another NAAQS of the same pollutant:

(i) the budget test as required by 20.11.3.118 NMAC for the portion of the nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where they can be reasonably identified through the interagency consultation process required by 20.11.3.105 NMAC; and

(ii) the interim emissions tests as required by 20.11.3.119 NMAC, when applicable, for either: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multistate nonattainment or maintenance area.

(3) In a nonattainment area, the interim emissions tests required by 20.11.3.119 NMAC must be satisfied for a NAAQS if neither Paragraph (1) nor paragraph (2) of Subsection C of 20.11.3.109 NMAC applies for such NAAQS.

[~~(3)~~] (4) An ozone nonattainment area shall satisfy the interim emissions test for NO_x, as required by 20.11.3.119 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or [~~phase I attainment demonstration~~] other control strategy SIP that does not include a motor vehicle emissions budget for NO_x. The implementation plan for [~~the 1-hour ozone~~] an NAAQS shall be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in [~~1990~~] the SIP's baseline year.

[~~(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually marginal and below areas) shall satisfy one of the following requirements:~~

~~(a) the interim emissions tests required by 20.11.3.119 NMAC; or~~

~~(b) the state shall submit to EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by 20.11.3.118 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection C of 20.11.3.109 NMAC).~~]

(5) Notwithstanding [~~Paragraph (1) and Paragraph (2)~~] Paragraphs (1), (2) and (3) of Subsection C of 20.11.3.109 NMAC, [~~moderate and above ozone~~] nonattainment areas with [~~three years of~~] clean data for [~~the 1-hour ozone~~] NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for [~~the 1-hour ozone~~] that NAAQS shall satisfy one of the following requirements:

(a) the budget test or the interim emissions tests as required by 20.11.3.118 NMAC and 20.11.3.119 NMAC as described in Paragraph (2) and (3) of Subsection C of 20.11.3.109 NMAC;

(b) the budget test as required by 20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the [~~1-hour ozone~~] NAAQS for which the area is designated nonattainment (subject to the timing requirements of Paragraph (1) of Subsection C of 20.11.3.109 NMAC; or

(c) the budget test as required by 20.11.3.118 NMAC, using the motor vehicle emissions [~~of ozone precursors~~] in the most recent year of [~~clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 1-hour ozone NAAQS~~] attainment as motor vehicle emissions budgets, if the state or local air quality agency requests that the motor vehicle emissions in the most recent year of attainment be used as budgets, and EPA approves the request in conjunction with the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment.

(6) For the PM_{10} NAAQS only, the interim emissions tests must be satisfied as required by 20.11.3.119 NMAC for conformity determinations made if the submitted implementation plan revision for a PM_{10} nonattainment area is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.

D. [~~8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area~~] Hot-spot conformity test requirements for CO, $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas: [~~Subsection D of 20.11.3.109 NMAC applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS and areas that were designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. Subsection D of 20.11.3.109 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC.~~] This provision applies in accordance with Subsection D of 20.11.3.2 NMAC for a NAAQS and until the effective date of any revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, [~~in such 8-hour ozone~~] project-level conformity determinations in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas [~~conformity determinations~~] shall include a demonstration that the [~~budget or interim emissions tests~~] hot-spot tests for the applicable NAAQS are satisfied as described in the following:

[~~(1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, Part D, Subpart 1 areas), the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.

(3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_x, as required by 20.11.3.119 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually marginal and certain Clean Air Act, Part D, Subpart 1 areas) shall satisfy one of the following requirements:

(a) the interim emissions tests required by 20.11.3.119 NMAC; or

(b) the state shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by 20.11.3.118 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) as described in Paragraph (1) of Subsection D of 20.11.3.109 NMAC.

(5) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection D of 20.11.3.109 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following requirements:

(a) the interim emissions tests as required by 20.11.3.119 NMAC;

(b) the budget test as required by 20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection D of 20.11.3.109 NMAC; or

(c) the budget test as required by 20.11.3.118 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

E. 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area: Subsection E of 20.11.3.109 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following.

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) Prior to Paragraph (1) of Subsection E of 20.11.3.109 NMAC applying, the following test(s) shall be satisfied:

(a) if the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission;

(b) if the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC for either:

(i) the 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by 20.11.3.105 NMAC; or

(ii) the 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; if additional emissions reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions shall come from within the 8-hour nonattainment area;

(c) if the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire 1-hour ozone nonattainment or maintenance area(s):

(i) the budget test as required by 20.11.3.118 NMAC for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and

(ii) the interim emissions tests as required by 20.11.3.119 NMAC for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state of a multi-state 1-hour nonattainment or maintenance area;

(d) if the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s):

(i) the budget test as

required by 20.11.3.118 NMAC for the portion of the 8-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by 20.11.3.105 NMAC; and

(ii) the interim emissions tests as required by 20.11.3.119 NMAC, when applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state 1-hour nonattainment or maintenance area.

(3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_x, as required by 20.11.3.119 NMAC, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002. Prior to an adequate or approved NO_x motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.

(4) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection E of 20.11.3.109 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following requirements:

(a) the budget test or interim emissions tests as required by 20.11.3.118 NMAC and 20.11.3.119 NMAC and as described in Paragraph (2) of Subsection E of 20.11.3.109 NMAC;

(b) the budget test as required by 20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection E of 20.11.3.109 NMAC; or

(c) the budget test as required by 20.11.3.118 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

F. CO nonattainment and maintenance areas: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget or emission reduction tests are satisfied as described in the following:]

(1) FHWA/FTA projects in CO nonattainment or maintenance areas shall satisfy the hot-spot test required by Subsection A of 20.11.3.116 NMAC at all times; until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects shall also satisfy the hot-spot test required by Subsection B of 20.11.3.116 NMAC;

[(2) in CO nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking;

(3) except as provided in Paragraph (4) of Subsection F of 20.11.3.109 NMAC, in CO nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan;

(4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g. moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) shall satisfy one of the following requirements:

(a) the interim emissions tests required by 20.11.3.119 NMAC; or

(b) the state shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 20.11.3.118 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (2) of Subsection F of 20.11.3.109 NMAC).

G. PM_{10} nonattainment and maintenance areas: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in PM_{10} nonattainment and maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget or interim emissions tests are satisfied as described in the following:]

[(1)] (2) FHWA/FTA projects in PM_{10} non-attainment or maintenance areas shall satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC; and

[(2) In PM_{10} nonattainment and maintenance areas where a budget is submitted for the 24-hour PM_{10} NAAQS, the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(3) Prior to Paragraph (2) of Subsection G of 20.11.3.109 NMAC applying, the budget test must be satisfied as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budget established for the revoked annual PM_{10} NAAQS, if such a budget exists.

(4) In PM_{10} nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made:

(a) if there is no approved motor

~~vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan; or~~

~~(b) if the submitted implementation plan revision is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.~~

~~**H. NO_2 nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in NO_2 nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:~~

~~(1) In NO_2 nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(2) In NO_2 nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.~~

~~**I. 1997 $PM_{2.5}$ nonattainment and maintenance areas**: In addition to the criteria listed in Table 1 of Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in $PM_{2.5}$ nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:~~]

[~~(1)~~] (3) FHWA/FTA projects in [~~such 1997~~] $PM_{2.5}$ nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.

[~~(2) in such 1997 $PM_{2.5}$ nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking;~~

~~(3) in $PM_{2.5}$ nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.~~

~~**J. 2006 $PM_{2.5}$ NAAQS nonattainment and maintenance areas without 1997 $PM_{2.5}$ NAAQS motor vehicle emissions budgets for any portion of the 2006 $PM_{2.5}$ NAAQS area:** In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such 2006 $PM_{2.5}$ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget or interim emissions tests are satisfied as described in the following:~~

~~(1) FHWA/FTA projects in such $PM_{2.5}$ nonattainment and maintenance areas shall satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.~~

~~(2) In such $PM_{2.5}$ nonattainment and maintenance areas the budget test must be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(3) In such $PM_{2.5}$ nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan for the 2006 $PM_{2.5}$ NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS.~~

~~**K. 2006 $PM_{2.5}$ NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1997 $PM_{2.5}$ NAAQS that cover all or a portion of the 2006 $PM_{2.5}$ nonattainment area.** In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such 2006 $PM_{2.5}$ nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:~~

~~(1) FHWA/FTA projects in such $PM_{2.5}$ nonattainment and maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.~~

~~(2) In such $PM_{2.5}$ nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(3) Prior to Paragraph (2) of Subsection K of 20.11.3.109 NMAC applying, the following test(s) must be satisfied:~~

~~(a) if the 2006 $PM_{2.5}$ nonattainment area covers the same geographic area as the 1997 $PM_{2.5}$ nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission;~~

~~(b) if the 2006 $PM_{2.5}$ nonattainment area covers a smaller geographic area within the 1997 $PM_{2.5}$ nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC for either:~~

~~(i) the 2006 $PM_{2.5}$ nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by 20.11.3.105 NMAC; or~~

~~(ii) the 1997 $PM_{2.5}$ nonattainment area using the approved or~~

~~adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission; if additional emissions reductions are necessary to meet the budget test for the 2006 $PM_{2.5}$ NAAQS in such cases, these emissions reductions must come from within the 2006 $PM_{2.5}$ nonattainment area;~~

~~(c) if the 2006 $PM_{2.5}$ nonattainment area covers a larger geographic area and encompasses the entire 1997 $PM_{2.5}$ nonattainment or maintenance area(s):~~

~~(i) the budget test as required by 20.11.3.118 NMAC for the portion of the 2006 $PM_{2.5}$ nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission; and the interim emissions tests as required by 20.11.3.119 NMAC for either: the portion of the 2006 $PM_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 $PM_{2.5}$ implementation plan, the entire 2006 $PM_{2.5}$ nonattainment area, or the entire portion of the 2006 $PM_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 $PM_{2.5}$ SIP budgets are established for each state of a multi-state 1997 $PM_{2.5}$ nonattainment or maintenance area; or~~

~~(ii) the budget test as required by 20.11.3.118 NMAC for the entire 2006 $PM_{2.5}$ nonattainment area using the approved or adequate motor vehicle emissions budgets in the applicable 1997 $PM_{2.5}$ implementation plan or implementation plan submission;~~

~~(d) if the 2006 $PM_{2.5}$ nonattainment area partially covers a 1997 $PM_{2.5}$ nonattainment or maintenance area(s):~~

~~(i) the budget test as required by 20.11.3.118 NMAC for the portion of the 2006 $PM_{2.5}$ nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by 20.11.3.105 NMAC; and~~

~~(ii) the interim emissions tests as required by 20.11.3.119 NMAC, when applicable, for either: the portion of the 2006 $PM_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 $PM_{2.5}$ implementation plan, the entire 2006 $PM_{2.5}$ nonattainment area, or the entire portion of the 2006 $PM_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 $PM_{2.5}$ SIP budgets are established for each state in a multi-state 1997 $PM_{2.5}$ nonattainment or maintenance area.~~]

[~~L.~~] E. Areas with limited maintenance plans: Notwithstanding the other subsections of 20.11.3.109 NMAC, an area is not required to satisfy the regional emissions analysis for 20.11.3.118 NMAC or 20.11.3.119 NMAC for a given pollutant and NAAQS if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of Subsection B of 20.11.3.109 NMAC is still required, including the hot-spot requirements for projects in CO PM_{10} and $PM_{2.5}$ areas.

[~~M.~~] F. Areas with insignificant motor vehicle emissions: Notwithstanding the other subsections of 20.11.3.109 NMAC, an area is not required to satisfy a regional emissions analysis for 20.11.3.118 NMAC or 20.11.3.119 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 in Subsection B of 20.11.3.109 NMAC is still required, including regional emissions analyses for 20.11.3.118 NMAC or 20.11.3.119 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, PM_{10} and $PM_{2.5}$ areas in 20.11.3.116 NMAC shall also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

[**~~N.~~**] **G. Isolated rural nonattainment and maintenance areas**: This subsection applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of 20.11.3.110 NMAC, 20.11.3.111 NMAC, 20.11.3.112 NMAC, 20.11.3.116 NMAC, 20.11.3.117 NMAC and Subsection D of 20.11.3.113 NMAC. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects shall also satisfy the requirements of Subsection B of 20.11.3.116 NMAC.

(2) Isolated rural nonattainment and maintenance areas are subject to the budget or interim emissions tests as described in [~~Subsections C through K~~] Subsection C of 20.11.3.109 NMAC, with the following modifications:

(a) When the requirements of Subsection D of 20.11.3.106 NMAC, 20.11.3.116 NMAC, 20.11.3.118 NMAC and 20.11.3.119 NMAC apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP that are in the rural nonattainment or maintenance area. When the requirements of Subsection D of 20.11.3.106 NMAC apply to isolated rural nonattainment and maintenance areas, references to "MPO" shall be taken to mean the state department of transportation.

(b) In isolated rural nonattainment and maintenance areas that are subject to 20.11.3.118 NMAC, FHWA/FTA projects shall be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects shall satisfy one of the following requirements:

(i) 20.11.3.118 NMAC;

(ii) 20.11.3.119 NMAC (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.11.3.119 NMAC);

(iii) as demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, shall not cause

or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; control measures assumed in the analysis shall be enforceable.

(c) The choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection [~~H~~] G of 20.11.3.109 NMAC and the methodology used to meet the requirements of Item (iii) of Subparagraph (b) of Paragraph (2) of Subsection [~~H~~] G of 20.11.3.109 NMAC shall be determined through the interagency consultation process required in Subparagraph (h) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC through which the relevant recipients of Title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the state air quality agency and the state DOT shall reach consensus about the option and methodology selected. EPA and DOT shall be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in Subsection E of 20.11.3.105 NMAC, which applies for any state air agency comments on a conformity determination.

[20.11.3.109 NMAC - Rn & A, 20.11.3.206 NMAC, 11/15/10; A, 10/15/12]

20.11.3.116 CRITERIA AND PROCEDURES: LOCALIZED CO, PM_{10} AND $PM_{2.5}$ VIOLATIONS (hot-spots):

A. Subsection A of 20.11.3.116 NMAC applies at all times. The FHWA/FTA project shall not cause or contribute to any new localized CO, PM_{10} or $PM_{2.5}$ violations or increase the frequency or severity of any existing CO, PM_{10} or $PM_{2.5}$ violations, or delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas for FHWA/FTA projects that are not identified in Paragraph (1) of Subsection B of 20.11.3.123 NMAC. This criterion is satisfied for all other FHWA/FTA projects in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project, and the project has been included in a regional emissions analysis that meets applicable 20.11.3.118 NMAC or 20.11.3.119 NMAC requirements. The demonstration shall be performed according to the consultation requirements of Paragraph (1) of Subsection D of 20.11.3.105 NMAC and the methodology requirements of 20.11.3.123 NMAC.

B. Subsection B of 20.11.3.116 NMAC applies for CO nonattainment areas as described in Paragraph (1) of Subsection [~~F~~] D of 20.11.3.109 NMAC. Each FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations shall be eliminated or reduced in severity and number as a result of the project. The demonstration shall be performed according to the consultation requirements of Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC and the methodology requirements of 20.11.3.123 NMAC.

[20.11.3.116 NMAC - Rn & A, 20.11.3.213 NMAC, 11/15/10; A, 10/15/12]

20.11.3.118 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET:

A. The transportation plan, TIP and project not from a conforming transportation plan and TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in Subsections C through [~~H~~] G of 20.11.3.109 NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in Subsection C of 20.11.3.118 NMAC are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

B. Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each year for which the applicable (or submitted) implementation plan specifically establishes a motor vehicle emissions budget(s), [~~for the attainment year (if it is within the timeframe of the transportation plan and conformity determination), for the last year of the timeframe of the conformity determination (as described under Subsection D of 20.11.3.106 NMAC), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than 10 years apart,~~] and for each year for which a regional emissions analysis is performed to fulfill the requirements in Subsection D of 20.11.3.118 NMAC, as follows:

(1) **Until a maintenance plan is submitted:**

(a) emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) shall be less than or equal to that years motor vehicle emissions budget(s); and

(b) emissions in years for which no motor vehicle emissions budget(s) are specifically established shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year; for example, emissions in years after the attainment year for which the implementation plan does not establish a budget shall be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) **When a maintenance plan has been submitted:**

(a) emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emission budget(s) shall be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the interagency consultation process required by 20.11.3.105 NMAC shall determine what shall be considered in order to make such a finding;

(b) for years after the last year of the maintenance plan, emissions shall be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

(c) if an approved or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years shall be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

(d) for any analysis years before the last year of the maintenance plan, emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

C. Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each pollutant or pollutant precursor in Subsection B of 20.11.3.2 NMAC for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle

emissions budget.

D. Consistency with the motor vehicle emissions budget(s) shall be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) shall be demonstrated with a regional emissions analysis that meets the requirements of 20.11.3.122 NMAC and Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(2) The regional emissions analysis may be performed for any years in the time frame of the conformity determination (as described under Subsection D of 20.11.3.106 NMAC) provided they are not more than 10 years apart and provided the analysis is performed for the attainment year (if it is in the time frame of the transportation plan and conformity determination) and the last year of the time frame of the conformity determination. Emissions in years for which consistency with motor vehicle emissions budgets shall be demonstrated, as required in Subsection B of 20.11.3.118 NMAC, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(3) When the time frame of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.11.3.106 NMAC, the conformity determination shall be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the time frame of the conformity determination).

E. Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans:

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans shall be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes and the adequacy finding is effective. However, motor vehicle emission budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of 20.11.3.118 NMAC. Consistency with the previously established motor vehicle emissions budget(s) shall be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emission tests required by 20.11.3.119 NMAC shall be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination shall remain valid. Projects included in that transportation plan or TIP could still satisfy 20.11.3.114 NMAC and 20.11.3.115 NMAC, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA shall not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(a) the submitted control strategy implementation plan revision or maintenance plan was endorsed by the governor (or his designee) and was subject to a state public hearing;

(b) before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, state and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(c) the motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(d) the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment or maintenance (whichever is relevant to the given implementation plan submission);

(e) the motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(f) revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 20.11.3.7 NMAC for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA shall review the state's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA shall document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of 20.11.3.118 NMAC are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations shall be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget shall cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

F. Adequacy review process for implementation plan submissions: EPA will use the procedure listed in Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.118 NMAC to review the adequacy of an implementation plan submission:

(1) When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan,

(a) EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy;

(b) the public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission; if the complete implementation plan is not accessible electronically through the internet and a copy is requested within 15 days of the date of the website notice, the comment period will be extended for 30 days from the date that a copy of the implementation plan is mailed;

(c) after the public comment period closes, EPA will inform the state in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including

response to any comments submitted directly and review of comments submitted through the state process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under Subparagraph (c) of Paragraph (2) of Subsection F of 20.11.3.118 NMAC;

(d) EPA will publish a federal register notice to inform the public of EPA's finding; if EPA finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published as established in the federal register notice, unless EPA is taking a final approval action on the SIP as described in Subparagraph (c) of Paragraph (2) of Subsection F of 20.11.3.118 NMAC;

(e) EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website; the website will also include EPA's response to comments if any comments were received during the public comment period;

(f) if after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.118 NMAC unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission; in all cases where EPA reverses its previous finding to a finding of inadequacy under Paragraph (1) of Subsection F of 20.11.3.118 NMAC, such a finding will become effective immediately upon the date of EPA's letter to the state;

(g) if after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.118 NMAC.

(2) When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan,

(a) EPA's federal register notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy;

(b) the publication of the notice of proposed rulemaking will start a public comment period of at least 30 days;

(c) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in Subparagraphs (c) through (e) of Paragraphs (1) of Subsection F of 20.11.3.118 NMAC; if EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the federal register, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking; EPA will respond to comments received directly and review comments submitted through the state process and include the response to comments in the applicable docket.

[20.11.3.118 NMAC - Rn & A, 20.11.3.215 NMAC, 11/15/10; A, 10/15/12]

20.11.3.119 CRITERIA AND PROCEDURES: INTERIM EMISSIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS:

A. The transportation plan, TIP and project not from a conforming transportation plan and TIP shall satisfy the interim emissions test(s) as described in Subsections C through [~~N~~] G of 20.11.3.109 NMAC. This criterion applies to the net effect of the action (transportation plan, TIP or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

B. Ozone areas: The requirements of Subsection B of 20.11.3.119 NMAC apply to all [~~1-hour ozone and 8-hour~~] ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met:

(1) in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC by any nonzero amount [~~:~~

~~(i) 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as described in Subsection C of 20.11.3.109 NMAC; or~~

~~(ii) 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in Subsection D and Subsection E of 20.11.3.109 NMAC~~];

(2) in marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC[~~:~~

~~(i) 1990 emissions, in areas for the 1-hour ozone NAAQS as described in Subsection C of 20.11.3.109 NMAC; or~~

~~(ii) 2002 emissions, in areas for the 8-hour ozone NAAQS as described in Subsection D and Subsection E of 20.11.3.109 NMAC~~].

C. CO areas: This criterion may be met:

(1) in moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA Section 187(a)(7) if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than [~~1990~~] emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC by any nonzero amount;

(2) in moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than [~~1990~~] emissions in the baseline year for that NAAQS as described in Subsection E of

20.11.3.119 NMAC.

D. $PM_{2.5}$, PM_{10} and NO_2 areas: This criterion may be met in $PM_{2.5}$, PM_{10} and NO_2 nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC, one of the following requirements is met:

(1) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) the emissions predicted in the "action" scenario are not greater than [baseline] emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC; baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

E. [$PM_{2.5}$ areas] Baseline year for various NAAQS: [This criterion may be met in $PM_{2.5}$ nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC, one of the following requirements is met] The baseline year is defined as follows:

(1) [the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or] 1990, in areas designated nonattainment for the 1990 CO NAAQS or the 1990 NO_2 NAAQS.

(2) [the emissions predicted in the "action" scenario are not greater than:] 1990, in areas designated nonattainment for the 1990 PM_{10} NAAQS, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

[(a)] (3) 2002 [emissions], in areas designated nonattainment for the 1997 ozone NAAQS or 1997 $PM_{2.5}$ NAAQS.[; or]

[(b) emissions in] (4) the most recent year for which EPA's Air Emissions Reporting [Requirements] Rule (40 CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories, as of the effective date of [nonattainment] designations [for any $PM_{2.5}$ NAAQS other than the 1997 $PM_{2.5}$ NAAQS] in areas designated nonattainment for a NAAQS that is promulgated after 1997.

F. Pollutants: The regional emissions analysis shall be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NO_x in ozone areas, unless the EPA administrator determines that additional reductions of NO_x would not contribute to attainment;

(3) CO in CO areas;

(4) PM_{10} in PM_{10} areas;

(5) VOC and NO_x in PM_{10} areas if the EPA regional administrator or the director of the air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT;

(6) NO_x in NO_2 areas;

(7) $PM_{2.5}$ in $PM_{2.5}$ areas;

(8) re-entrained road dust in $PM_{2.5}$ areas only if the EPA regional administrator or the director of the air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT;

(9) NO_x in $PM_{2.5}$ areas, unless the EPA regional administrator and the director of the state air agency have made a finding that emissions of NO_x from within the area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT; and

(10) VOC, SO_2 and ammonia in $PM_{2.5}$ areas if the EPA regional administrator or the director of the state air agency has made a finding that any of such precursor emissions from within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT.

G. Analysis Years:

(1) The regional emissions analysis shall be performed for analysis years that are no more than 10 years apart. The first analysis year shall be no more than five years beyond the year in which the conformity determination is being made. The last year of the time frame of the conformity determination (as described under Subsection D of 20.11.3.106 NMAC) shall also be an analysis year.

(2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B, Subparagraph (a) of Paragraph (2) of Subsection C, and Paragraph (1) of Subsection D [and Paragraph (1) of Subsection E] of 20.11.3.119 NMAC, a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC would not be required for analysis years in which the transportation projects and planning assumptions in the action and "baseline" scenarios are exactly the same. In such a case, Subsection A of 20.11.3.119 NMAC can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario for such analysis years.

(3) When the time frame of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.11.3.106 NMAC, the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

H. "Baseline" scenario: The regional emissions analysis required by Subsections B through E of 20.11.3.119 NMAC shall estimate the emissions that would result from the "baseline" scenario in each analysis year. The "baseline" scenario shall be defined for each of the analysis years. The "baseline" scenario is the future transportation system that shall result from current programs; including the following (except that exempt projects list in 20.11.3.126 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.127 NMAC need not be explicitly considered):

(1) all in-place regionally significant highway and transit facilities, services and activities;

(2) all ongoing travel demand management or transportation system management activities; and

(3) completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan or TIP; or have completed the NEPA process.

I. "Action" scenario: The regional emissions analysis required by Subsections B through E of 20.11.3.119 NMAC shall estimate the emissions that would result from the "action" scenario in each analysis year. The "action" scenario shall be defined for each of the analysis years. The "action" scenario is the transportation system that would result from the implementation of the proposed action (MTP, TIP or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "action" scenario shall include the following (except that exempt projects listed in 20.11.3.126

NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.127 NMAC need not be explicitly considered):

(1) all facilities, services and activities in the "baseline" scenario;

(2) completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which shall be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) all travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) the incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

J. Projects not from a conforming transportation plan and TIP: For the regional emissions analysis required by Subsections B through E of 20.11.3.119 NMAC, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario shall include the project with its original design concept and scope, and the "action" scenario shall include the project with its new design concept and scope.

[20.11.3.119 NMAC - Rn & A, 20.11.3.216 NMAC, 11/15/10; A, 10/15/12]

20.11.3.121 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS.

A. Except as provided in Subsection B of 20.11.3.121 NMAC, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project comes from the currently conforming transportation plan and TIP (or meets the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

(2) the project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period), even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

(3) a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of 20.11.3.118 NMAC or 20.11.3.119 NMAC for a project not from a conforming transportation plan and TIP).

B. In isolated rural nonattainment and maintenance areas subject to Subsection [~~N~~] G of 20.11.3.109 NMAC, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly; or

(2) a new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements 20.11.3.118 NMAC or 20.11.3.119 NMAC for projects not from a conforming transportation plan and TIP).

C. Notwithstanding Subsection A and Subsection B of 20.11.3.121 NMAC, in nonattainment and maintenance areas subject to Subsection [~~L~~] E or Subsection [~~M~~] F of 20.11.3.109 NMAC for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met for that pollutant/precursor and NAAQS:

(1) the project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

(2) the project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly.

[20.11.3.121 NMAC - Rn & A, 20.11.3.218 NMAC, 11/15/10; A, 10/15/12]

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.82 NMAC, Sections 7, 10, 11, 14 through 22 and 24, with Sections 25 through 34 being renumbered and/or amended to Sections 26 through 35, and one new additional Section 25, effective October 15, 2012.

20.11.82.7 DEFINITIONS: As used in 20.11.82 NMAC:

A. "Act" means the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, and its later amendments and successor provisions.

B. "Board" means the Albuquerque-Bernalillo county air quality control board or its successor board pursuant to the act.

C. "Days" means consecutive days except as otherwise specifically provided.

D. "Department" means the city of Albuquerque environmental health department or its successor agency.

E. "Document" means [~~any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a proceeding pursuant to 20.11.82 NMAC, or brought to or before the board for its consideration, but does not include~~

~~a cover letter accompanying a document transmitted for filing~~] a pleading or exhibit and any other document including electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images and any other data or data compilations that are stored in any medium from which information can be obtained either directly or, if necessary, after translation, into a reasonably usable form.

F. "Environmental justice" means the fair treatment of all residents (in the city of Albuquerque and Bernalillo county), including communities of color and low income communities, and their meaningful involvement in the development, implementation and enforcement of environmental laws, regulations and policies regardless of race, color, ethnicity, religion, income or education level.

G. "Exhibit" means any document or tangible item submitted for inclusion in the [~~hearing~~] record proper.

H. [~~"Ex parte contact"~~ ~~means oral or other communication with a board member or a board hearing officer regarding the merits of a pending rulemaking procedure if:~~

~~(1) the communication is made by a person who is not a board member, hearing clerk or hearing officer;~~

~~(2) the person communicating knows or has reason to know a petition has been filed pursuant to 20.11.82 NMAC;~~

~~(3) the communication is made without all other parties being present or receiving the same communication that was received by the board member or the board hearing officer; and~~

~~(4) the communication is intended to affect, or reasonably may be expected to affect the board member's or the hearing officer's opinion regarding the merits of the pending rulemaking proceeding.~~] Reserved

I. "General public" means any person attending a rulemaking hearing who has not [~~submitted~~] filed a notice of intent to present technical testimony (NOI) or filed an entry of appearance pursuant to 20.11.82.20 NMAC or 20.11.82.21 NMAC.

J. "Governing law" means the statute, including any applicable case law, which authorizes and governs the decision regarding the proposed regulatory change.

K. "Hearing clerk" means the department employee designated by the director to provide staff support to the board, and is the person designated by the board to maintain the official record of the proceeding.

L. "Hearing officer" means the person who is designated by the board to conduct a hearing pursuant to 20.11.82 NMAC.

M. [~~"Hearing record"~~ ~~means:~~

~~(1) the transcript of proceedings; and~~

~~(2) the record proper.~~] Reserved

N. [~~"Party"~~ ~~means the petitioner, any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance pursuant to 20.11.82.20 NMAC or 20.11.82.21 NMAC.~~] **"NOI"** means a notice of intent to present technical testimony which is described in 20.11.82.20 NMAC.

O. "Non-technical testimony" means testimony that is not scientific, engineering, economic or other specialized testimony. A person who provides only non-technical testimony or a non-technical exhibit is not required to file an NOI or entry of appearance pursuant to 20.11.82.20 NMAC or 20.11.82.21 NMAC.

P. "Participant" means any person who participates in a rulemaking proceeding before the board.

Q. "Party" means:

(1) the petitioner;

(2) any person who filed an NOI pursuant to 20.11.82.20 NMAC; or

(3) any person who filed an entry of appearance pursuant to 20.11.82.21 NMAC.

[~~Q.~~] R. "Person" means an individual or any entity, including federal, state and local governmental entities, however organized.

[~~R.~~] S. "Petitioner" means the person who petitioned the board for the regulatory change that is the subject of the hearing.

[~~S.~~] T. "Record proper" or **"record"** means all documents related to the hearing, including documents received or generated by the board before the beginning, or after the conclusion of the hearing, including, but not limited to:

(1) the petition for hearing and any response thereto;

(2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any meeting thereafter at which the proposed regulatory change was discussed;

(3) the notice of hearing;

(4) proof of publication;

(5) [~~notices of intent to present technical testimony~~] NOI(s);

(6) statements for the public record;

(7) the hearing officer's report, if any;

(8) post-hearing submissions, if allowed;

(9) the stenographic transcription or audio [~~tape~~] recording of the hearing and the stenographic transcription or audio [~~tapes~~] recording or appropriate extract of the audio [~~tapes~~] recording of the meeting at which the board deliberated on the adoption of the proposed regulatory change; and

(10) the board's decision and the reasons [~~therefore~~] therefor.

[~~T.~~] U. "Regulation" means a rule, regulation or standard promulgated by the board that affects one or more persons, in addition to the board and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts.

[~~U.~~] V. "Regulatory change" means the adoption, amendment or repeal of a regulation.

[~~V.~~] W. "Service" means [~~personally~~] delivering a copy of a document, [~~exhibit or pleading~~] including a pleading or exhibit, to a party as required by [~~20.11.82 NMAC to be served; mailing it to that person; or, if that person has agreed in writing, sending it by facsimile or electronic transmission. If a person is represented by an attorney, service shall be made on the attorney. Service by mail is complete upon mailing the document unless service is made by mail to a party who must act within a prescribed period after being served, in which case three days shall be added to the prescribed period. The three-day extension does not apply to any deadline imposed by the act. Service by facsimile or electronic transmission is accomplished when the transmission of the document is complete. The person who receives the facsimile or electronic transmission shall promptly provide written confirmation of receipt if requested by the hearing officer, the board or a party.~~] Subsection C of 20.11.82.16 NMAC.

[~~W.~~] X. "Technical testimony" 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.

[~~X.~~] Y. "Transcript of proceedings" means the verbatim record, audio [~~tape~~] recording or stenographic transcription of the proceedings, testimony and argument in the matter, together with all exhibits offered at the hearing, whether or not admitted into evidence, and includes the record of any motion hearings or pre-hearing conferences.

[20.11.82.7 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.10 DOCUMENTS: Documents incorporated and cited in 20.11.82 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, [~~Room~~] Suite 3023, Albuquerque, NM 87102.

[20.11.82.10 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.11 POWERS AND

DUTIES OF BOARD AND HEARING OFFICER:

A. Board: The board shall exercise all powers and duties authorized by 20.11.82 NMAC and not otherwise delegated to the hearing officer or the hearing clerk. The board shall designate a hearing officer for each hearing. The board may direct the hearing officer to file a report of the hearing as provided by 20.11.82.31 NMAC.

B. Hearing officer: [~~The board shall designate a hearing officer for each hearing.~~] The hearing officer shall exercise all powers and duties delegated or otherwise authorized by 20.11.82 NMAC. The hearing officer may be a member of the board. 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 consideration of issues arising in proceedings governed by 20.11.82 NMAC, including:

(1) conducting hearings pursuant to 20.11.82 NMAC;

(2) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;

(3) making orders as may be necessary to preserve decorum and to protect the orderly hearing process;

(4) if requested by the board, preparing [~~and filing~~] a report of the hearing, with recommendations for board action;

(5) requesting parties to file original documents with the hearing clerk;

(6) establishing the deadlines for filing documents with the hearing clerk; [~~and~~]

(7) requesting the prevailing party to submit a proposed statement of reasons in support of the board's decision; and

(8) filing with the hearing clerk all original documents issued by the hearing officer.

C. Notice of hearing officer assignment: If a hearing officer other than a board member is assigned as a hearing officer, the hearing clerk shall notify the parties of the name and address of the hearing officer. At the same time, the hearing clerk also shall forward to the hearing officer copies of all documents related to the petition that have been filed to date.

[20.11.82.11 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.14 GENERAL PROVISIONS - RECUSAL:

A. No board member shall participate in any action in which [~~his or her~~] that member's impartiality or fairness may reasonably be questioned. [~~and~~] The member shall recuse [~~himself or herself~~] oneself in any such action by giving notice to the board and the general public by announcing the recusal on the record. In making a decision to recuse [~~him or herself~~] oneself, the board member may rely upon any relevant authority.

B. A board member or a hearing officer shall not perform any function authorized by 20.11.82 NMAC regarding any matter in which a board member or a hearing officer:

(1) has a personal bias or prejudice concerning a party;

(2) is related to a party within the third degree of relationship;

(3) is an officer, director or trustee of a party or interested participant in the proceeding; or

(4) has a financial interest in the proceeding or has any other conflict of interest.

[20.11.82.14 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.15 GENERAL PROVISIONS - EX PARTE COMMUNICATION: At no time after a proceeding is initiated by filing a petition pursuant to 20.11.82.18 NMAC and before the conclusion of a proceeding initiated pursuant to 20.11.82 NMAC shall [~~the department, or any other party, interested participant or their representatives communicate ex parte, orally or in writing, with any board member or the hearing officer, regarding the merits of the proceeding~~] any person have ex parte contact with a board member or the hearing officer regarding the merits of a petition or motion filed pursuant to 20.11.82 NMAC.

[20.11.82.15 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.16 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:

A. The filing of any document as required by 20.11.82 NMAC shall be accomplished by delivering the document to the hearing clerk.

B. Any person filing any document shall:

(1) provide the hearing clerk with the original and [~~nine~~] 15 copies of the document [~~, unless the document is an exhibit, in which case 20.11.82.27 NMAC shall apply~~];

(2) deliver a copy to the board attorney;

(3) [~~serve a copy thereof on the petitioner, if the document is a notice of intent to present technical testimony filed by any person other than the petitioner~~] serve a copy on all other parties; and

(4) file with the hearing clerk at least 15 days before any hearing or meeting at which the board will consider the document; if the document is a motion seeking an order from the hearing officer in a rulemaking hearing, the motion shall also be served at the same time on the hearing officer and the board attorney; motions and responses shall be filed only by parties to a hearing and shall comply with 20.11.82.16 NMAC and 20.11.82.25 NMAC;

(5) if the document is a motion for a stay, 20.11.82.35 NMAC shall apply.

C. Whenever 20.11.82 NMAC requires service of a document, service on all other parties shall be made by delivering a copy to the person to be served by [~~mailing it,~~] hand delivery, mail or, if that person has agreed in writing, by sending it by facsimile or by electronic transmission to that person. An agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to 20.11.82 NMAC. Service shall also be made upon the board's attorney. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document unless service is made by mail to a party who must act within a prescribed period after being served, in which case three days shall be added to the prescribed period. The three-day extension does not apply to any deadline imposed by the act. Service by facsimile or electronic transmission is accomplished when the transmission of the document is completed. The person who received the facsimile or electronic transmission shall promptly provide written confirmation of receipt if requested by the hearing officer, the board or a party.

D. The petitioner and any person who has filed a timely [~~notice of intent to present technical testimony~~] NOI pursuant to 20.11.82.20 NMAC may inspect all documents that have been filed in a proceeding in which [~~he or she~~] that person is involved as a participant. The inspection shall be permitted as provided by the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12. Whenever any document is filed in a proceeding subject to 20.11.82 NMAC, the hearing clerk shall notify by email the petitioner and all persons who have filed a timely [~~notice of intent to present technical testimony~~] NOI. A person who does not provide an email address shall instead be notified by mail.

E. [~~All documents filed pursuant to 20.11.82 NMAC shall be made available for inspection upon request as provided by the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12.~~

~~F.~~ **]**The hearing clerk shall provide copies of all documents to each board member at least five days before a hearing or meeting at which the board will

consider the documents. [~~With regard to documents filed in conjunction with any rulemaking hearing,~~] The hearing officer may make an exception to this requirement.

[~~G.~~] F. 20.11.82.20 NMAC and [~~20.11.82.27~~] 20.11.82.28 NMAC also provide requirements regarding hearing exhibits.

[20.11.82.16 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.17 EXAMINATION OF DOCUMENTS FILED:

A. Examination allowed: [~~Subject to the provisions of law restricting the public disclosure of confidential information, during normal business hours~~] Any person may inspect and request a copy of any document filed in any rulemaking proceeding before the board, during normal business hours, subject to the provisions of law restricting the public disclosure of confidential information. The documents shall be made available by the hearing clerk as required by the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12, and may be viewed at the Albuquerque environmental health department, 400 Marquette NW, [~~Room~~] Suite 3023, Albuquerque, NM 87102.

B. Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of the documents.

[20.11.82.17 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.18 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:

A. Any person may file a petition with the board to adopt, amend or repeal any regulation within the jurisdiction of the board.

B. The petition shall be in writing and shall include the name of the regulation and a statement of the reasons for the proposed regulatory change. The petition shall cite the relevant statutes that authorize the board to adopt the proposed regulatory change, and shall estimate the time that will be needed to conduct the rulemaking hearing, if at all possible. A copy of the entire rule, including any proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the board in legislative-edit format, with strike-outs and underlines as appropriate, and shall include individual line numbers. The hearing clerk shall return to the petitioner any document that does not meet the requirements of 20.11.82.18 NMAC, along with a copy of 20.11.82 NMAC and a check-list of required items. The petitioner will be asked to resubmit the petition as required by 20.11.82.18 NMAC.

C. At a public meeting occurring no later than 60 days after receipt of the petition, the board shall determine whether or not to hold a public hearing on the [~~proposal~~] proposed regulatory change. Any person may respond to the petition either in writing before the public meeting or in person at the public meeting.

D. If the board decides by a vote of a majority of board members present to hold a public hearing on the petition, the board may issue orders specifying procedures for conduct of the hearing, in addition to the requirements established in 20.11.82 NMAC, as may be necessary and appropriate to fully inform the board of the matters at issue in the hearing or control the conduct of the hearing. The orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing before the hearing, or limiting testimony or cross-examination.

[20.11.82.18 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.19 NOTICE OF HEARINGS:

A. Unless otherwise allowed by governing law and specified by the board, the board, through the hearing clerk, shall give public notice of the hearing at least 30 days before the hearing unless the board requires a longer public notice period. Public notice shall include at a minimum:

(1) a single publication in the newspaper with the largest general circulation in Bernalillo county;

(2) publication in the New Mexico Register;

(3) if technically feasible at the time, publication by electronic media; and

(4) other means of providing notice as the board may direct or are required by law.

B. The board shall make reasonable efforts to give notice to persons who have made a written request to the board for advance notice of regulatory change hearings. Requests for notice shall be addressed to the hearing clerk, [~~and~~] shall designate the areas of board activity that are of interest, and provide a legible address to which notice can be sent.

C. Public notice of the hearing shall state:

(1) the subject, including a description of the proposed regulatory change, date, time and place of the hearing;

(2) the statutes, regulations and procedural rules governing the conduct of the hearing;

(3) the manner in which persons may present their views or evidence to the board;

(4) the location where persons may obtain copies of the proposed regulatory change; and

(5) if applicable, that the board may make a decision on the proposed regulatory change at the conclusion of the hearing or at a separate board meeting.

[20.11.82.19 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.20 TECHNICAL TESTIMONY; NOTICE OF INTENT (NOI):

A. No later than 15 days before the hearing, any person, including the petitioner, who intends to present technical testimony at the hearing shall file [~~a notice of intent to present technical testimony~~] an NOI. The [~~notice~~] NOI shall:

(1) identify the person for whom the witness or witnesses will testify;

(2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;

(3) [~~summarize or~~] include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

(4) include the text of any recommended modifications to the proposed regulatory change; [~~and~~]

(5) list and [~~describe, or~~] attach an original and 15 copies of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and

(6) be served on the petitioner, if the document is an NOI filed by any person other than the petitioner.

B. The person filing an NOI shall serve the notice pursuant to 20.11.82.16 NMAC.

C. The hearing officer may enforce the provisions of 20.11.82.20 NMAC by taking whatever action the hearing officer deems appropriate, including exclusion of the technical testimony of any witness for whom [~~a notice of intent~~] an NOI was not timely filed. If the testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to the testimony.

[20.11.82.20 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.21 ENTRY OF APPEARANCE: Any person who is or may be affected by the proposed regulatory change may file an entry of appearance and shall be a party. The entry of appearance shall be filed no later than 15 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid a waste of public resources.

[20.11.82.21 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.22 NON-TECHNICAL TESTIMONY; PARTICIPATION BY GENERAL PUBLIC:

A. Any member of the general public may [~~testify~~] provide non-technical testimony at the hearing. Notification before the hearing is not required in order to present non-technical testimony at the hearing. A person providing non-technical testimony [~~also~~] may also offer non-technical exhibits in connection with the testimony provided, if the exhibit is not [~~unduly repetitious of the testimony provided. The board requests, but does not require members of the general public to provide the hearing clerk with an original and nine copies of every non-technical exhibit before or at the hearing.~~] an undue repetition of previous non-technical testimony. Members of the general public are requested to deliver an original and 15 copies of each non-technical exhibit offered, to the hearing clerk, either before or at the hearing.

B. A member of the general public who wishes to submit a non-technical written statement for the record instead of providing oral testimony at the hearing shall file the written statement before the hearing or submit it at the hearing, and is requested to provide an original and 15 copies of the statement to the hearing clerk.

C. A member of the general public who wishes to provide technical testimony or offer technical exhibits shall comply with requirements of 20.11.82.20 NMAC.

[20.11.82.22 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.24 PARTICIPATION AT A BOARD MEETING BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE: A member of the board may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when a medical or emergency situation exists that makes it extremely difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone or other device can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the board who speaks at the meeting. A request to be present and vote by telephone or other similar device shall be made by the member to the chair or acting chair of the board [~~by the member~~]. A board member who wishes to participate in a meeting in this manner must receive permission from the chair or acting chair of the board sufficiently in advance of the meeting so the hearing clerk can [~~arrange for an adequate telephone hookup~~] make adequate arrangements. The chair or acting chair shall determine whether a qualifying medical or emergency situation exists. The chair or acting chair who approves the request shall direct the hearing clerk to make arrangements. A board member's participation by such means shall constitute presence in person at the meeting. This provision shall not be used to allow a member to constitute a quorum of the board, and may only be used for the purposes of:

A. choosing a hearing officer;

B. authorizing the hearing clerk to secure a hearing officer for a hearing or hearings;

C. scheduling or rescheduling a meeting or hearing; and

D. voting on the limited issues listed in Subsections A, B and C of 20.11.82.24 NMAC.

[20.11.82.24 NMAC - N, 8/11/08; A, 10/15/12]

20.11.82.25 MOTIONS:

A. General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, and state the relief sought. Each written motion shall be accompanied by an affidavit, certificate or other evidence relied upon, and shall be filed and served as required by 20.11.82.16 NMAC.

B. Unopposed motions: All unopposed motions shall state that the concurrence or agreement of all other parties was obtained. The party that filed the motion shall submit to the hearing officer for review a proposed order that has been approved by all parties.

C. Opposed motions: All opposed motions shall state either that concurrence or agreement of all other parties was sought and denied, or why concurrence was not sought. A memorandum brief in support of an opposed motion may be filed with the motion.

D. Response to motions: a party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. Any other party who fails 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 submit, but is not required to submit a reply to any response within 10 days after service of the response.

F. Decision regarding motions: Motions may be decided by the hearing officer, in the hearing officer's sole discretion, without a hearing. Within five days after being served with a copy of the motion, a party upon whom service has been made may file a written request asking that a hearing be held. A procedural motion may be ruled upon before the expiration of the time for response. Any response regarding a procedural motion received after the decision is made shall be treated as a request for reconsideration of the ruling. However, the hearing officer shall refer all motions that would effectively dispose of the petition to the board for a decision.

[20.11.82.25 NMAC - N, 8/11/08; 20.11.82.25 NMAC - N, 10/15/12]

[~~20.11.82.25~~] 20.11.82.26 HEARING PROCEDURES - CONDUCT OF HEARINGS:

A. The rules of civil procedure and the rules of evidence shall not apply.

B. The hearing officer shall conduct the hearing in a manner that provides a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with [~~an opening~~] a statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any [~~person~~] party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon [~~notices of intent to present technical testimony~~] NOI(s), sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent to testify on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any [~~person~~] party who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance [~~20.11.82.29~~] 20.11.82.30 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject or subjects regarding which submittals will be allowed and the deadline for filing the submittals.

(8) Any board action to adopt, amend or repeal a board regulation requires the concurrence of four board members.

[20.11.82.26 NMAC - N, 8/11/08;

20.11.82.26 NMAC - Rn & A, 20.11.82.25 NMAC, 10/15/12]

[~~20.11.82.26~~] 20.11.82.27 TESTIMONY AND CROSS-EXAMINATION:

A. All testimony shall be taken under oath or affirmation, which may be accomplished as a group or individually.

B. The hearing officer shall admit all relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of, or against the proposed rule.

C. Any person who testifies at the hearing is subject to cross-examination on the subject matter of [~~his or her~~] that person's direct testimony and matters affecting [~~his or her~~] that person's credibility. Any person attending the hearing is entitled to conduct cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[20.11.82.27 NMAC - N, 8/11/08; 20.11.82.27 NMAC - Rn & A, 20.11.82.26 NMAC, 10/15/12]

[~~20.11.82.27~~] 20.11.82.28 TECHNICAL EXHIBITS:

A. The deadlines for filing technical exhibits are established by 20.11.82.20 NMAC.

B. Any [~~person~~] party offering a technical exhibit shall provide the hearing clerk with an original and 15 copies for the board, the hearing officer, the board attorney, and persons attending the hearing.

C. All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, the person shall identify each exhibit with an index tab or by other appropriate means.

D. Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.11.82.28 NMAC - N, 8/11/08; 20.11.82.28 NMAC - Rn & A, 20.11.82.27 NMAC, 10/15/12]

[~~20.11.82.28~~] 20.11.82.29 TRANSCRIPT OF PROCEEDINGS: The hearing clerk shall arrange for a court reporter to make a verbatim transcription of the hearing unless the board requires another method of recording. The petitioner shall pay the cost of the court reporter and the original transcription. The petitioner shall also pay the cost of a copy of a transcription for each board member, the hearing officer and the board attorney if required by the hearing officer or the board.

[20.11.82.29 NMAC - N, 8/11/08; 20.11.82.29 NMAC - Rn, 20.11.82.28 NMAC, 10/15/12]

[~~20.11.82.29~~] 20.11.82.30 POST-HEARING SUBMISSIONS: The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[20.11.82.30 NMAC - N, 8/11/08; 20.11.82.30 NMAC - Rn & A, 20.11.82.29 NMAC, 10/15/12]

[~~20.11.82.30~~] 20.11.82.31 HEARING OFFICER'S REPORT: If the board directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, [~~explain the testimony and make a recommendation for board action~~] identify the parties' final proposals and the evidence supporting those proposals, including discussion or recommendations as requested by the board, and shall be filed with the hearing clerk within the time specified by the board. The hearing clerk shall promptly notify each [~~participant~~] party that the hearing officer's report has been filed and shall provide each party with a copy of the report [~~upon request as required by 20.11.82.17 NMAC~~] and notice of any deadline set for comments on the report.

[20.11.82.31 NMAC - N, 8/11/08; 20.11.82.31 NMAC - Rn & A, 20.11.82.30 NMAC, 10/15/12]

[~~20.11.82.31~~] 20.11.82.32 DELIBERATION AND DECISION:

A. As provided in the act at NMSA 74-2-5.E, in making its regulations, the board shall give weight it deems appropriate to all facts and circumstances, including:

(1) character and degree of injury to or interference with health, welfare, visibility and property;

(2) the public interest, including the social and economic value of the sources and subjects of air contaminants, with due consideration for environmental justice principles; and

(3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

B. If a quorum of the board attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing or meeting, the board may immediately deliberate and make a decision on the proposed regulatory change at the end of the hearing or at a board meeting after the hearing.

C. If the board does not reach a decision at the conclusion of the hearing or meeting, then, following receipt of the transcript, the hearing clerk shall promptly furnish a copy of the transcript to each board member who did not attend the hearing and, if necessary, to other board members, the board attorney and the hearing officer. Exhibits that were provided to persons at the time of the hearing need not be supplied again.

D. The board shall reach its decision on the proposed regulatory change within 60 days after the later of the close of the record or the date the hearing officer's report is filed, if a quorum of the board is available.

E. During the course of its deliberations, if the board determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, then, consistent with the requirements of due process, the board may reopen the hearing for necessary additional evidence only. The board or hearing officer may require additional notice as appropriate.

F. The board shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

G. The board's written decision is the official version of the board's action and the reasons for that action. Other written or oral statements by board members are not [~~recognized as~~] a part of the board's official decision or reasons.

[20.11.82.32 NMAC - N, 8/11/08; 20.11.82.32 NMAC - Rn & A, 20.11.82.31 NMAC, 10/15/12]

[~~20.11.82.32~~] 20.11.82.33 NOTICE OF BOARD ACTION: The hearing clerk shall provide notice of the board's action to each of the [~~participants~~] parties who have provided a legible address and to all other persons who have made a [~~legible~~] written request to the board for notification of the action taken, and have provided a legible address.

[20.11.82.33 NMAC - N, 8/11/08; 20.11.82.33 NMAC - Rn & A, 20.11.82.32 NMAC, 10/15/12]

[~~20.11.82.33~~] 20.11.82.34 [~~APPEALS AND STAYS -~~] APPEAL OF BOARD REGULATIONS:

A. Appeal of any regulatory change by the board shall be taken in accordance with NMSA 74-2-9.

B. The appellant shall serve a copy of the notice of appeal on the board and on each [~~participant~~] party.

C. The appellant shall be responsible for preparation of a sufficient number of copies of the [~~hearing~~] record proper at the expense of appellant.

D. Unless otherwise provided by NMSA 74-2-9, the filing of an appeal shall not act as a stay of the regulatory change being appealed.

[20.11.82.34 NMAC - N, 8/11/08; 20.11.82.34 NMAC - Rn & A, 20.11.82.33 NMAC, 10/15/12]

[~~20.11.82.34~~] 20.11.82.35 STAY OF BOARD REGULATIONS:

A. Any person who is or may be affected by a regulatory change adopted by the board may file a motion with the board seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting the granting of a stay. The movant shall serve the motion for a stay as provided by 20.11.82.16 NMAC. The movant shall file the motion at least 15 days before the next regularly scheduled board meeting [~~at which the board will consider the motion. The movant shall serve the motion for a stay as provided by 20.11.82.16 NMAC, and shall also serve all participants in the rulemaking proceeding~~]. At the beginning of the next regularly scheduled board meeting, the board shall appoint a hearing officer. The hearing officer shall preside at the motion hearing, which shall occur before the meeting at which the board makes a final decision regarding the motion.

B. Unless otherwise provided by governing law, the board may grant a stay pending appeal of any regulatory change promulgated by the board. The board may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

C. In determining whether good cause exists for granting a stay, the board shall consider:

(1) the likelihood that the movant will prevail on the merits of the appeal;

(2) whether the moving party will suffer irreparable harm if a stay is not granted;

(3) whether substantial harm will result to [~~other interested persons~~] another participant; and

(4) whether harm to the public interest will result.

D. If no action is taken within 60 days after filing of the motion, the board shall be deemed to have denied the motion for stay.

[20.11.82.35 NMAC - Rn & A, 20.11.82.34 NMAC, 10/15/12]

NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.3 NMAC, Sections 7 and 8, effective 10-06-12.

16.64.3.7 DEFINITIONS:

A. "Accredited college or university" means a college or university that was accredited by the American board of funeral service education (ABFSE) at the time of the applicant's graduation or completion of courses.

B. [Reserved.]

[6-15-96; 16.64.3.7 NMAC - Rn & A, 16 NMAC 64.3.7, 09-15-01; A, 08-08-12; A, 10-06-12]

16.64.3.8 APPLICATIONS:

A. [~~All applications for licensure shall be on forms supplied by the board.~~] An applicant applying for a funeral service intern license must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has graduated from high school or the equivalent;

(5) submit satisfactory proof of employment and proof of supervision;

(6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

B. An applicant applying for a direct disposer license in the state of New Mexico must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least sixty (60) semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

C. An applicant applying for a funeral service practitioner license must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than twelve (12) months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in embalming at least fifty (50) bodies, making of at least (50) funeral arrangements, and the directing of at least fifty (50) funerals;

(6) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least sixty (60) semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

(7) submit satisfactory evidence that the applicant has passed the national board examination;

(8) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(9) an applicant applying based on credentials from another state must:

(a) submit a completed application form supplied by the board office;

(b) pay applicable fees as set forth in 16.64.2.8 NMAC;

(c) submit a verification of licensure and good standing;

(d) submit proof of five (5) continuous years of experience/employment as a funeral service practitioner;

(e) submit satisfactory evidence that the applicant has passed the national board examination;

(f) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

[~~B.~~] D. The board, in its sole discretion, may require an applicant for licensure to present whatever evidence or affidavits as it deems necessary to establish that the applicant is qualified for licensure.

[~~C.~~] E. The board may require applicants for licensure to personally appear before the board at the time the application is scheduled to be considered.

[~~D. No application shall be considered complete nor acted upon unless the appropriate fee(s), as outlined in 16.64.2.8 NMAC accompanies the application.~~]

[~~E.~~] F. The burden of knowing and complying with the requirements necessary for licensure rests entirely on the applicant [~~however the board shall provide each applicant with copies of the applicable statutes and rules~~].

[~~F.~~] G. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, [~~for~~] with the exception of:

(1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five (5) years prior to application; and

(2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

[~~G.~~] H. If the application for licensure is deemed to be incomplete when twelve (12) months has elapsed from the date stamped on the application or document the application and documents will be deemed null and void and any fees paid will be forfeited. Application and documents for licensure submitted to the board will be considered filed as of the date stamped on the application or documents by the board office, which shall be the date received by the board.

[2-7-76...6-15-96, 1-22-99; 16.64.3.8 NMAC - Rn & A, 16 NMAC 64.3.8, 09-15-01; A, 04-02-10; A, 10-06-12]

NEW MEXICO BOARD OF FUNERAL SERVICES

This is an amendment to 16.64.4 NMAC, Section 10, effective 10-06-12.

16.64.4.10 LICENSEE IN CHARGE AND SEPARATE ESTABLISHMENTS:

A. Each establishment shall have in charge, full-time therein, a [~~licensee in charge~~] funeral service practitioner.

(1) The [~~licensee in charge~~] licensed funeral service practitioner for a funeral establishment shall [~~be a licensed funeral service practitioner, and shall~~] live within [~~fifty (50) miles~~] ninety (90) minutes by legal road travel of the establishment.

(2) The [~~licensee in charge~~] licensed funeral service practitioner of a commercial establishment shall [~~be a licensed funeral service practitioner, and shall~~] live within [~~fifty (50) miles~~] ninety (90) minutes by legal road travel of the establishment.

(3) The licensee in charge of a direct disposition establishment shall be a licensed direct disposer, and shall live within [~~fifty (50) miles~~] (90) minutes by legal road travel of the establishment.

B. A licensee in charge may be licensee in charge of more than one establishment provided that the requirements outlined in Subsection A of 16.64.4.10 NMAC have been met, and:

(1) the establishments are within fifty (50) miles by legal road travel of each other;

(2) the licensee in charge lives within [~~fifty (50) miles~~] (90) minutes by legal road travel of each establishment; and

(3) application is made in accordance with the requirements outlined in 16.64.4.11 NMAC for a change in the licensee in charge.

[2-7-76...9-26-93; 16.64.4.10 NMAC - Rn & A, 16 NMAC 64.4.10, 09-15-01; A, 10-06-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

The following Human Services Department, Income Support Division, Low Income Home Energy Assistance Program, rules are repealed effective 10-1-2012.

8.150.101 NMAC, Bureau Responsibilities, filed 9-17-2001.
8.150.102 NMAC, Field Office Responsibilities, filed 9-17-2001.
8.150.420 NMAC, Special Recipient Responsibilities, filed 9-17-2001.
8.150.430 NMAC, Recipient Rights/ Responsibilities, filed 9-17-2001.
8.150.522 NMAC, Unearned Income, filed 9-17-2001.
8.150.524 NMAC, Gross Income Eligibility, filed 9-17-2001.
8.150.526 NMAC, Net Income Eligibility, filed 9-17-2001.
8.150.610 NMAC, Gasoline and Home Heating Relief Fund, filed 9-17-2007.

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.139.504 NMAC, Section 11, effective October 1, 2012.

8.139.504.11 BENEFIT DELIVERY

A. Benefit issuance: NM Extra Help SNAP benefits shall be issued through a direct deposit into a household's electronic benefit transfer (EBT) food stamp account. EBT cards are issued and EBT accounts maintained as defined at 8.139.610 NMAC. A participating household has a definite issuance date so that food stamp benefits are received on or about the same time each month. The issuance date is based on the last two digits of the social security number of the individual to whom the food stamps are issued. Benefits for the month of application shall not be prorated.

B. Eligibility determination: Eligibility is based on adjusted net income (ANI) which equals the countable gross income minus the appropriate standard deduction, minus the total combined shelter cost, and minus the medical deduction. To be eligible for NM Extra Help SNAP, the applicant household's ANI must be below the appropriate net income level in accordance with 8.139.500 NMAC.

C. Benefit calculation: Benefits are issued based on adjusted income (AI) and the shelter to income ratio (STIR). AI is equal to the gross countable income minus total medical expenses. The STIR is equal to the total shelter costs divided by the AI. Benefit amounts shall be subject to review and adjustment in coordination with the regular food stamp program and cost neutrality and may be adjusted each January.

(1) Benefits for a two person household:

(a) The monthly benefit amount for a two person household with a monthly AI of less than $900.00 is $240.00.

(b) The monthly benefit amount for a two person household with a monthly STIR equal to or greater than 0.9 is $240.00.

(c) The monthly benefit amount for a two person household with a monthly AI equal to or greater than $900.00 but less than $1,500.00 and a STIR equal to or greater than 0.8 and less than 0.9 is $180.00.

(d) The monthly benefit amount for a two person household with a monthly AI equal to or greater than $900.00 but less than $1,500.00 and a STIR equal to or greater than 0.25 but less than 0.8 is $75.00.

(e) The monthly benefit amount for a two person household with a monthly AI equal to or greater than $1,500 but less than $1,800.00 and a STIR equal to or greater than 0.25 is $75.00.

(f) The monthly benefit amount for a two person household with a monthly AI equal to or greater than $900.00 but less than $1,500.00 and a STIR less than 0.25 is $16.00.

(g) The monthly benefit amount for a two person household with a monthly AI equal to or greater than $1,800.00 and a STIR less than 0.25 is $16.00.

(2) Benefits for a one person household:

(a) The monthly benefit amount for a one person household with an AI less than $500.00 is $180.00.

(b) [~~The monthly benefit amount for a one person household with a STIR equal to or greater than 0.85 is $180.00.~~] The monthly benefit amount for a one person household with an AI of between $500.00 and $800.00 and a STIR of 0.85 or less is $75.00.

(c) [~~The monthly benefit amount for a one person household with an AI equal to or greater than $500.00 and a STIR equal to or greater than 0.65 but less than .085 is $75.00.~~] The monthly benefit amount for a one person household with an AI of between $500.00 and $800.00 and a STIR greater than 0.85 is $180.00.

(d) The monthly benefit amount for a one person household with an AI greater than $800.00 and a STIR of 0.65 or more is $75.00.

[~~**(d)**~~] **(e)** The monthly benefit amount for a one person household with an AI [~~equal to or~~] greater than [~~$500.00~~] $800.00 and a STIR less than 0.65 is $16.00.

D. Benefit correction: Benefit corrections shall be determined and adjusted as defined at 8.139.640 NMAC.

[8.139.504.11 NMAC - N, 08/01/2011; A, 07/01/2012; A, 10/01/2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.150.100 NMAC, Section 10 and new Sections 11 and 12, effective October 1, 2012.

8.150.100.10 MISSION STATEMENT:

A. **HOUSEHOLD RELATED POLICIES:**

(1) HSD households: Households that receive benefits from programs administered by HSD will be notified of the LIHEAP application period. Those households that wish to apply for LIHEAP benefits may submit an application. It is HSD's policy to issue regular benefits under this program to eligible households that apply for benefits during the specified period of application for regular benefits and that meet the income eligibility requirement and have a responsibility to pay for energy costs as specified in this policy.

(2) Non-HSD households: It is HSD's policy to issue regular benefits under this program to eligible households that receive no other assistance from HSD but that apply for LIHEAP benefits during the specified period of application for regular benefits and that meet the income eligibility requirement and have a responsibility to pay for energy costs as specified in this policy.

(3) Wood-primary heat source: With the exception of households that use wood as their primary heat source and gather their own wood supply, households that do not incur a direct or indirect home energy cost are not eligible.

(4) Renter with energy costs: Renters who meet the eligibility criteria and incur a home energy cost are eligible for benefits under this program.

B. **CRISIS INTERVENTION RELATED POLICIES:**

(1) Crisis verification: Eligible households that have received a written disconnect notice from their utility vendor or a statement of non-delivery or sale of fuel from their fuel vendor due to lack of payment or inability to pay may be eligible to receive a LIHEAP benefit. When a crisis situation is identified, the department is required to provide intervention to resolve the energy crisis. The processing of the applications for households in a crisis situation includes contacting the utility company or fuel provider within the specified time frames to resolve the crisis situation. Eligible households with insufficient funds to open an account with a utility vendor or meet the security deposit requirements of a utility vendor may also be eligible to receive a LIHEAP benefit. These households must also be assisted with crisis intervention. Crisis intervention is not available to households that have received a LIHEAP benefit in the current federal fiscal year.

(2) Crisis timeliness: Assistance to resolve a crisis situation will be provided no later than 48 hours after the household's application for LIHEAP benefits. Eligible households with a life-threatening emergency will be provided assistance no later than 18 hours after the household's application for LIHEAP benefits. Assistance is defined as a contact with the vendor to intercede on the household's behalf to resolve the crisis situation.

(3) Utility/vendor mediation: [~~HSD also assists households in negotiating with the household's utility or fuel vendor regarding the payment of arrearages or past due amounts. If the utility or fuel vendor refuses to make arrangements with the household for payment of outstanding balances, the~~] LIHEAP benefit is intended to be a supplement to assist households with their energy bill. The ultimate responsibility for utility payments is the household's. The household will be notified that the LIHEAP benefit alone will not resolve their crisis situation. The household will be informed of other community resources.

[7-1-95, 11-1-95, 11-15-96, 10-01-97, 10-15-98, 10-1-00; 8.150.100.10 NMAC - Rn, 8 NMAC 22.LHP.002, 10-1-01; A, 10-1-06; A, 10-1-12]

8.150.100.11 RESPONSIBILITIES AND DELEGATION: The income support division (ISD) of the human services department is responsible for administering the low income home energy assistance program (LIHEAP).

A. State LIHEAP plan: Every year, ISD submits a state plan to the U. S. department of health and human services (DHHS) for New Mexico's administration of LIHEAP. The proposed state plan and the proposed LIHEAP policy manual are made available for public comment and a public hearing is held.

B. LIHEAP administration: ISD is responsible for such matters as:

(1) formulating and interpreting LIHEAP policy;

(2) coordinating with other divisions within HSD for data processing of LIHEAP eligibility and payment;

(3) allocating and distributing LIHEAP monies;

(4) data entry of client information not available on the department's computer eligibility system; and

(5) oversight responsibility for LIHEAP policy and procedures training and for the review of all LIHEAP training materials.

[8.150.100.11 NMAC - Rn, 8.150.101.9 NMAC & A, 10-1-12]

8.150.100.12 ISD FIELD OFFICE RESPONSIBILITIES: Each of the field offices of the income support division in the state is responsible for:

A. providing outreach and referral for low-income clients, particularly disabled and elderly clients, regarding the LIHEAP program;

B. informing low-income households, particularly disabled and elderly clients, about the eligibility determination process and application procedures for the LIHEAP program;

C. providing documentation to households requesting verification of cash benefits received from the human services department or other documentation available to the department or in the case file;

D. complying with other LIHEAP program directives as may be issued by ISD;

E. assisting all applicant households to complete the LIHEAP application and when necessary interviewing the household when LIHEAP benefits have been requested;

F. entering the completed LIHEAP application into the designated LIHEAP computer system;

G. responding to inquiries about the status of a LIHEAP application; and

H. processing payment errors when identified; the ISD office must issue a supplement in cases of benefit under-issuances or complete and submit restitution and claim paperwork to the office of the inspector general's restitution services bureau for over-issuances.

[8.150.100.12 NMAC - Rn, 8.150.102.8 NMAC & A, 10-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.150.110 NMAC, Sections 9 and 10, effective October 1, 2012.

8.150.110.9 SUBMISSION OF FORMS: [~~Paper applications~~]

A. Applicants: Any household may apply for regular benefits at any one of the income support division county offices [~~and suboffices~~] located throughout the state during the period specified for application for regular benefits.

B. Application process: In order for a determination of eligibility for regular benefits to be made for these applicant households, the household's [~~paper~~] application, signed and accompanied by all required supporting documentation, must be received by the income support division county offices [~~or suboffices~~] by the

deadline date of the application period for regular benefits.

C. Application period: The period of application for regular benefits will be year round beginning after the application for the LIHEAP grant has been submitted to the U. S. department of health and human services, and ending August 31. There will be a one month suspension of LIHEAP during the month of September. The opening and closing dates for this application period are advertised in all promotional material regarding the program.

D. Crisis processing: Households who apply for LIHEAP benefits and provide documentation that a crisis situation exists will have their application [~~"fast tracked"~~] processed within 48 hours after submission of an application for LIHEAP benefits or within 18 hours in demonstrated life-threatening situations.

[7-1-95, 11-1-95, 11-15-96, 10-01-97, 12-01-97, 10-1-00; 8.150.110.9 NMAC - Rn, 8 NMAC 22.LHP.112 & A, 10-1-01; A, 10-1-12]

8.150.110.10 DISPOSITION OF APPLICATION/NOTICE:

A. Income support division county office responsibilities: [~~All households who apply for LIHEAP benefits through a paper application at an income support division county office or suboffice will be provided with a notice of approval or denial. The notice of eligibility will be provided to the applicant when the application process is completed at the ISD county office.~~] Households who complete the application process for LIHEAP benefits will be provided with a notice of approval or denial. The notice of benefit determination will be provided to applicant no later than 60 days from the date of submission of a completed application. If the household fails to provide the verification required to determine eligibility to ISD, ISD may summarily deny the application after 60 days from the date of the application.

B. LIHEAP central office responsibilities: LIHEAP central office staff will complete random reviews of LIHEAP approvals and denials. The review will verify whether LIHEAP policy was correctly applied. If an eligibility error is found or the application is incomplete, a determination will be made to identify any payment errors.

C. Notices: All households will be mailed a notice of eligibility for LIHEAP benefits. The notice will list the point total, the benefit amount and the method of issuance.

[7-1-95, 11-1-95, 11-15-96, 11-16-96, 10-15-98, 10-1-00; 8.150.110.10 NMAC - Rn, 8 NMAC 22.LHP.116, 10-1-01; A, 10-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.150.410 NMAC, Sections 9 and 12, a repeal of Section 10 and an addition of Sections 16 through 18, effective October 1, 2012.

8.150.410.9 E N E R G Y RESPONSIBILITY:

A. Energy cost: To be eligible for LIHEAP benefits, the household must incur an energy cost. The energy cost may be for a primary heat source, i.e., the energy source or fuel with which the household is predominantly heated, or for a secondary heat source. A secondary heat source is an energy source that is essential to the process of providing heat to the home. Or, the energy cost may be for a cooling cost. The cooling cost may be for a primary source, i.e., evaporative cooling or refrigerated air, or secondary cooling. Secondary cooling is the use of energy to operate portable fans, ceiling fans, whole house fans, gable vent fans, or power attic vent fans.

B. Secondary heat source: Electricity to ignite a gas or steam furnace is the most common example of an allowable secondary heat source for LIHEAP purposes. Electricity used only for lighting purposes or to operate fans to distribute heat from a wood-burning stove is not considered an allowable secondary heat source for LIHEAP purposes.

C. W o o d - g a t h e r i n g households: Households who use wood as a fuel to heat their home and gather the wood themselves are considered to have a heating responsibility. Regardless of whether a [~~cost~~] direct or indirect cost was incurred to obtain the wood the household meets this requirement.

D. Direct or indirect utility responsibility: The heating/cooling cost may be direct in the form of a utility payment or fuel purchase, or indirect in the form of a non-subsidized rent payment which either designates or does not designate the included utility cost, or costs associated with obtaining wood for heating households.

E. Crisis intervention: To be eligible for LIHEAP crisis intervention, the household must meet the eligibility criteria for regular benefits as specified in 8.150.500.8 NMAC, must not have received a LIHEAP benefit in the current federal fiscal year and, in addition, be able to provide verification that proves the applicant household is facing a current or impending energy crisis, established with any one of the following:

(1) written notice of disconnect for the household from a utility vendor for a disconnect date after the close of the previous LIHEAP crisis season;

(2) proof of insufficient funds for the household to open an account with a utility vendor or meet the security deposit requirements of a utility vendor;

(3) statement from the household's fuel vendor that fuel will not be provided without payment.

F. Community referrals: In circumstances where the household is not eligible for crisis intervention, the household may be informed of other resources in the community, particularly other utility assistance programs available through a community action agency, which may be able to assist the household in meeting its energy expenses.

[7-1-95, 11-1-95, 11-15-96, 10-15-98; 8.150.410.9 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; A, 10-1-12]

8.150.410.10 [~~D I R E C T OR INDIRECT UTILITY RESPONSIBILITY:~~ ~~The heating/cooling cost may be direct in the form of a utility payment or fuel purchase, or indirect in the form of a non-subsidized rent payment which either designates or does not designate the included utility cost.~~] [Reserved]

[7-1-95, 11-1-95, 11-15-96, 10-15-98; 8.150.410.10 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; Repealed, 10-1-12]

8.150.410.12 INDIAN TRIBAL ELIGIBILITY: In New Mexico, an Indian tribe may choose to administer its own LIHEAP program for tribal members and request from DHHS an allocation of the state's share of the LIHEAP grant award for this purpose. An Indian tribe is defined as a legal entity of a group of Native Americans living on tribal lands with a distinct and separate government. Residents of tribal land may be eligible for tribal administered LIHEAP or HSD-administered LIHEAP under the following circumstances.

A. Tribes that administer LIHEAP: Indian tribal members living on their tribe's tribal lands, whose tribe administers their own LIHEAP program, are not eligible for HSD-administered LIHEAP benefits.

B. Tribes not administering LIHEAP: Indian tribal members living on the tribal lands of tribes not administering their own LIHEAP program may be considered for HSD-administered LIHEAP benefits providing they meet income eligibility and heating/cooling responsibility requirements as specified in this policy.

C. Indians on other tribes' land: [~~Housholds~~] Households that are members of Indian tribes administering their own LIHEAP program but not living on their tribe's tribal lands, may be considered for HSD-administered LIHEAP benefits providing they meet income eligibility

and heating responsibility requirements, as specified in this policy, and they did not receive LIHEAP benefits from their tribal government.

D. Non-Indians and non-tribal members on tribal land: Non-Indians living on tribal lands and Indians living on tribal lands who are excluded from eligibility for LIHEAP by the Indian tribe administering their own LIHEAP program may be considered for HSD-administered LIHEAP benefits providing they meet income eligibility and heating/cooling responsibility requirements as specified in this policy.

E. At the direction of the HSD secretary, HSD may serve tribal members normally excluded due to Subsection A of 8.150.410.12 NMAC if they have not been or do not expect to be served by the tribal LIHEAP program.

[7-1-95, 11-1-95, 11-15-96; 8.150.410.12 NMAC - Rn, 8 NMAC 22.LHP.410 & A, 10-10-01; A, 10-1-05; A, 10-1-06; A, 10-1-12]

8.150.410.16 RESIDENCE IN FACILITY OR INSTITUTION: Persons residing in New Mexico but living in group homes, halfway houses, institutions, homeless shelters, or in places not normally intended for human occupation are not eligible unless they can document heating/cooling expenses.

[8.150.410.16 NMAC - Rn, 8.150.420.8 NMAC & A, 10-1-12]

8.150.410.17 RECIPIENT RIGHTS:

A. Treatment and non-discrimination: Members of a household shall have the right, at all times, to be treated with dignity at all times. Household members may not be discriminated against on the basis of age, sex, race, color, handicap, national origin, or religious or political belief.

B. Confidentiality: Household members have the right to confidentiality as defined in 8.100.100.13 NMAC.

C. Fair hearings: The household has the right to disagree with the determinations made by HSD and to appeal such actions through HSD's fair hearing process.

[8.150.410.17 NMAC - Rn, 8.150.430.8 NMAC & A, 10-1-12]

8.150.410.18 RECIPIENT RESPONSIBILITIES:

A. Benefit purpose: The household is responsible for using the benefit received for the purpose intended.

B. Erroneously issued benefits: If it is determined the household is not entitled to the benefit received, whether agency or client caused, the household is responsible for paying back the benefits received. The household is responsible for repayment whether the benefit was received directly by the household or paid to a vendor.

[8.150.410.18 NMAC - Rn, 8.150.430.9 NMAC & A, 10-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.150.500 NMAC, Section 8 and a repeal of Sections 9 and 10, effective October 1, 2012.

8.150.500.8 NEED DETERMINATION: To be eligible for LIHEAP benefits households must do the following:

A. application: a household member or representative must complete an application for LIHEAP benefits and be interviewed; and

B. documentation: the household must provide proof that they meet the qualifications of the LIHEAP program; current documents used in other public assistance programs may be used for LIHEAP application processes, unless questionable:

(1) proof of identity for the applicant using any of the following documentation:

(a) birth certificates(s); or

(b) baptism certificate; or

(c) hospital or birth record; or

(d) divorce papers; or

(e) alien registration card; or

(f) immigration & naturalization service (INS) records; or

(g) U. S. passport; or

(h) Indian census records; or

(i) family bible; or

(j) school or day care records; or;

(k) government records; or

(l) social security records; or

(m) social service records; or

(n) insurance policy; or

(o) court records; or

(p) church records; or

(q) voter registration card; or

(r) letter from doctor, religious official or school official, or someone else who knows the applicant; or

(s) applicant sworn statement;

(2) proof of citizenship or legal resident status if questionable, such as birth certificate, permanent resident card, naturalization papers, etc.;

(3) social security numbers for all household members; a social security card is required if the number has not been issued by the social security administration or is being used by another person in the ISD data bases;

(4) proof of gross income for all household members, such as check stubs, award letters, statement from employer, etc.;

(5) proof of a utility responsibility with an expense incurred in the past twelve months for the household's current residence [~~unless expense information is made available to HSD by a utility, bulk fuel vendor or municipality~~]:

(a) bill for metered service for a one-month period, or

(b) purchase receipt for propane, or

(c) receipt for wood purchase, or

(d) rental agreement or landlord statement that utilities are included in rent, or

(e) signed statement or billing history from a utility or fuel vendor;

(6) [~~acount~~] account number at current address for the selected heating or cooling expense;

(7) proof of crisis when the situation exists, such as a disconnect notice, statement of non-delivery of bulk fuel or statement detailing the cost of initiating service;

(8) proof of disability for at least one household member [~~, if claimed, such as a doctor's statement, SSI award letter, statement of receipt of worker's compensation or DVR services, other disability-based income, etc.~~] as determined by another public assistance or federal or state entity; and

(9) proof of emergency expenditures that apply to [~~8.150.526~~] 8.150.520.18 NMAC;

C. eligibility criteria: the household must meet the identity, social security number, income, citizenship, utility responsibility, and residency requirements.

[7-1-95, 11-1-95, 11-15-96, 10-1-97, 10-15-98; 8.150.500.8 NMAC - Rn, 8 NMAC 22.LHP.501.11 & A, 10-1-01; A, 10-1-06; A, 10-1-07; A, 10-1-12]

8.150.500.9 [~~CRISIS INTERVENTION:~~ ~~To be eligible for LIHEAP crisis intervention, the household must meet the eligibility criteria for regular benefits as specified above in 8.150.500.8 NMAC, must not have received a LIHEAP benefit in the current federal fiscal year and, in addition, be able to:~~

~~A. Crisis verification: Provide verification that proves the applicant household is facing a current or impending energy crisis, established with any one of the following:~~

~~(1) written notice of disconnect for the household from a utility vendor for a disconnect date after the close of the previous LIHEAP crisis season;~~

~~(2) proof of insufficient funds for the household to open an account with a utility vendor or meet the security deposit requirements of a utility vendor;~~

~~(3) statement from the household's~~

~~fuel vendor that fuel will not be provided without payment.~~

~~B. Community referrals: In circumstances where the household is not eligible for crisis intervention, the household must be informed of other resources in the community, particularly other utility assistance programs available through a community action agency, which may be able to assist the household in meeting its energy expenses.~~] [Reserved]

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-00; 8.150.500.9 NMAC - Rn, 8 NMAC 22.LHP.501.12, 10-1-01; A, 10-1-06; Repealed 10-1-12]

8.150.500.10 [~~GROSS INCOME DETERMINATION:~~ ~~Gross income is defined as all income received prior to deductions, including taxes, and garnishments, whether voluntary or involuntary.~~

~~A. **Income sources:** Gross income includes income from both earned and unearned sources.~~

~~B. **Countable income:** The gross unearned income of all household members is counted in its entirety, and the gross earned income of all household members over the age of 18 is counted in its entirety, unless:~~

~~(1) the income is specifically exempted; or~~

~~(2) the income is self-employment (see LIHEAP 8.150.520.9 NMAC); or~~

~~(3) the income is that of an ineligible alien, in which case the income is prorated (see LIHEAP policy 8.150.520.10 NMAC);~~

~~(4) the income is a full month's income and is anticipated to be received on a weekly or biweekly basis; in these circumstances, the income shall be converted to a monthly amount as follows:~~

~~(a) income received on a weekly basis is averaged and multiplied by 4.0;~~

~~(b) income received on a biweekly basis is averaged and multiplied by 2.0;~~

~~(c) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in $.50 or more are rounded up; amounts resulting in $.49 or lower are rounded down.~~

~~C. **Gross income receipt period:** Gross income received or anticipated to be received by the household in the month of application is used to establish income eligibility for LIHEAP applications unless Subsection D of 8.150.500.10 NMAC applies.~~

~~D. **Current income verified in other public assistance programs:** Current income that has been verified by ISD in another active public assistance programs may be used to verify income for the LIHEAP application, unless questionable.~~] [Reserved]

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-00; 8.150.500.10 NMAC - Rn, 8 NMAC 22.LHP.501.2 & A, 10-1-01; A, 10-1-05; A, 10-1-07; A, 4-1-10; Repealed, 10-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.150.520 NMAC, Sections 8 through 11 and adding Sections 12 through 19, effective October 1, 2012.

8.150.520.8 EARNED <u>GROSS</u> INCOME:

A. Definitions: Earned <u>gross</u> income is defined as income received in the form of wages paid on a predetermined regular basis, pay received irregularly for work performed irregularly, or income resulting from self-employment activities. Income from rental property, if 20 hours or more per week are spent working as a landlord, is also countable as earned income.

B. Exclusions: The following are not counted as <u>gross</u> income:

(1) in-kind benefits: (i.e. good or services realized, provided or exchanged for non-monetary compensation);

(2) vendor payments: (i.e. payments made on behalf of a household to a third party);

(3) lump sum payments: [~~food stamp on lump sum policy in 8.139 NMAC~~] <u>see food stamp regulations on lump sum payments in 8.139.520.9 NMAC</u>;

(4) loans;

(5) charitable contributions from nonprofit agencies to meet household expenses;

(6) earned income tax credits;

(7) value of food stamps;

(8) TANF annual clothing allowance;

(9) monies received for the care of a third party beneficiary who is not a household member; and

(10) monies excluded by federal statute, a listing of which can be found in food stamp policy citation 8.139 NMAC.

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-99, 10-1-00; 8.150.520.8 NMAC - Rn, 8 NMAC 22.LHP.520.2, 10-1-01; A, 10-1-06; A, 10-1-12]

8.150.520.9 S E L F EMPLOYMENT <u>GROSS</u> INCOME: [~~Self employment income must be annualized.~~]

A. Definition: Ongoing self-employment income intended to support the household through the year [~~must be annualized~~], that is averaged over a 12 month period, even if the household earns the money in a concentrated period. Self-employment income intended to support the household only for a portion of the year must be averaged over the months it is intended to provide support.

B. Verification sources: Monthly business records detailing profits and expenses or the household's federal income tax return are needed to annualize the household's self-employment income.

C. Gross income calculation: For self-employment income, the net income of the business activity is considered the gross income of the household member. The net income of the business is derived by subtracting the allowable costs of doing business from the business's gross income.

D. Business expenses:

(1) Allowable costs are, generally, those required to produce the business's gross income. These include, but are not limited, to: raw materials, stock, labor, insurance premiums, interest paid on income producing property, taxes paid on income-producing property, transportation for business purposes.

(2) Costs specifically not allowed are payments on the principal of the purchase price of income-producing property, assets, equipment, or machinery, net losses from previous periods, personal income taxes, money set aside for personal expenses, transportation to and from work, charitable contributions, entertainment, and depreciation.

E. Annualizing income: From gross self-employment income, subtract allowable expenses to derive the net self-employment income. Divide the net self-employment income by 12 to produce a monthly (average) figure. This figure is the countable monthly gross income. To determine the household's total gross, this figure must be added to any other income the household receives.

[7-1-95, 11-1-95, 11-15-96; 8.150.520.9 NMAC - Rn, 8 NMAC 22.LHP.520.3, 10-1-01; A, 10-1-12]

8.150.520.10 <u>GROSS</u> INCOME OF INELIGIBLE ALIENS: The <u>gross</u> income received by any ineligible alien household member must be prorated <u>and counted to establish the benefit amount</u>.

A. Definition: If any member of the household providing income to the household is an ineligible alien for TANF purposes, that member's income is not counted in its entirety but is prorated. Prorating results in excluding a portion of the ineligible alien household member's income from consideration because the ineligible alien is not a recipient of public assistance benefits.

B. Proration calculation: Calculate the gross income of the ineligible alien and divide the total by the number of members, eligible and ineligible, in the household. The resulting figure is the pro-

rata portion of the income for each member, eligible and ineligible. To determine the portion of the income to be counted, multiply the pro rata portion by the remaining number of eligible household members.
[7-1-95, 11-1-95, 11-15-96; 8.150.520.10 NMAC - Rn, 8 NMAC 22.LHP.520.4, 10-1-01; A, 10-1-06; A, 10-1-12]

8.150.520.11 GROSS INCOME OF MIGRANT HOUSEHOLDS:

A. Definition: A migrant household is a group that travels away from home on a regular basis with a group of laborers to seek employment in an agriculturally related activity.

B. Verification sources: The household's federal income tax return is needed to annualize the household's income.

C. Calculation: The household's annual income reported on their federal income tax return should be divided by 12 to determine the household's average monthly income.
[10-15-98; 8.150.520.11 NMAC - Rn, 8 NMAC 22.LHP.520.5, 10-1-01; A, 10-1-12]

8.150.520.12 GROSS INCOME DETERMINATION: Gross income of the household member is defined as all income received prior to deductions, including taxes, garnishments, whether voluntary or involuntary and net business income.

A. **Income sources:** Gross income includes income from both earned and unearned sources.

B. **Countable income:** The gross unearned income of all household members is counted in its entirety, and the gross earned income of all household members over the age of 18 is counted in its entirety, unless:

(1) the income is specifically exempted; or

(2) the income is self-employment, in which case the income is annualized (see LIHEAP 8.150.520.9 NMAC); or

(3) the income is that of an ineligible alien, in which case the income is prorated (see LIHEAP policy 8.150.520.10 NMAC);

(4) the income is a full month's income and is anticipated to be received on a weekly or biweekly basis; in these circumstances, the income shall be converted to a monthly amount as follows:

(a) income received on a weekly basis is averaged and multiplied by 4.0;

(b) income received on a biweekly basis is averaged and multiplied by 2.0;

(c) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in $.50 or more are rounded up; amounts resulting in $.49 or lower are rounded down.

C. **Gross income receipt period:** HSD shall establish income by utilizing the gross income of the household for the 30 day period immediately preceding the date on which LIHEAP eligibility is determined by ISD.

D. **Current income verified in other public assistance programs:** Current income that has been verified by ISD in another active public assistance programs may be used to verify income for the LIHEAP application, unless deemed questionable.
[8.150.520.12 NMAC - Rn, 8.150.500.10 NMAC & A, 10-1-12]

8.150.520.13 UNEARNED INCOME:

A. Definition: Unearned income is income received in the form of entitlement, disability, retirement, unemployment benefits or payments, including but not limited to the following:

(1) child support;

(2) alimony;

(3) temporary assistance to needy families (TANF) benefits;

(4) general assistance (GA) payments;

(5) royalties;

(6) dividends and interest; or

(7) tribal benefits.

B. Gross unearned income: The gross amount of the benefit or payment must be counted. In the case of OASDI benefits, the gross amount of the benefit includes the amount deducted for the medicare premium, if applicable.

C. Real estate contracts: Monthly payments resulting from the sale of property and contributions from family or friends are also countable unearned income.

D. Exclusions: The following are not counted as income:

(1) in-kind benefits (i.e. goods or services realized, provided or exchanged for non-monetary compensation);

(2) vendor payments (i.e. payments made on behalf of a household to a third party);

(3) lump sum payments: as defined in food stamp regulations at 8.139.520.9 NMAC;

(4) loans;

(5) charitable contributions from nonprofit agencies to meet household expenses;

(6) earned income tax credits;

(7) value of food stamps;

(8) TANF annual clothing allowance;

(9) monies received for the care of a third party beneficiary who is not a household member; and

(10) monies excluded by federal statute, as listed at 8.139.527 NMAC.
[8.150.520.13 NMAC - Rn, 8.150.522.8 NMAC & A, 10-1-12]

8.150.520.14 TOTAL GROSS INCOME: The household's total gross income is determined by adding countable earned and unearned income. Income received from self-employment and by ineligible aliens is not counted in full. The income of migrant households may be annualized and averaged. The household's total gross income must be equal to or less than income standards published annually in the LIHEAP state plan.
[8.150.520.14 NMAC - Rn, 8.150.524.8 NMAC & A, 10-1-12]

8.150.520.15 INCOME STANDARD: Income guidelines for eligibility will be updated at the beginning of each federal fiscal year as required by federal statute. The guidelines will be effective for the entire federal fiscal year beginning October 1 and ending September 30. The income guidelines will be determined by the secretary of the human services department before the beginning of the new federal fiscal year and published annually in the LIHEAP state plan.
[8.150.520.15 NMAC - Rn, 8.150.524.9 NMAC & A, 10-1-12]

8.150.520.16 CRISIS INTERVENTION STANDARDS: Households who are over the income standards but meet the crisis intervention requirements may be eligible for a crisis LIHEAP benefit. If a household is over the income standards, HSD staff should explore the household's financial circumstances and take into account any financial crises in the household that may have resulted in the household's inability to meet its utility or fuel expenses in the past 30 days. In these cases, the household's net income, rather than gross income, may be considered to determine income eligibility for LIHEAP benefits.
[8.150.520.16 NMAC - Rn, 8.150.500.9 NMAC & A, 10-1-12]

8.150.520.17 NET INCOME:

A. Definition: Net income, except for net business income, for the purposes of LIHEAP policy, is not gross income minus deductions. Rather, it is gross income minus household emergency expenses incurred and paid in 30 days prior to the application date or the initial payment, during that period, of a bill resulting from a recent household emergency.

B. Calculation: To determine the net income for a household, subtract any allowable household emergency expenses from the household's gross income.

C. No emergency expenses: If the household did not incur and pay household emergency expenses or an initial payment for a recent household emergency in the 30 days prior to the application date for LIHEAP benefits, gross income is to be used to make the determination of eligibility.
[8.150.520.17 NMAC - Rn, 8.150.526.9 NMAC & A, 10-1-12]

8.150.520.18 HOUSEHOLD

EMERGENCY EXPENSES:

A. Definition: Household emergency expenses are defined as expenses incurred and paid in full or in part by the household in the 30 days prior to the application date.

B. Examples of emergency expenses include:

(1) hospital, ambulance, doctor and dental bills;

(2) laboratory and other testing bills;

(3) prescriptions and non-prescription items ordered by a licensed health care professional; and

(4) services provided or ordered by a licensed health care professional; or

(5) non-elective medical expenses;

(6) emergency medical expenses, such as:

(7) hospital bills; and

(8) ambulance bills;

(9) expenses resulting from the death of a household member or other major household crisis; or

(10) repair or replacement of the household's primary vehicle.

C. Licensure exemption: Native American practitioners (medicine men), though not licensed by the state, are specifically recognized by HSD as health care providers under this policy.

[8.150.520.18 NMAC - Rn, 8.150.526.10 NMAC & A, 10-1-12]

8.150.520.19 VERIFICATION: To be considered, the household must provide proof of the incurred expense(s) and proof of payment.

[8.102.520.19 NMAC - Rn, 8.150.526.11 NMAC & A, 10-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.150.600 NMAC, Section 8 and addition of Sections 9, 10 and 11, effective October 1, 2012.

8.150.600.8 BENEFITS - ISSUANCE AND USE AND VENDOR RESPONSIBILITIES:

A. Issuance of benefits: Benefits are issued in one of the three following methods:

(1) client warrants: HSD issues benefits directly to clients through client warrants [~~when authorized by the LIHEAP director~~]; or

(2) vendor payments: HSD issues benefits directly to the vendor; or

(a) HSD will provide the name and, when applicable, customer account number for the LIHEAP-eligible household to the vendor specified by the household; the vendor will notify HSD of mismatches within a specified time frame;

(b) vendors who carry customer accounts will credit eligible households with the amount of the LIHEAP regular benefit no more than 30 days from the time of the payment; vendors who provide fuel on demand will provide fuel to eligible households equal to the amount of the LIHEAP regular benefit no more than 30 days from the date of the eligible household's contact with the vendor to make arrangements for the provision of such fuel;

(c) vendors may transfer excess LIHEAP benefits from the account originally credited to another account they have for the household; the vendor must document the transfer in a manner that meets generally accepted audit standards; in order to transfer LIHEAP funds, the following conditions must be met:

(i) the vendor must provide multiple utility services [~~and/or~~] or bulk fuel; and

(ii) a credit remains on the originally credited account after current and delinquent charges are satisfied; and

(iii) the household approves the transfer; and

(iv) the utility or bulk fuel account that is credited is used by the household for their heating or cooling needs;

(d) vendors should transfer a LIHEAP benefit credit on an account that is closed after the credit is posted; the transfer must be to a new or existing account for the new residence of the recipient household; the vendor must document the transfer in a manner that meets generally accepted audit standards;

(e) vendors may refund LIHEAP benefit credit to a household under certain circumstances when the household moves [~~and/or~~] or will not have service with the company at their residence; the vendor must document the transfer in a manner that meets generally accepted audit standards;

(f) vendors must refund LIHEAP benefit credits on closed accounts to HSD when the credit cannot be transferred to a new account and/or the household cannot be located;

(3) electronic benefit transfer account: LIHEAP benefits are deposited directly into the household's special account that may be:

(a) a cash account available to the household at ATMs and retail stores; or

(b) a special account for LIHEAP payments accessed at authorized utility vendors to pay for heating or cooling costs; the EBT card is used at a point of sale (POS) terminal at the utility company office or other retailers authorized to accept utility company payments.

B. Benefit use: The recipient household is responsible for using the benefit for the purpose intended:

(1) to purchase fuel, such as propane, wood, coal, kerosene, fuel oil or other unregulated fuels;

(2) to pay the household's utility charges, such as those for electric or natural gas services;

(3) to purchase gasoline [~~and/or~~] or tools needed when a household gathers/cuts it's own firewood;

(4) to pay a landlord for the utility costs that are included in the rent payment;

(5) to pay for a deposit obligation needed to initiate or continue service.

[7-1-95, 11-1-95, 11-15-96, 10-01-97; 8.150.600.8 NMAC - Rn, 8 NMAC 22.LHP.601 & A, 10-1-01; A, 10-1-05; A, 10-1-06; A, 10-1-12]

8.150.600.9 STATE LIHEAP FUNDING:

A. Purpose: To reduce the home heating and cooling costs of low-income New Mexicans.

B. Benefits:

(1) payments that assist low-income households to reduce the costs of home heating/cooling; or

(2) weatherization services for the homes of low-income households.

[8.150.600.9 NMAC - Rn, 8.150.610.8 NMAC & A, 10-1-12]

8.150.600.10 FUND USES: Unless specified by the New Mexico state legislature, the secretary of the human services department has the authority to specify the uses of the funding. Funding will be used for purposes similar to those allowed under the federal low income home energy assistance program.

[8.150.600.10 NMAC - Rn, 8.150.610.9 NMAC & A, 10-1-12]

8.150.600.11 WINTER MORATORIUM ON UTILITY DISCONNECTION: No utility shall discontinue or disconnect residential utility service for heating from November 15 through March 15 of the subsequent year for certain customers.

A. Administering authority: The human services department or a tribal entity that administers its own low income home energy assistance program are designated as the authorities to identify customers who meet the certain qualifications for the winter moratorium. The customer must also meet the New Mexico public regulation commission requirements to receive winter moratorium protection.

B. Qualification: Customers who qualify for the winter moratorium must meet the following income

standards:

(1) the customer is a member of a household in which the total gross income is at or below 150% of the current federal poverty guidelines; or

(2) one or more of the household members:

(a) receive supplemental security income; or

(b) are eligible for any federally funded assistance program administered by ISD with income guidelines at or below 150% of the current federal poverty guidelines;

(3) the person in whose name a utility account is listed and the name of the public assistance recipient need not match in order for the customer to be entitled to protection under this section.

C. Proof of qualification:

(1) HSD generated approval notice for certain public assistance programs;

(2) computer generated notice from HSD;

(3) form completed by hand from a local ISD office;

(4) HSD generated data file listing qualified households;

(5) form completed by any agency charged with determining eligibility for a public assistance program; or

(6) HSD and a utility company/ municipality may mutually agree on a method of notification.

[8.150.600.11 NMAC - Rn, 8.150.610.10 NMAC & A, 10-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment of 8.150.620 NMAC, a repeal of Section 11 and addition of Section 12, effective October 1, 2012.

8.150.620.11 [~~P O I N T S INFORMATION SOURCE:~~ ~~The LIHEAP points guidelines are available from all human services department income support division offices, by writing to: Human Services Department LIHEAP P O Box 25607 Albuquerque NM 87125-6507, or by contacting the income support division customer service desk at 1 800 283-4465, or Relay New Mexico at 1-800 659-8331. If you are disabled and need the guidelines in an alternative format, please make the request when you contact us. The points guidelines are also located on the HSD income support division web site at http://www.hsd.state.nm.us/pdf/LIHEAPPointGuidelines.pdf.~~] [Reserved]

[8.150.620.11 - N, 10-1-01; A, 10-01-06; A, 10-01-07; Repealed, 10-1-12]

8.150.620.12 R E T R O A C T I V E BENEFIT COVERAGE: Households that were denied LIHEAP benefits or received a lesser benefit than they were entitled to but, prevail in an appeal through an agency conference or fair hearing, are entitled a retroactive benefit.

[8.150.620.12 - N, 10-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 281 M E D I C A I D ELIGIBILIY - INSTITUTIONAL CARE (CATEGORIES 081, 083, AND 084)
PART 510 TRUST STANDARDS

8.281.510.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[8.281.510.1 NMAC - N, 10-1-12]

8.281.510.2 SCOPE: The rule applies to the general public.

[8.281.510.2 NMAC - N, 10-1-12]

8.281.510.3 S T A T U T O R Y 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, Sections 27-2-12 et seq.

[8.281.510.3 NMAC - N, 10-1-12]

8.281.510.4 D U R A T I O N : Permanent.

[8.281.510.4 NMAC - N, 10-1-12]

8.281.510.5 EFFECTIVE DATE: October 1, 2012, unless a later date is cited at the end of a section.

[8.281.510.5 NMAC - N, 10-1-12]

8.281.510.6 OBJECTIVE: The objective of this rule is to provide eligibility criteria and procedures for the medicaid programs.

[8.281.510.6 NMAC - N, 10-1-12]

8.281.510.7 DEFINITIONS:

A. "Assets" include all income and resources as described in 8.281.500 NMAC of an applicant/recipient and his/her spouse. Assets not in a trust are considered under the applicable rule to determine if they are countable or excludable for the purposes of medicaid eligibility.

B. "Beneficiary" is the individual(s) for whose benefit the assets are held by the trustee.

C. "Benefit" is something to the advantage of or profit to the recipient.

D. "Community spouse" is an individual as described in Subsection E of 8.281.500.7 NMAC, *definitions*.

E. "Corporate trustee" means a bank, trust company, or company whose primary business is trust services. A corporate trustee may not have any affiliation with the beneficiary either through relatives working for the corporate trustee or investments by the beneficiary with the company other than for administrative fees.

F. "Corpus" is the body of the trust or the original asset used to establish the trust (to include principal, interest, and subsequent additions), such as a sum of money or real property.

G. "Department" is the New Mexico human services department or successor agency.

H. "Grantor" is the owner of or has legal control over the assets placed into a trust. A grantor may also be referred to as a settlor or trustor.

I. "Institutionalized individual" is an individual as described in Subsection K of 8.281.500.7 NMAC.

J. "Irrevocable trust" is created when the grantor does not reserve any right to cancel or revoke any provision of the trust.

(1) Although termed irrevocable, a trust which provides that the trust can only be modified or terminated by a court is a revocable trust because the applicant/ recipient (or his/her responsible party) or the trustee can petition the court to amend or terminate the trust.

(2) Although termed irrevocable, a trust that will terminate if a certain circumstance occurs during the lifetime of the applicant/recipient, such as the applicant/ recipient leaving the nursing facility and returning home, is a revocable trust.

(3) Although termed irrevocable, a trust that can be revoked or terminated upon the agreement of any or all beneficiaries (including residual beneficiaries) is a revocable trust.

K. "Payment" means any disbursal from the corpus of the trust or from income generated by the trust which benefits the party receiving it. A payment may include actual cash, as well as non-cash or property disbursements, such as the right to use and occupy real property.

L. "Residual beneficiary" is a person or entity that receives the remaining trust principal upon the death of the original trust beneficiary.

M. "Revocable trust" is created when the grantor reserves any right to cancel any provision of the trust.

N. "Sole benefit of" means that no individual or entity, except the person for whom the trust was established, may benefit from the assets in any way whether at the time the trust is created or at any time in the future except after medicaid is reimbursed.

O. "Trust" includes any

legal instrument, device or arrangement, that is reduced to writing, signed and executed, which may not be called a trust under state law, or which is similar to a trust. A trust is a legal device in which property (real or personal) or other assets are held by one or more individuals for the benefit of others. A trust is usually created by a transfer of assets from the owner (grantor) to the trustee. Assets are not part of a trust and are considered outside of the trust until the date they are actually transferred into the trust, as demonstrated by verifiable documentation, regardless of the effective date of the trust. The transfer may be made while the grantor is alive or it may be made by will. The transfer of assets into a trust divests the original owner of legal title or restricts access to those assets. Trusts may also include structured settlements meeting the requirements stated above.

P. "Trust records" include, but are not limited to verifiable documentation of all transactions paid by or paid into a trust. Minimal documentation of distributions includes date of transaction, amount of payment (or if not paid by cash or other legal tender, type of asset distributed), person or entity receiving distribution, purpose of distribution, if distribution was made to acquire a non-consumable good, the location of that non-consumable good, and person or entity authorizing the distribution. Minimal documentation of additions to the trust includes the date of the transaction and a description of or amount of the asset transferred into the trust. The department shall not pay any costs or fees for obtaining trust records from the applicant/recipient or the trustee.

Q. "Trustee" is a person or entity who holds and controls the assets in the trust. The trustee usually has legal title to the assets held in the trust and is considered the owner of the trust assets in most dealings with third parties.

[8.281.510.7 NMAC - N, 10-1-12]

8.281.510.8 [RESERVED]

8.281.510.9 MEDICAID QUALIFYING TRUSTS (MQT): An MQT is a trust created prior to August 11, 1993. An MQT is a trust, or similar legal device, established (other than by will) by an applicant/recipient or an applicant/recipient's spouse, under which the applicant/recipient may be the beneficiary of all or part of the distributions from the trust and such distributions are determined by one or more trustees who are permitted to exercise any discretion with respect to distributions to the applicant/recipient. A trust established by an applicant/recipient or an applicant/recipient's spouse includes trusts created or approved by a representative of the applicant/recipient (parent, guardian or person holding power of attorney) or the court where the property placed in trust is intended to satisfy or settle a claim made by or on behalf of the applicant/recipient or the applicant/recipient's spouse. This includes trust accounts or similar devices established for a minor child. In addition, a trust established jointly by at least one of the applicant/recipients who can establish an MQT and another party or parties (who do not qualify as one of these applicant/recipients) is an MQT as long as it meets the other MQT criteria. The provisions regarding MQTs apply even though an MQT is irrevocable or is established for purposes other than enabling an applicant/recipient to qualify for medicaid; and, whether or not discretion is actually exercised.

A. **Similar legal device:** MQT rules listed in this subsection also apply to "similar legal devices" or arrangements having all the characteristics of an MQT except that there is no actual trust document. The determination whether a given document or arrangement constitutes a "similar legal device" shall be made by the department.

B. **MQT resource treatment:** For revocable MQTs, the entire principal is an available resource to the applicant/recipient. For irrevocable MQTs, the countable amount of the principal is the maximum amount the trustee can disburse to (or for the benefit of) the applicant/recipient, using his/her full discretionary powers under the terms of the trust. If the trustee has unrestricted access to the principal and has discretionary power to disburse the entire principal to the applicant/recipient (or to use it for the applicant/recipient's benefit), the entire principal is an available resource to the applicant/recipient. Placement of an asset excluded by 8.281.500.13 NMAC, *resource exclusions*, into a trust does not change the nature of the asset. The asset remains excluded, except for the home of an institutionalized individual. If the home of an institutionalized individual is placed in a trust, it becomes a countable resource. The value of the property is included in the value of the principal. If the MQT permits a specified amount of trust income to be distributed periodically to the applicant/recipient (or to be used for his/her benefit), but those distributions are not made, the applicant/recipient's countable resources increase cumulatively by the undistributed amount.

C. **Income treatment:** Amounts of MQT income distributed to the applicant/recipient or to third parties for the applicant/recipient's benefit are countable income when distributed.

D. **Transfer of resources:** If the MQT is irrevocable, a transfer of resources has occurred to the extent that the applicant/ recipient or grantor's access to the principal is restricted (e.g., if the trust states that the trustee cannot access the principal, but must distribute the income produced by that principal to the applicant/recipient, the principal is not an available resource and has, therefore, been transferred). See 8.281.500.14 NMAC.

E. **Beneficiary of trust lives in an ICF-MR:** If the beneficiary of a trust is an applicant/recipient who is mentally retarded and resides in an intermediate care facility for the mentally retarded (ICF-MR), that applicant/recipient's trust is not considered an MQT if the trust or trust decree was established prior to April 7, 1986, and is solely for the benefit of that applicant/recipient.

F. **Treatment of SSI or social security lump sum payments:** SSI or social security lump sum payments for retroactive periods which are placed in an MQT do not qualify for the 9-month exclusion from countable resources. The trust is evaluated as an MQT for purposes of medicaid eligibility.

G. Trust records shall be open at all reasonable times to inspection by the department and copies shall be provided upon the request of an authorized representative of the department.

[8.281.510.9 NMAC - Rp, 8.281.510.15 NMAC, 10-1-12]

8.281.510.10 TRUSTS ESTABLISHED ON OR AFTER AUGUST 11, 1993: Trusts established on or after August 11, 1993 are evaluated using the provisions of OBRA 93. The term "medicaid qualifying trust" or MQT is no longer used after that date. Any trust which meets the basic definition of a trust can be counted in determining eligibility for medicaid. No clause or requirement in a trust, no matter how specifically it applies to medicaid or other federal or state programs (i.e. exculpatory clauses) precludes a trust from being considered under 8.281.500 NMAC. Depending on how the trust is structured, the amounts in the trust may count as resources, income, or a transfer of assets. All trusts submitted for review by the department must be in writing, signed, and fully executed. Trusts that are not signed and executed will not be considered as effective trusts until they are signed and executed. Assets are not part of a trust and are considered outside of the trust until the date they are actually transferred into the trust, as demonstrated by verifiable documentation, regardless of the effective date of the trust.

A. The standards set forth in this section shall apply to trusts or similar legal devices without regard to:

(1) the purposes for which the trust is established;

(2) whether the trustee(s) has discretion or exercises such discretion under

the trust;

(3) any restrictions on when or whether distributions can be made from the trust; and

(4) or any restrictions on the use of distributions from the trust.

B. **Trust establishment:** An applicant/recipient is considered to have established a trust and that trust is considered to belong to that applicant/recipient if his/her assets were used to form all or part of the corpus of the trust. Applicants/recipients to whom the trust provisions apply shall include any applicant/recipient who establishes a trust and who is an applicant/recipient for medicaid services. An applicant/recipient shall be considered to have established a trust if any of his/her assets, regardless of the amount, were used to form part or all of the corpus of the trust.

(1) The trust must have been established, other than by will, by any of the following individuals:

(a) applicant/recipient;

(b) applicant/recipient's spouse;

(c) an individual, including a court or administrative body, with legal authority to act in place of, or on behalf of, the applicant/recipient or his/her spouse; or

(d) an individual, including a court or administrative body, acting at the direction of, or upon the request of, the applicant/recipient or his/her spouse.

(2) When the corpus of a trust includes assets of another person or persons not described in (a) through (d) above, as well as assets of the applicant/recipient, the rules apply only to the portion of the trust attributable to the assets of the applicant/recipient. Thus, in determining countable income and resources in the trust for eligibility and post-eligibility purposes, the ISD caseworker shall prorate any amounts of income and resources, based on the proportion of the applicant/recipient's assets in the trust to those of other persons. (For example: if the applicant/recipient and his two sisters create a trust and each sister contributes a total value of $50,000 and the applicant contributes $25,000, the applicant's prorated share is 20 percent of the entire value of the trust.)

C. **Treatment of trusts:** For purposes of determining medicaid eligibility, the treatment of trusts shall be dependent on the characteristics of the trust.

D. **Revocable trusts:**

(1) the entire corpus of the trust shall be counted as a resource available to the applicant/recipient; and

(2) any payments from the trust made to or for the benefit of the applicant/recipient shall be counted as income (unless otherwise excludable, see 8.281.500.20 NMAC, *unearned income*, and 8.281.500.21 NMAC, *deemed income*); and

(3) any payments from the trust which are not made to or for the benefit of the applicant/recipient shall be considered as assets transferred for less than fair market value (see Section 8.281.500.14 NMAC, *asset transfers*).

E. **Irrevocable trusts:** In an irrevocable trust from which payment can be made under the terms of the trust to or for the benefit of the applicant/recipient from all or a portion of the trust.

(1) The following shall apply to that trust or that portion of the trust:

(a) payments from income or from the corpus made to or for the benefit of the applicant/recipient shall be treated as income to the applicant/recipient unless otherwise excludable (see 8.281.500.20 NMAC and 8.281.500.21 NMAC);

(b) income on the corpus of the trust which could be paid to or for the benefit of the applicant/recipient shall be counted as a resource available to the applicant/recipient;

(c) the portion of the corpus that could be paid to or for the benefit of the applicant/recipient shall be treated as a resource available to the applicant/recipient; and

(d) payments from income or from the corpus that are made, but not to or for the benefit of the applicant/recipient, shall be treated as a transfer of assets for less than fair market value (see Section 8.281.500.14 NMAC).

(2) In the case of an irrevocable trust from which payments from all or a portion of the trust cannot, under any circumstances, be made to or for the benefit of the applicant/recipient, all of the trust, or any such portion or income thereof, shall be treated as a transfer of assets for less than fair market value (see Section 8.281.500.14 NMAC).

(a) In treating these portions as a transfer of assets, the date of transfer shall be considered to be the date the trust was established, or, if later, the date on which the applicant/recipient no longer had a right of payment.

(b) For transfer of assets purposes, in determining the value of the portion of the trust which cannot be paid to the applicant/recipient, amounts that have been paid, for whatever purpose, shall not be subtracted from the value of the trust on the date the trust was created or, if later, the date that payment could no longer be made. The value of the transferred amount shall be no less than the value on the date the trust is established or, if later, on the date that payment could no longer be made. If additional funds are added to this portion of the trust, those funds shall be treated as a new transfer of assets for less than fair market value, as of the date the additional funds were added to the trust. (See Section 8.281.500.14 NMAC)

F. Payments are considered countable to the applicant/recipient when made from a revocable or irrevocable trust to or on behalf of the applicant/recipient including payments of any sort, including an amount from the corpus or income produced by the corpus, paid to another person or entity such that the applicant/recipient derives some benefit from the payment.

G. In determining whether payments can or cannot be made from a trust to or for an applicant/recipient, the department shall take into account any restrictions on payments, such as use restrictions, exculpatory clauses, or limits on trustee discretion that may be included in the trust. Any amount in a trust for which payment can be made, no matter how unlikely the circumstance of payment might be or how distant in the future, shall be considered a payment that can be made under some circumstances. For example, if an irrevocable trust provides that the trustee can disburse only $1,000 to or for the applicant/recipient out of a $10,000 trust, only the $1,000 is treated as a payment that could be made. The remaining $9,000 is treated as an amount which cannot, under any circumstances, be paid to or for the benefit of the applicant/recipient and may be subject to a transfer penalty. On the other hand, if a trust contains $25,000 that the trustee can pay to the applicant/recipient only in the event that the applicant/recipient needs, for example, a heart transplant, this full amount is considered as a payment that could be made under some circumstance, even though the likelihood of payment is remote. Similarly, if a payment cannot be made until some point in the distant future, it is still payment that can be made under some circumstances and the funds are counted as a resource.

H. Institutionalized individuals with a community spouse: A transfer to a trust (or similar instrument) for the sole benefit of a community spouse shall be treated in accordance with the provisions above. If the trust is established by either spouse (using at least some of the couple's assets) the trust shall be reviewed by the department for availability of resources, in accordance with the provisions above. If the payment from such a trust shall be considered an available resource to either spouse, the trust shall be included as a countable resource in determining medicaid eligibility for the institutionalized spouse.

I. Trust records shall be open at all reasonable times to inspection by the department and copies shall be provided upon the request of an authorized representative of the department. The department shall not be charged any fees or costs associated with providing trust records to the department.

[8.281.510.10 NMAC - Rp, 8.281.500.15 NMAC, 10-1-12]

8.281.510.11 RECOGNIZED MEDICAID TRUSTS: The trust provisions set forth in 8.281.510.9 NMAC and 8.281.510.10 NMAC shall not apply to the following trusts so long as the trust document meets all the requirements set forth in this section.

A. The recognized medicaid trusts described in this section (special needs trusts and non-profit trusts for certain disabled individuals) are subject to the following.

(1) Only income and resources distributed directly to the applicant/recipient or to a third party on the applicant/recipient's behalf by the trustee are considered available to the applicant/recipient in determining medicaid eligibility if the applicant/recipient could use the payment for food or shelter for him/herself.

(2) The trusts are reversionary trusts meaning the trust must provide that, upon the death of the applicant/recipient, any funds remaining in the trust revert to the state medicaid agency, up to the amount paid in medicaid benefits on the applicant/recipient's behalf. If the applicant/recipient has resided in more than one state, the trust must provide that the funds remaining in the trust are distributed to each state in which the applicant/recipient received medicaid, based on the state's proportionate share of the total amount of medicaid benefits paid by all of the states on the applicant/recipient's behalf.

(3) All trusts submitted for review to the department must be in writing, signed, and fully executed. Trusts that are not signed and executed will not be considered as effective trusts until they are signed and executed. Trusts must also be funded as demonstrated by verifiable documentation prior to review by the department.

(4) Assets are not part of a trust and are considered outside of the trust until the date they are actually transferred into the trust, as demonstrated by verifiable documentation, regardless of the effective date of the trust. Assets outside of a trust will be evaluated according to the applicable regulations regarding the counting of resources.

(5) Since the department is a reversionary beneficiary for all of the trusts described in the rest of this section, any legal action concerning one of these trusts must name the department as an interested party and the department must be notified by service of process in accordance with the New Mexico Rules of Civil Procedure.

(6) The applicant/recipient may not be the trustee and may not have any ability, access, or authority to manage or control the trust account.

(7) Each trust document must identify the person or organization that drafted the trust document.

(8) If the department approves or previously approved a recognized medicaid trust, the trust and administration of the trust are subject to review by the department, at least annually, and more frequently upon the request of the department, to determine if the trust remains a valid trust for the purposes of meeting the requirements of a recognized medicaid trust.

(9) If the department determines that a trust is invalid under Paragraph (8) above, the department will evaluate the applicant/recipient's medicaid eligibility, applying the provisions of 8.281.500 NMAC to the corpus of any existing trust. If the corpus of the trust is not disclosed, or cannot be identified by the department due to a lack of documentation, the department will presume that the corpus of the trust is a countable resource in excess and will be counted toward the allowable resource limit in 8.281.500.11 NMAC, *applicable resource standards*.

(10) The trustee and any alternate trustees shall be specifically identified by name and address.

(11) The department shall not be charged any fees or costs for obtaining trust records or documents.

(12) The trust may not under any circumstances provide a loan to the beneficiary or any other individual or entity.

(13) The trust must be in compliance with all applicable criteria as set forth in 8.281.510.11 NMAC.

(14) All trusts under Subsection B below must terminate upon the death of the beneficiary and provision made to immediately disburse the remaining corpus in accordance with the terms of the trust.

B. **Special needs trusts:** A special needs trust is a trust containing the assets of a disabled applicant/recipient established and funded prior to the time the disabled applicant/recipient reaches the age of 65 and which is established for the sole benefit of the disabled applicant/recipient by a parent, grandparent, legal guardian of the disabled applicant/recipient, or a court. To qualify as a special needs trust, the trust shall contain the following provisions.

(1) The trust shall be identified as an OBRA '93 trust established pursuant to 42 U.S.C. Section 1396p(d)(4)(A).

(2) The trust shall not contain any provisions to automatically alter the form of the trust from an individual trust to a "pooled trust" under 42 U.S.C. Section 1396p(d)(4)(C). The special needs trust should be properly dissolved and a pooled trust should be created in accordance with federal and state laws.

(3) The trust shall specifically state that the trust is for the sole benefit of the trust beneficiary. Only trusts which are intended for the sole benefit of the disabled applicant/recipient are special needs trusts. Any trust which provides benefits to other persons is not for the sole benefit of the trust beneficiary and shall not be considered a special needs trust. The trust may provide for reasonable compensation to a trustee and shall provide for the reimbursement to the department on the death of the trust beneficiary.

(4) The trust shall specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any federal, state or other governmental entity for which the beneficiary may otherwise be eligible or for which the beneficiary may be receiving.

(5) Parents shall not be relieved of their duty to support a minor child. A minor's funds in a trust shall not be expended on routine support that should be provided by the parents.

(6) The trust shall specifically state the age of the trust beneficiary, whether the trust beneficiary is disabled within the definition of 42 U.S.C. Section 1382c(a)(3), and whether the trust beneficiary is competent at the time the trust is established.

(7) If the trust beneficiary is a minor, the trustee shall execute a bond to protect the child's funds or shall get a court's written order exempting him/her from the bond requirement.

(8) If there is some question about the trust beneficiary's disability, independent proof may be required.

(9) If the trust beneficiary is a minor, the trust shall state whether the trust beneficiary is expected to be competent at his or her majority.

(10) The trust shall specifically identify, in an attached schedule, the source of the initial trust property and all assets of the trust. If the trust is being established with funds from the proceeds of a settlement or judgment subsequent to the bringing of a legal cause of action, medicaid's claim for its expenditures that are related to the cause of action shall be repaid immediately upon the receipt of such proceeds and prior to the establishment of the trust.

(11) Subsequent additions made to the trust corpus shall be reported to the ISD caseworker upon application and recertification. Subsequent additions to the trust (other than interest on the corpus) after the applicant/recipient reaches age 65 may be subject to transfer of asset provisions (unless an exception to transfer of asset provisions applies).

(12) If subsequent additions are to be made to the trust corpus with funds not belonging to the trust beneficiary, it shall be understood that those funds are a gift to the trust beneficiary and cannot be reclaimed by the donor.

(13) If the trust makes provisions which are intended to limit invasion by creditors or to insulate the trust from liens

or encumbrances, the trust shall state that such provisions are not intended to limit the state's right to reimbursement or to recoup incorrectly paid benefits.

(14) The special needs trust shall identify the grantor by name, indicate his/her relationship to the primary beneficiary, and state that it is established by a parent, grandparent, or legal guardian of the trust beneficiary, or by a court. A court can be named as the grantor, if the trust is established pursuant to a settlement of a case before it, or if the court is otherwise involved in the creation of the trust.

(15) The trust may pay administration fees and legal bills incurred by the beneficiary related to the trust administration.

(16) The trust shall specifically state that it is irrevocable. Neither the grantor, nor the beneficiary, or any remainder beneficiaries shall have any right or power, whether alone or in conjunction with others, in whatever capacity, to revoke or terminate the trust or to designate the persons who shall possess or enjoy the trust estate during his/her lifetime. However, the trustee may seek an amendment for the limited purpose of ensuring that the trust complies with any changes to the laws governing the trust, per the agreement of all interested parties, to include the department. All such amendments shall be reviewed, consented to, and approved in writing by the department or its successor agency prior to finalizing the amendments. Any amendments not agreed to in writing by the department are void. Trust records shall be open at all reasonable times to inspection by the department and copies shall be provided, at no cost to the department, upon the request of an authorized representative of the department.

(17) The trustee shall be specifically identified by name and address. The trust shall state that the original trust beneficiary cannot be the trustee. The trust shall make provisions for naming a successor trustee in the event that any trustee is unable or unwilling to serve. The department as well as the trust beneficiary or guardian (if applicable), shall be given prior notice if there is a change in the trustee.

(18) The trust shall specifically state that the trustee shall fully comply with all state laws and regulations, including prudent administration per, NMSA 1978, Section 46A-8-804 (2003). The trust shall provide that the trustee cannot take any actions not authorized by, or without regard to, state laws and regulations.

(19) The trust shall specifically state that the trustee shall be compensated only as provided by law. The costs of administration must comply with NMSA 1978, Section 46A-8-805(2003). If the trust identifies a guardian, the trust shall specifically identify him or her by name. A guardian shall be compensated only as provided by law. The parent of a minor child shall not be compensated from the trust as the child's guardian.

(20) The trust shall specifically name the department as a remainder beneficiary with priority over any other beneficiaries except the primary beneficiary for whom the trust was created. The trust shall specifically state that, upon the death of the primary beneficiary, the department will be immediately notified by the trustee in writing, and shall be paid all amounts remaining in the trust up to the total value of all medical assistance paid on behalf of the primary beneficiary. The trustee shall comply fully with this obligation to first repay the department, without requiring the department to take any action except to establish the amount to be repaid. Repayment shall be made by the trustee to the department or to any successor agency within 30 days after receiving written notification by the department of the amounts expended on behalf of the primary beneficiary.

(a) Allowable administrative expenses: The following types of administrative expenses may be paid from the trust prior to reimbursement to the department for medical assistance paid: taxes due from the trust to the state or federal government because of the death of the beneficiary, and reasonable fees for administration of the trust estate such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust. Payment of such expenses must be fully documented and copies of the documentation provided to the department within seven calendar days of making such payments.

(b) Prohibited expenses and payments: Examples of some types of expenses that are not permitted prior to reimbursement to the department for medical assistance, include but are not limited to: taxes due from the estate of the beneficiary other than those arising from inclusion of the trust in the estate, inheritance taxes due for residual beneficiaries, payment of debts owed to third parties other than the department, funeral expenses, and payments to residual beneficiaries.

(21) If there is a provision for repayment of other assistance programs, the trust shall specifically state that the medicaid program shall be repaid prior to making repayment to any other assistance programs.

(22) The trust shall specifically state that if the beneficiary has received medicaid benefits in more than one state, each state that provided medicaid benefits shall be repaid. If there is an insufficient amount left to cover all benefits paid, then each state shall be paid its proportionate share of the amount left in the trust, based upon the amount of support provided by each state to the beneficiary.

(23) No provisions in the trust shall permit the trustee or the estate's representative to first repay other persons or creditors at the death of the beneficiary. Only what remains in the trust after the repayments specified in Paragraphs (20) through (22) above have been made shall be considered available for other expenses or beneficiaries of the estate.

(24) The trust shall specify that an accounting of all additions and expenditures made by or into the trust shall be submitted to the department on an annual basis, or more frequently upon the request of the department. The department shall not be charged any fees or costs for obtaining these records.

(25) The trust shall not create other trusts within it.

(26) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the department must be named in the controlling documents as the primary remainder beneficiary up to the total amount of medical assistance paid on behalf of the individual.

(27) Distributions from the trust made to or for the benefit of a third party that are not for the sole primary benefit of the disabled individual are treated as a transfer of assets for less than fair market value and may create a period of ineligibility for certain medicaid services.

C. **Income diversion trusts:** An applicant/recipient whose income exceeds the income standard may be eligible to receive medicaid through the creation and funding of an income diversion trust. The trust terminates upon the death of the beneficiary. An income diversion trust must meet all of the following requirements.

(1) The trust is composed only of pension, social security, and other income to the applicant/recipient, including accumulated income in the trust.

(2) Only income distributed directly to the applicant/recipient or to a third party on the applicant/recipient's behalf by the trustee are considered available to the applicant/recipient in determining medicaid eligibility if the applicant/recipient could use the payment for food or shelter for him/herself.

(3) An income diversion trust is a reversionary trust meaning the trust must provide that, upon the death of the applicant/recipient, any funds remaining in the trust revert to the state medicaid agency, up to the amount paid in medicaid benefits on the applicant/recipient's behalf.

(4) If the applicant/recipient has resided in more than one state, the trust must provide that the funds remaining in the trust are distributed to each state in which the applicant/recipient received medicaid, based

on the state's proportionate share of the total amount of medicaid benefits paid by all the states on the applicant/recipient's behalf.

(5) The trustee may, upon the death of the beneficiary, pay the expenses of the beneficiary's burial or cremation up to the amount then authorized for burial expenses under federal and state medicaid law and regulations, to the extent other resources are not so designated.

(6) The trusts described in this section are also known in New Mexico as Maxwell v. Heim income diversion trusts; those trusts executed on or after August 11, 1993 no longer have to be court ordered or approved.

D. **Non-profit trusts for certain disabled individuals:** Trusts containing the assets of applicants/recipients who meet the social security administration's definition of disability.

(1) The trust must meet all the following criteria to be considered a non-profit trust for certain disabled individuals:

(a) the trust is established and managed by a non-profit association;

(b) a separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools these accounts;

(c) accounts in the trust are established solely for the benefit of applicants/recipients who meet the social security administration's definition of disability and are established by the parent, grandparent, or legal guardian of such applicants/recipients, by such applicants/recipients themselves, or by a court;

(d) to the extent that any amounts remaining in the applicant/recipient's trust account upon his/her death are not retained by the trust, the trust pays to the department an amount equal to the total amount of medicaid benefits paid on behalf of the applicant/recipient;

(i) allowable administrative expenses: the following types of administrative expenses may be paid from the trust prior to reimbursement to the department for medical assistance paid: taxes due from the trust to the state or federal government because of the death of the beneficiary, and reasonable fees for administration of the trust estate such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust; payment of such expenses must be fully documented and copies of the documentation provided to the department within seven calendar days of making such payments;

(ii) prohibited expenses and payments: examples of some types of expenses that are not permitted prior to reimbursement to the department for medical assistance, include but are not limited to: taxes due from the estate of the beneficiary other than those arising from inclusion of the trust in the estate, inheritance taxes due for residual beneficiaries, payment of debts owed to third parties, funeral expenses, and payments to residual beneficiaries; and

(iii) any income or resources added to the trust after the applicant/recipient reaches 65 years of age may subject him or her to a transfer of assets penalty.

(2) A trustee of a non-profit trust, in order to fulfill his or her fiduciary obligations with respect to the state's remainder interest in the trust, must:

(a) notify the department, in writing, of the creation or funding of the trust for the benefit of an applicant/recipient; and

(b) notify the department, in writing, of the death of the beneficiary of the trust; and

(c) notify the department, in writing, in advance of any transactions involving transfers from the trust principal for less than fair market value.

(3) Trust records shall be open at all reasonable times to inspection by the department and copies shall be provided, at no cost to the department, upon the request of an authorized representative of the department.

[8.281.510.11 NMAC - Rp, 8.281.500.15 NMAC, 10-1-12]

8.281.510.12 OTHER TRUSTS:

A. **Limited partnerships**: A limited partnership is a "similar legal device" to a trust. Trust provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) direct that the term "trust" includes any legal device similar to a trust. Therefore, OBRA 93 trust provisions of this section apply to limited partnerships. The general partners act as trustee, and the limited partners are the equivalent of beneficiaries of an irrevocable trust. To the extent that the general partners can make each limited partner's ownership interest available to him, that interest is a countable resource and not a transfer of assets. However, a transfer of assets has occurred to the extent that:

(1) the value of the share of ownership purchased by the limited partner is less than the amount he invested;

(2) the general partners cannot make the limited partner's share available to him;

(3) if transfer-of-assets provisions apply, the look-back period is 60 months.

B. **Trusts created by will:** Trusts that are created by will, but are not in effect (i.e., the testator is not deceased) are not considered as countable resources. Once a trust created by will is in effect and funded (i.e., the testator is deceased), the trust will be reviewed according to Subsection C, below.

C. **Third party trusts:**

(1) Third party trusts are trusts which are established with assets contributed by individuals other than the applicant/recipient or the applicant/recipient's spouse for the benefit of an applicant/recipient.

(2) The terms of the trust will determine whether the trust fund is countable as a resource or income for medicaid eligibility.

(a) Trusts which limit distributions to non-support or supplemental needs will not be considered as a countable resource in their entirety.

(b) If the applicant/recipient has the right to demand a distribution, the amount that may be demanded is countable, whether or not it is actually distributed.

(c) If the trustee may exercise discretion in distributing income or resources to the applicant/recipient or on behalf of the applicant/recipient, only the actual distributions of income or resources are countable in determining eligibility.

(d) If the applicant/recipient as the beneficiary of the trust may revoke or direct distributions from the trust, the trust is considered a countable resource.

(3) Trust records shall be open at all reasonable times to inspection by the department and copies shall be provided, at no cost to the department, upon the request of an authorized representative of the department.

[8.281.510.12 NMAC - Rp, 8.281.500.15 NMAC, 10-1-12]

8.281.510.13 UNDUE HARDSHIP: An applicant/recipients who has excess resources and is unable to access resources from an existing trust will not be found ineligible for medicaid where the department determines, on a case by case basis, that denial of eligibility on the basis of excess resources would work an undue hardship.

A. The applicant/recipient must demonstrate that the application of the trust regulation would deprive the applicant/recipient or his/her spouse of:

(1) medical care such that the applicant/recipient's health or life would be endangered; or

(2) food, clothing, shelter or other necessities of life.

B. The applicant/recipient must submit any documentation to support the claim that application of the trust regulation would constitute an undue hardship within 30 days of the date of the notice regarding eligibility for medicaid.

C. Undue hardship does not exist when the application of the trust regulation causes an applicant/recipient or his/her family members inconvenience or restricts their lifestyle.

D. The county director of the ISD office will make a decision regarding

an application for waiver of the trust regulation within 30 days of receipt of the application. The decision to grant a waiver shall be reviewed at every re-certification to determine if the circumstances justifying a waiver are still applicable.

E. Notice of the decision shall be mailed to the applicant/recipient or his/her representative.

F. The applicant/recipient or his/her representative must notify the ISD caseworker of any change in circumstances which affects the application of the undue hardship waiver exception within ten days of the change in circumstances. The department will review the change of circumstances and determine the next appropriate action, which may include withdrawal of the waiver.

[8.281.510.13 NMAC - Rp, 8.281.500.15 NMAC, 10-1-12]

8.281.510.14 USE OF TRUST V. TRANSFER RULES FOR ASSETS PLACED IN TRUST: When a non-excluded asset is placed in a trust, a transfer of assets for less than fair market value generally takes place. An applicant/recipient (or someone acting on behalf of the applicant/recipient) placing an asset in a trust generally gives up ownership of the asset to the trust. If the applicant/recipient does not receive fair compensation in return, a penalty is imposed under the transfer of assets provisions. However, the trust provisions contain specific requirements for treatment of assets placed in trusts. These requirements indicate when assets are considered countable as income or resources, and as a transfer of assets depending on the specific circumstances of the particular trust. Application of the trust regulations, along with the imposition of a penalty for the transfer of the assets into the trust, could result in the applicant/recipient being penalized twice for actions involving the same asset. If an asset is subject to the trust regulations and a transfer of asset penalty, the requirements of the trust regulations take precedence over a transfer of assets penalty for the same asset.

[8.281.510.14 NMAC - N, 10-1-12]

8.281.510.15 EXCLUDED ASSETS PLACED IN A TRUST: Placement of excluded assets in a trust, with the exception of a home, shall not result in a penalty of ineligibility because the transferred asset is not an asset for transfer purposes. However, a home, whether excluded or not, when transferred into a trust shall be considered a resource unless:

A. the trust is for the sole benefit for the applicant/recipient's spouse; or

B. was transferred to a trust that is in compliance with Subsections B or D of 8.281.510.11 NMAC that is established for the sole benefit of the applicant/recipient's disabled child, or

C. was transferred to a trust that is in compliance with Subsection B or D of 8.281.510.11 NMAC that is established solely for the benefit of an individual who is under 65 years of age and who is disabled.

[8.281.510.15 NMAC - N, 10-1-12]

8.281.510.16 DOCUMENTATION OF TRUSTS AND TRUST RECORDS: Applicants/recipients shall disclose the existence of any trust to which they have contributed income, resources, or are a beneficiary. Upon learning of the existence of a trust, the ISD caseworker must obtain a copy of the trust document, including all attachments, and forward it to the MAD eligibility unit so that it may be reviewed by MAD for a determination on how the trust may affect medicaid eligibility. Trust records shall be open at all reasonable times to inspection by the department and copies shall be provided upon the request of an authorized representative of the department. The department shall not be charged any fees or costs associated with providing trust records to the department. Any records relating to a trust that are sealed by a court order or settlement agreement shall be produced to the department by the applicant/recipient or trustee upon request. Failure to provide such records will result in the presumption that the applicant/recipient's trust is a countable resource that exceeds the resource limitation at 8.281.500 NMAC.

[8.281.510.16 NMAC - N, 10-1-12]

8.281.510.17 COMMENCEMENT OF PROCEEDINGS: The department may commence a proceeding against the trustee of a trust, if the department considers any acts, omissions, or failures of the trustee to be inconsistent with the terms of the trust, contrary to applicable laws or regulations, or contrary to the fiduciary obligations of the trustee.

[8.281.510.17 NMAC - N, 10-1-12]

8.281.510.18 NON-COMPLIANCE WITH TERMS OF TRUST: If the department suspects or determines that the trustee is not complying with the terms of a trust that has been approved by the department, the department will send a letter to the recipient of services or his or her representative requesting more information or describing the specific actions that are not in compliance with the trust which may include but is not limited to proper management of the funds in the trust. The recipient will have 15 days to provide the requested information or demonstrate, through documentation, that the actions of the trustee are not in violation of the terms of the trust. Failure to respond or to adequately demonstrate that the terms of the trust have not been violated may result in a transfer of assets penalty, disqualification from eligibility to receive benefits, and legal action, as appropriate. If the department identifies that the violation of the terms of the trust has been to inadequately fund the trust, the recipient shall immediately obtain a corporate trustee and amend the trust to be managed by that corporate trustee.

[8.281.510.18 NMAC - N, 10-1-12]

8.281.510.19 AMENDMENTS TO CERTAIN TRUSTS: A special needs trust, income diversion trust, or pooled charitable trust that was created prior to the effective date of these regulations must fully comply with these regulations as part of any subsequent amendments made to those trusts on or after the effective date of these regulations.

[8.281.510.19 NMAC - N, 10-1-12]

HISTORY OF 8.281.510 NMAC:

NMAC History:

8 NMAC 4.ICM.500, Eligibility Policy, Income and Resource Standards, filed 12-30-94.

8 NMAC 4.ICM.500, Eligibility Policy, Income and Resource Standards, filed 7-17-97.

8.281.500 NMAC, Income and Resource Standards, filed 2-15-01.

8.281.500.15 NMAC, Trusts, filed 2-15-01 - Replaced by 8.281.510 NMAC, Trust Standards, effective 10-1-12.

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.201.500 NMAC. 8.201.500.12 NMAC is new and 8.201.500.13 NMAC through 8.201.500.16 NMAC were renumbered, effective October 1, 2012.

8.201.500.12 TRUSTS:

See 8.281.510 NMAC and following subsections.

[2/1/95; 8.201.500.12 NMAC - Rn, 8 NMAC 4.EXT.520 & A, 10/1/09; 8.201.500.12 NMAC - N, 10/1/1/12]

~~[8.201.500.12]~~ 8.201.500.13 INCOME STANDARDS: To be eligible for medicaid extension, an applicant/recipient must have countable income below the SSI FBR. See 8.215.500.18 NMAC, *income*, through 8.215.500.22 NMAC, *disregards*, for information on exclusions, disregards, and countable income.

[2/1/95; 8.201.500.13 NMAC - Rn, 8 NMAC 4.EXT.522 & A, 10/1/09; 8.201.500.13 NMAC - Rn, 8.201.500.12 NMAC, 10/1/12]

~~[8.201.500.13]~~ 8.201.500.14 COMPUTATION OF COLA DISREGARDS IN PICKLE AND 503 LEADS CASES:

A. An applicant/recipient's

countable income, after exclusion of the Title II COLAs received following SSI termination, must be less than the current SSI federal benefit rate (FBR).

B. To determine the total amount of the applicant/recipient's Title II COLAs received since the applicant/ recipient lost SSI, the following calculation must be completed:

(1) divide the current Title II amount by the percentage amount of the previous year's COLA;

(2) repeat this calculation for each Title II COLA benefit received after the applicant lost SSI; computations are based on the previous year's COLA and previous benefit; see 8.200.520.12 NMAC, *COLA disregard computation*, of 503 leads and pickle cases;

(3) when the last computation is completed, the result is the Title II benefit amount the applicant/ recipient was receiving when he/she lost SSI;

(4) subtract this amount from the current Title II benefit amount; the result is the aggregate Title II COLAs the applicant/ recipient received after losing SSI; and

(5) subtract the aggregate COLAs from the applicant/recipient's countable income to determine if the income is below the current SSI FBR.

C. If the resulting income is below the current SSI FBR, and the applicant/recipient meets all other requirements for SSI, he/she is eligible for medicaid extension.

[2/1/95; 8.201.500.14 NMAC - Rn, 8 NMAC 4.EXT.523 & A, 10/1/09; 8.201.500.14 NMAC - Rn, 8.201.500.13 NMAC, 10/1/12]

[~~8.201.500.14~~] 8.201.500.15 DEEMED INCOME: If an applicant/recipient is a minor who lives with a parent(s), deemed income from the parent(s) must be considered. If an applicant/recipient is married and lives with a spouse, deemed income from the spouse must be considered. See 8.215.500.21 NMAC, *deemed income*, for information on deemed income. If an applicant/recipient has a spouse or parent who receives Title II benefits, all COLAs received by the spouse/parent since the applicant/recipient lost SSI are deducted from the spouse/parent's income before it is deemed to the applicant/recipient.

[2/1/95; 8.201.500.15 NMAC - Rn, 8 NMAC 4.EXT.526 & Repealed, 10/1/09; 8.201.500.15 NMAC, Rn, 8.201.500.14 NMAC, 10/1/12]

[~~8.201.500.15~~] 8.201.500.16 [RESERVED]

[8.201.500.16 NMAC - Rn, 8.201.500.15 NMAC, 10/1/12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.240.500 NMAC, Sections 12-15, effective October 1, 2012.

8.240.500.12 TRUSTS: See 8.281.510 NMAC and following subsections.

[2/1/95; 9/15/95; 8.240.500.12 NMAC - Rn, 8 NMAC 4.QMB.520 & A, 7/15/10; 8.240.500.12 NMAC - N, 10/1/12]

[~~8.240.500.12~~] 8.240.500.13 INCOME STANDARDS: The income ceiling for QMB eligibility is 100 percent of the federal income poverty guidelines. These guidelines are updated annually effective April 1st. See 8.200.520 NMAC, *Income Standards*. If the applicant is a minor child, income must be deemed from the parent(s). Income must be verified and documented in the case record. See 8.215.500.13 NMAC, *countable resources*, and 8.215.500.14 NMAC, *resource exclusions*, for specific information on exclusions, disregards, and calculation of countable income.

[2/1/95; 9/15/95; 8.240.500.13 NMAC - Rn, 8 NMAC 4.QMB.522 & A, 7/15/10; 8.240.500.13 NMAC - Rn, 8.240.500.12 NMAC, 10/1/12]

[~~8.240.500.13~~] 8.240.500.14 UNEARNED INCOME: Unearned income exclusions: All social security and railroad retirement beneficiaries receive cost of living adjustments (COLAs) in January of each year. The ISD caseworker must disregard the COLA from January through March when (re)determining QMB eligibility. For redeterminations made in January, February and March and for new QMB applications registered in January, February or March, the ISD caseworker uses the December social security and railroad retirement benefit amounts. For QMB applications registered from April through December, total gross income including the new COLA figures are used to determine income and compared to the new April federal poverty levels. This exclusion does not apply to other types of income.

[2/1/95; 9/15/95; 8.240.500.14 NMAC - Rn, 8 NMAC 4.QMB.523 & A, 7/15/10; 8.240.500.14 NMAC - Rn, 8.240.500.13 NMAC, 10/1/12]

[~~8.240.500.14~~] 8.240.500.15 DEEMED INCOME:

A. Minor applicant/ recipient living with parent(s): If the applicant/recipient is a minor who lives with a parent(s), deemed income from the parent(s) must be considered in accordance with 8.215.500.21 NMAC, *deemed income*, and applicable subsections.

B. Applicant/recipient living with an ineligible spouse: If an applicant/recipient is living in the same household with an ineligible spouse, the income of the applicant/recipient and the income of the ineligible spouse must be considered in accordance with the following paragraphs.

(1) Evaluation of applicant/ recipient's Income: The ISD caseworker determines the amount of income available to the applicant/recipient using only the applicant/recipient's own income. Allow the standard $20 disregard in accordance with instructions in Subsection B of 8.215.500.22 NMAC of the medical assistance division policy manual. If the applicant/recipient has earned income, allow the earned income disregard as specified in Subsection C of 8.215.500.22 NMAC. From the combined total of the applicant/recipient's remaining earned and unearned income, subtract up to the difference between 100 percent of the federal income poverty level for two persons and 100 percent of the federal income poverty level for one person. This is referred to as the FPL disregard. Compare the remaining countable income of the applicant/recipient to the individual income standard for the QMB program. If the applicant/recipient's remaining countable income is greater than the individual standard, s/he is ineligible for the QMB program. If the applicant/ recipient's remaining countable income is less than the individual income standard, proceed to the following section.

(2) Evaluation of the ineligible spouse's gross income: The ISD caseworker determines the total gross earned and unearned income of the ineligible spouse. From this combined amount, subtract a living allowance for any ineligible minor dependent child(ren) of either member of the couple who live(s) in the home. The deductible amount of the ineligible child(ren)'s living allowance cannot exceed the ineligible spouse's total gross income. The amount of the living allowance for an ineligible child is determined by subtracting the child's gross income from the figure which represents the difference between 100 percent of the federal income poverty level for two persons and 100 percent of the federal income poverty level for one person. A "child" must be under 18 years of age or under 21 years of age if a full-time student at an institution of learning.

(3) Determination of countable income for eligibility purposes: The ISD caseworker adds the gross unearned income of the applicant/recipient (without applying any disregards) to the gross unearned income of the ineligible spouse. The ISD caseworker then adds the total gross earned income of the applicant/recipient to the total gross earned income of the ineligible spouse. From the combined total gross earnings of

the couple, the ISD caseworker subtracts one earned income disregard (the first $65 of the total earnings plus 1/2 of the remainder). The resulting figure is the total combined countable earnings of the couple. Add the couple's total combined countable earned income to their total gross unearned income. From this figure subtract the standard $20 disregard determined in accordance with Subsection B of 8.215.500.22 NMAC. Next, subtract the amount of the FPL disregard which the applicant/recipient was allowed. Finally, subtract the amount of the ineligible child(ren)'s living allowance which was calculated in Paragraph (2) of Subsection B of 8.240.500.14 NMAC. The resulting figure is the countable income of the couple. Compare it to the couple standard for QMB. If the countable income of the couple exceeds the couple standard, the applicant/recipient is ineligible for the QMB program. If the countable income of the couple is less than the couple standard, the applicant/recipient is eligible for the QMB program of the factor of income.

[8.240.500.15 NMAC - Rn, 8.240.500.14 NMAC, 10/1/12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.243.500 NMAC, Section 15, effective October 1, 2012.

8.243.500.15 TRUSTS: [~~See 8.215.500.16.A.~~] See 8.281.510 NMAC and following subsections.

[8.243.500.15 NMAC - N, 1-1-01; A, 10-1-12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.245.500 NMAC, Section 8; Section 12 is new and Sections 13-15 have been renumbered, effective October 1, 2012.

8.245.500.8 MISSION: [~~To reduce the impact of poverty living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.~~] To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.245.500.8 NMAC - N, 12/1/09; A, 10/1/12]

8.245.500.12 TRUSTS: See 8.281.510 NMAC and following subsections.

[2/1/95; 8.245.500.12 NMAC - Rn, 8 NMAC 4.SMB.520 & A, 12/1/09; 8.245.500.12 NMAC - N, 10/1/12]

[~~8.245.500.12~~] 8.245.500.13 INCOME STANDARDS: Income standards for this category are at least 100 percent but no more than 120 percent of the federal income poverty guidelines. The federal income poverty guidelines are adjusted annually, effective April 1. See 8.200.520 NMAC, *Income Standards*, and 8.215.500.19 NMAC, *Income Standards*, for information on exclusions, disregards, and countable income. Verification of income must be documented in the case file.

[2/1/95; 8.245.500.13 NMAC - Rn, 8 NMAC 4.SMB.522 & A, 12/1/09; 8.245.500.13 NMAC - Rn, 8.245.500.12 NMAC, 10/1/12]

[~~8.245.500.13~~] 8.245.500.14 UNEARNED INCOME: Unearned income exclusions: All social security and railroad retirement beneficiaries receive cost of living adjustments (COLAs) in January of each year. The ISD caseworker must disregard the COLA from January through March when (re)determining SLIMB eligibility. For redeterminations made in January, February and March and for new SLIMB applications registered in January, February, or March, the ISD caseworker uses the December social security and railroad retirement benefit amounts. For SLIMB applications registered from April through December, total gross income including the new COLA figures are used to determine income and compared to the new April federal poverty levels. This exclusion does not apply to other types of income.

[2/1/95; 8.245.500.14 NMAC - Rn, 8 NMAC 4.SMB.523 & A, 12/1/09; A, 7/15/10; 8.245.500.14 NMAC - Rn, 8.245.500.13 NMAC, 10/1/12]

[~~8.245.500.14~~] 8.245.500.15 DEEMED INCOME: If an applicant/recipient is a minor who lives with a parent(s), deemed income from the parent(s) must be considered. If an applicant/recipient is married and lives with a spouse, deemed income from the spouse must be considered. See 8.215.500.21 NMAC, *Deemed Income*, for information on deemed income.

[8.245.500.15 NMAC - Rn, 8.245.500.14 NMAC, 10/1/12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.250.500 NMAC, Section 8, Section 12 is new and Sections 13-15 have been renumbered, effective October 1, 2012.

8.250.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico [~~and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities~~] by providing support services that help families break the cycle of dependency on public assistance.

[8.250.500.8 NMAC - N, 12/1/09; A, 10/1/12]

8.250.500.12 TRUSTS: See 8.281.510 NMAC and following subsections.

[4/30/98; 8.250.500.12 NMAC - Rn, 8 NMAC 4.QIS.520 & A, 12/1/09; 8.250.500.12 NMAC - N, 10/1/12]

[~~8.250.500.12~~] 8.250.500.13 INCOME STANDARDS: Income standards for this category are at least 120 percent but less than 135 percent of the federal income poverty guidelines. The federal income poverty guidelines are adjusted annually, effective April 1. See 8.200.520 NMAC, *Income Standards*, and 8.215.500.19 NMAC, *income standards*, for information on exclusions, disregards and countable income. Verification of income must be documented in the case file.

[4/30/98; 8.250.500.13 NMAC - Rn, 8 NMAC 4.QIS.522 & A, 12/1/09; 8.250.500.13 NMAC - Rn, 8.250.500.12 NMAC, 10/1/12]

[~~8.250.500.13~~] 8.250.500.14 UNEARNED INCOME: Unearned income exclusions: All social security and railroad retirement beneficiaries receive cost of living adjustments (COLAs) in January of each year. The ISD caseworker must disregard the COLA from January through March when (re)determining QI1s eligibility. For redeterminations made in January, February and March and for new QI1 applications registered in January, February or March, the ISD caseworker uses the December social security and railroad retirement benefit amounts. For QI1 applications registered from April through December, total gross income including the new COLA figures are used to determine income and compared to the new April federal poverty levels. This exclusion does not apply to other types of income.

[4/30/98; 8.250.500.14 NMAC - Rn, 8 NMAC 4.QIS.523 & A, 12/1/09; A, 7/15/10; 8.250.500.14 NMAC - Rn, 8.250.500.13 NMAC, 10/1/12]

[~~8.250.500.14~~] 8.250.500.15 DEEMED INCOME: If an applicant/recipient is a minor who lives with a parent(s), deemed income from the parent(s) must be considered. If an applicant/recipient is married and lives with a spouse, deemed income from the spouse must be considered. See 8.215.500.21 NMAC, *deemed income*, for information on deemed income.

[8.250.500.15 NMAC - Rn, 8.250.500.14 NMAC, 10/1/12]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.281.500 NMAC, Sections 1, 3, 7 and 13-15, effective October 1, 2012.

8.281.500.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[2-1-95; 8.281.500.1 NMAC - Rn, 8 NMAC 4.ICM.000.1, 3-1-01; A, 10-1-12]

8.281.500.3 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. (Repl. Pamp. 1991)~~] et seq.
[2-1-95; 8.281.500.3 NMAC - Rn, 8 NMAC 4.ICM.000.3, 3-1-01; A, 10-1-12]

8.281.500.7 DEFINITIONS:

A. **Actuarially sound:** With respect to an annuity or promissory note, the payments made to the beneficiary do not exceed his/her life expectancy and returns to the beneficiary at least equal to the amount used to establish the contract.

B. **Annuity:** A financial instrument usually sold by a life insurance company, that pays out a regular income at fixed intervals for a certain period of time, often beginning at a certain age and continuing for the life of the owner.

C. **Assets:** All income and resources of an applicant/recipient and their spouse, if applicable,

D. **Bona fide:** A bona fide agreement is made in good faith and is legally valid.

E. **Community spouse:** The spouse of an institutionalized spouse who is residing in the community and not in an institution.

F. **Community spouse resource allowance:** An amount of a couples' resources that is set aside for the community spouse when the other spouse is institutionalized. There is a state minimum and a federal maximum amount of resources that can be set aside for the community spouse.

G. **Encumbrance:** A general term for any claim or lien on a parcel of real property, including mortgages, deeds of trust and abstracts of judgments.

H. **Fair market value:** An estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining medicaid eligibility.

I. **Home equity:** (Also known as equity value.) The value of a home minus the total amount owed on it in mortgages, liens and other encumbrances.

J. **Income:** Anything that an applicant/recipient receives in cash or in kind that he/she can use to meet his/her needs for food and shelter. In-kind income is not cash, but is actual food or shelter, or something that the applicant/recipient can use to get one of these.

K. **Institutionalized spouse:** An applicant/recipient who is in an acute care hospital, nursing facility, intermediate care facility for the mentally retarded, swingbed or certified in-state inpatient rehabilitation center.

L. **Life estate:** An interest in property that exists for the life of a person. For example, an individual gives a life estate in a house to person A and the remainder to person B. A has a life estate and B has a remainder interest until person A dies.

M. **Liquid resource:** Cash or something that can easily be converted to cash within 20 business days.

N. **Loan:** A transaction in which one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest.

O. **Lookback period:** A period of time in the past through which the ISD [~~worker~~] caseworker may examine all financial transactions for asset transfers.

P. **Minimum monthly maintenance needs allowance:** A minimum level of income that the federal government allows to be set aside for the support of the community spouse when the other spouse is in an institution.

Q. **Negotiable agreement:** An agreement (i.e., a loan) in which the ownership of the agreement and the whole amount of money can be transferred from one person to another.

R. **Non-liquid resource:** An asset such as real property, which cannot be easily converted to cash within [~~twenty (20)~~] 20 days.

S. **Promissory note:** A promissory note is a written, unconditional agreement in which one person promises to pay a specified sum of money at a specified time to another person.

T. **Relative:** Relative is defined as son/daughter; grandson/granddaughter; step-son/step-daughter; in-laws; mother/father; step-mother/step-father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step-brother/step-sister; and niece/nephew.

U. **Remainder/remainderman:** An interest in property that occurs after a life estate. For example, an individual gives a life estate in a house to person A and the remainder to person B. A has a life estate and B has a remainder interest. Person B is also called the remainderman.

V. **Resources:** Cash or other liquid assets and any real or personal property that applicant/recipient (or spouse if any) owns and could convert to be used for his/her support and maintenance.

W. **Restricted coverage:** Eligibility for medicaid except for payment for long term care services in a nursing facility.

X. **Reverse mortgage:** A loan against home equity providing cash advances to a borrower and requiring no repayment until a future date.

Y. **Sole benefit of:** A transfer is considered for the sole benefit of a spouse, blind or disabled child, or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind, or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

[~~Y.~~] Z. **Transfer:** To change over the possession, control or ownership of something.
[8.281.500.7 NMAC - N, 4-1-09; A, 10-1-12]

8.281.500.13 RESOURCE EXCLUSIONS: Some types of resources can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

A. **Burial fund exclusion:** Up to $1,500 can be excluded from the countable liquid resources of an applicant/recipient if designated as his/her burial fund. An additional amount of up to $1,500 can be excluded from countable liquid resources if designated as burial funds for the spouse of the applicant/recipient. The burial fund exclusion is separate from the burial space exclusion.

(1) **Retroactive designation of burial funds:** An applicant/recipient can retroactively designate funds for burial back to the first day of the month in which the applicant/recipient intended the funds to be set aside for burial. The applicant/recipient must sign a statement indicating the month the funds were set aside for burial.

(2) **Limit on exclusion:** An applicant/recipient can designate as much of his/her liquid resources as he/she wishes for burial purposes. However, only one burial fund allowance of up to $1,500 each for the applicant/recipient and his/her spouse can be excluded from countable resources. A burial fund exclusion does not continue from one

period of eligibility to another (i.e., across a period of ineligibility). For each new period of eligibility, any exclusion of burial funds must be developed as for an initial application.

(3) **Removal of designation:** An applicant/recipient cannot "un-designate" burial funds, unless one of the following occurs:

(a) eligibility terminates;

(b) part, or all, of the funds can no longer be excluded because the applicant/recipient purchased excluded life insurance or an irrevocable burial contract which partially or totally offsets the available burial fund exclusion; or

(c) the applicant/recipient uses the funds or any portion of the funds for another purpose; this action makes the funds countable; any designated burial funds used for another purpose will be counted as income in the month withdrawn and as a resource thereafter.

(4) **Reduction of burial fund exclusion:** The $1,500 burial fund exclusion is reduced by the following:

(a) the face value of excluded life insurance policies;

(b) assets held in irrevocable burial trusts; irrevocable means the value paid cannot be returned to the applicant/recipient;

(c) assets that are not burial space items held in irrevocable burial contracts;

(d) assets held in other irrevocable burial arrangements; and

(e) assets held in an irrevocable trust available to meet burial expenses.

(5) **Interest from burial fund:** Interest derived from a burial fund is not considered a countable resource or income if all the following conditions exist:

(a) the original amount is excluded;

(b) the excluded burial fund is not commingled with non-excluded burial funds;

(c) the interest earned remains with the excluded burial funds.

(6) **Commingling of burial funds:** Burial funds cannot be commingled with non-burial funds. If only part of the funds in an account are designated for burial, the burial fund exclusion cannot be applied until the funds designated for burial expenses are separated from the non-burial funds. Countable and excluded burial funds can be commingled.

(7) **Life insurance policy designated as burial fund:** An applicant/recipient can designate a life insurance policy as a burial fund at the time of application. The ISD [~~worker~~] caseworker must first analyze the policy according to Subsection H of 8.281.500.13 NMAC, *life insurance exclusion,* and following subsections.

(8) **Burial contracts:** If an applicant/recipient has a prepaid burial contract, the ISD [~~worker~~] caseworker determines whether it is revocable or irrevocable and whether it is paid for. Until all payments are made on a burial contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(a) An applicant/recipient may have a burial contract which is funded by a life insurance policy. The life insurance may be either revocably or irrevocably assigned to a funeral director or mortuary.

(b) A revocable contract exists if the value can be returned to the applicant/recipient. An irrevocable contract exists when the value cannot be returned. If the contract or insurance policy assignment is revocable, the following apply.

(i) If the burial contract is funded by a life insurance policy, the policy is the resource which must be evaluated. The burial contract itself has no value. It exists only to explain the applicant/recipient's burial arrangements.

(ii) No exclusions can be made for burial space items because the applicant/recipient does not have a right to them if the contract is not paid for or the policy is not paid up.

(c) If the assignment is irrevocable, the life insurance or burial contract is not a countable resource, because the applicant/recipient does not own it.

(i) The burial space exclusions can apply if the applicant/recipient has the right to the burial space items.

(ii) The value of the irrevocable burial arrangement is applied against the $1,500 burial fund exclusion only if the applicant/recipient has other liquid resources to designate for burial.

B. **Burial space exclusion:** A burial space or an agreement which represents the purchase of a burial space held for the burial of an applicant/recipient, his/her spouse, or any other member of his/her immediate family is an excluded resource regardless of value. Interest and accruals on the value of a burial space are excluded from consideration as countable income or resources.

(1) When calculating the value of resources to be deemed to an applicant/recipient from his/her parent(s) or spouse, the value of spaces held by the parent(s)/spouse which are to be used for the burial of the applicant/recipient, or any member of the applicant/recipient's immediate family, including the deemer parent/spouse, must be excluded.

(2) The burial space exclusion is separate from, and in addition to, the burial fund exclusion.

(3) **Burial space definitions:** "Burial space" is defined as a(n) burial plot, gravesite, crypt, mausoleum, casket, urn, niche, or other repository customarily used for the deceased's bodily remains.

(a) A burial space also includes necessary and reasonable improvements or additions, such as vaults, headstones, markers, plaques, burial containers (e.g., caskets), arrangements for the opening and closing of a gravesite, and contracts for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care.

(b) Items that serve the same purpose are excluded once per individual, such as excluding a cemetery lot and a casket, but not a casket and an urn.

(4) **Burial space contract:** An agreement which represents the purchase of a burial space is defined as a contract with a burial provider for a burial space held for the eligible applicant/recipient or a member of his/her immediate family.

(a) Until all payments are made on the contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(b) An eligible applicant/recipient's immediate family includes:

(i) spouse;

(ii) natural or adoptive parents;

(iii) minor or adult children, including adoptive and stepchildren;

(iv) siblings, including adoptive and stepsiblings; and

(v) spouse of any of the above relatives.

(c) If a relative's relationship to an applicant/recipient is by marriage only, the relationship ceases to exist upon the dissolution of the marriage.

(5) **Burial space "held" for an applicant/recipient:** A burial space is considered held for an applicant/recipient if:

(a) someone has title to or possesses a burial space intended for the use of the applicant/recipient or a member of his/her immediate family; or

(b) someone has a contract with a funeral service company for a specified burial space for the applicant/recipient or a member of his/her immediate family, such as an agreement which represents the individual's current right to the use of the items at the amount shown.

(6) Until the purchase price is paid in full, a burial space is not considered "held for" an individual under an installment sales contract or similar device if:

(a) the individual does not currently own the space;

(b) the individual does not currently have the right to use the space; and

(c) the seller is not currently obligated to provide the space.

C. **Life estate exclusion:** The value of a life estate interest in the applicant/recipient's own home or in the home of another is excluded if the applicant/

recipient has continuously resided in the home for a period of 12 months or more from the date of the life estate purchase. The value of the remainderman's interest when a life estate is retained in one's own home is considered a transfer of resources to be evaluated in accordance with 8.281.500.14 NMAC, *asset transfers*.

D. **Settlement exclusions:** Agent orange settlement payments made to veterans or their survivors are excluded from consideration as resources.

(1) Payments made under the Radiation Exposure Compensation Act are excluded from consideration as resources.

(2) Payments received from a state-administered fund established to aid victims of crime are excluded for nine months beginning the month after the month of receipt.

(3) Payments under the foundation called 'remembrance, responsibility and the future', are excluded from consideration as resources.

E. **Exclusions for real property and home:** A home is any shelter used by an applicant/recipient or his/her spouse as the principal place of residence. To be excluded, a home must have an equity value of [~~$750,000 or less. An applicant/recipient with home equity of more than (see 8.200.510.15 NMAC, *excess home equity amount for long-term care services*)~~] no more than (see 8.200.510.15 NMAC, *excess home equity amount for long-term care services*). An applicant/recipient with home equity of more than the amount specified shall be placed on restricted coverage for as long as he/she owns the home. The home includes any buildings and contiguous land used in the operation of the home. A home is not considered a countable resource while in use by the applicant/recipient as his/her principal place of residence. The home with an equity value of (see 8.200.510.15 NMAC, *excess home equity amount for long-term care services*) or less continues to be excluded during periods when the applicant/recipient resides in an acute care or long term care medical facility if the applicant/recipient or his/her representative states that the applicant/recipient intends to return to the home. **Exclusion of home:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home, but the home is the residence of the applicant/recipient's spouse or dependent minor child or adult disabled child, the home is an excluded resource.

F. **Income-producing property exclusion:** To be excluded from consideration as a countable resource, income-producing property that does not qualify as a bona fide business (e.g., rental property or mineral rights) must have an equity value of no more than $6,000 and an annual rate of return of at least six percent of the equity value. See Subparagraph (b) or Paragraph (1) of Subsection F of 8.281.500.13 NMAC, *determination of rate of return*, below if the equity value exceeds $6,000 but the rate of return is at least six percent annually. The $6,000 and six percent limitation does not apply to property used in a trade or bona fide business, or to property used by an applicant/recipient as an employee which is essential to the applicant/recipient's self-support (e.g., tools used in employment as a mechanic, property owned or being purchased in conjunction with operating a business). Existence of a bona fide business can be established by documentation such as business tax returns.

(1) **Determination of rate of return:** To calculate the annual rate of return for income producing property when the $6,000 and six percent limits apply, the previous year's income tax statement, or at least three months earnings is used to project the rate of return for the year.

(a) If the income is sporadic or has decreased from that needed to maintain a six percent rate of return for the coming year, the property is reevaluated at appropriate intervals.

(b) If the annual rate of return is at least six percent of the equity value but the equity value exceeds $6,000, only the excess equity is a countable resource.

(c) If the annual rate of return is less than six percent but the usual rate of return is more, the property is excluded as a countable resource if all the following conditions are met:

(i) unforeseeable circumstances, such as a fire, cause a temporary reduction in the rate of return;

(ii) the previous year's rate of return, as documented by the income tax statement or several months receipts, is at least six percent; and

(iii) the property is expected to produce a rate of return of at least six percent within 18 months of the end of the year in which the adverse circumstances occurred; the ISD [~~worker~~] caseworker records in the case narrative the plan of action which is expected to increase the rate of return.

(d) The ISD [~~worker~~] caseworker notifies the applicant/recipient in writing that the property is excluded based on its expected increase in return and that it will be reevaluated at the end of the 18 month grace period. When this period ends, the property must be producing an annual rate of at least six percent to continue to be excluded as a countable resource.

(2) **Types of income-producing property:** Income-producing property includes:

(a) a business, such as a farm or store, including necessary capital and operating assets such as land and buildings, inventory or livestock; the property must be in current use or have been used with a reasonable expectation of resumed use within a year of its most recent use; the ISD [~~worker~~] caseworker must account for the cash actually required to operate the business; liquid business assets of any amount are excluded;

(b) non-business property includes rental property, leased property, land leased for its mineral rights, and property producing items for home consumption; property which produces items solely for home use is assumed to be producing an annual rate of return of at least six percent;

(c) employment-related property, such as tools or equipment; the applicant/recipient must provide a statement from his/her employer to establish that tools or equipment are required for continued employment when the applicant/recipient leaves the institution; if the applicant/recipient is self-employed, only those tools normally required to perform the job adequately are excluded; the applicant/recipient must obtain a statement from someone in the same line of self-employment to establish what is excludable.

G. **Vehicle exclusion:** The term "vehicle" includes any mode of transportation such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing or as an antique, are not included in this definition. Recreational vehicles and boats are classified as personal effects and are evaluated under the household goods and personal effects exclusion. One vehicle is totally excluded if regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be non-liquid resources. Equity in the other automobiles is counted as a resource.

H. **Life insurance exclusion:** The value of life insurance policies is not considered a countable resource if the total cumulative face value of all policies owned by the applicant/recipient does not exceed $1,500. A policy is considered to be "owned" by the applicant/recipient if the applicant/recipient is the only one who can surrender the policy for cash.

(1) **Consideration of burial insurance and term insurance:** Burial insurance and term insurance are not considered when computing the cumulative face value because this insurance is redeemable only upon death.

(2) **Calculation when value exceeds limit:** If the total cumulative face value of all countable life insurance policies owned by the applicant/recipient exceeds $1,500, the ISD [~~worker~~] caseworker:

(a) verifies the total cash surrender value of all policies and considers the total amount a countable resource;

(b) informs the applicant/recipient that the insurance policies can be converted to term insurance or ordinary life insurance of lower face value at his/her option, if the cash surrender value, alone or in combination with other countable resources, exceeds the resource standard.

I. **Produce for home consumption exclusion:** The value of produce for home consumption is totally excluded.

J. **Exclusion of settlement payments from the department of housing and urban development:** Payments from the department of housing and urban development (HUD) as defined in *Underwood v. Harris* are excluded as income and resources. These one-time payments were made in the spring of 1980 to certain eligible tenants of subsidized housing [Section 236 of the National Housing Act].

(1) **Segregation of payment:** To be excluded as a resource, payments retained by an applicant/recipient must be kept separate. These payments must not be combined with any other countable resources.

(2) **Income from segregated funds:** Interest or dividend income received from segregated payment funds is not excluded from income, or, if retained, is not an excluded resource. This interest or dividend income must be kept separate from excludable payment funds.

K. **Lump sum payments exclusion:** SSI and social security lump sum payments for retroactive periods are excluded as countable resources for nine months after the month in which they are received. See Subparagraph (4) of Subsection B of 8.281.500.15 NMAC, *treatment of SSI or social security lump sum payments*, for policy regarding SSI and social security lump sums which are placed into the ownership of a medicaid qualifying trust. Social security lump sum payments are considered infrequent income. See Item (vii) of Subparagraph (b) of Paragraph (2) of Subsection C of 8.281.500.19 NMAC, *infrequent or irregular income*, and following subsections.

L. **Home replacement exclusion:** The proceeds from a reverse mortgage from the sale of an excluded home is excluded. Additionally, the value of a promissory note or similar installment sales contract which constitutes proceeds from the sale of an excluded home is excluded from countable resources if all of the following conditions are met:

(1) the note results from the sale of the applicant/recipient's home as described in Subsection E of 8.281.500.13 NMAC, *exclusions for real property and home*, and following subsections;

(2) within three months of receipt (execution) of the note, the applicant/recipient purchases a replacement home which meets the definition of a home in Subsection E of 8.281.500.13 NMAC, *exclusions for real property and home*, and following subsections;

(3) all note-generated proceeds are reinvested in the replacement home within three months of receipt.

(4) **Additional exclusions:** In addition to excluding the value of the note itself, the down payment received from the sale of the former home, as well as that portion of any installment amount constituting payment on the principal are also excluded from countable resources.

(5) **Failure to purchase another excluded home timely:** If the applicant/recipient does not purchase another home which can be excluded under the provisions of Subsection E of 8.281.500.13 NMAC, *exclusions for real property and home*, and following subsections within three months, the value of the promissory note or similar sales contract received from the sale of an excluded home becomes a countable resource as of the first moment of the first day of the month following the month the note is executed. If the applicant/recipient purchases a replacement home after the expiration of the three month period, the value of the promissory note or similar installment sales contract becomes an excluded resource effective the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested.

(6) **Failure to reinvest proceeds timely:** If the proceeds from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully within three months of receipt in a replacement home, the following resources become countable as of the first moment of the first day of the month following receipt of the payment:

(a) the fair market value of the note; and

(b) the portion of the proceeds, retained by the individual, which was not timely reinvested;

(c) the fair market value of the note remains a countable resource until the first moment of the first day of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home; failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract; however, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained.

(7) **Interest payments:** If interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments are considered countable unearned income in accordance with Paragraph (3) of Subsection A of 8.281.500.20 NMAC, *interest on promissory note or sales contract*.

(8) **When the home replacement exclusion does not apply:** If the home replacement exclusion does not apply, the market value of a promissory note or sales contract as well as the portion of the payment received on the principal are considered countable resources.

M. **Household goods and personal effects exclusion:** Household goods and personal effects are excluded if they meet one of the following four criteria. They are:

(1) items of personal property, found in or near the home, which are used on a regular basis; items may include but are not limited to: furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting;

(2) items needed by the householder for maintenance, use and occupancy of the premises as a home; items may include but are not limited to: cooking and eating utensils, dishes, appliances, tools, and furniture;

(3) items of personal property ordinarily worn or carried by the individual; items may include but are not limited to: clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;

(4) items otherwise having an intimate relation to the individual; items may include but are not limited to: prosthetic devices, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual; or items required because of an individual's impairment.

[2-1-95; 7-31-97; 8.281.500.13 NMAC - Rn, 8 NMAC 4.ICM.513, 3-1-01; A, 5-1-01; A, 1-1-06; A, 4-1-09; A, 1-1-11; A, 10-1-12]

8.281.500.14 ASSET TRANSFERS: The ISD [~~worker~~] caseworker must determine whether an applicant/recipient or his/her spouse transferred assets within a specified period of time (look back period) before applying for institutional care medicaid or at any time after approval of the application. Then the ISD [~~worker~~] caseworker must determine if the applicant/recipient or his/her spouse received fair market value for the asset. If the applicant/recipient or his/her spouse did not receive fair market value for the asset, then the applicant/recipient may be subject to a penalty. In the case of an asset held by the applicant/recipient in common with another individual or individuals in a joint tenancy,

tenancy in common, or similar arrangement including life estate/remainderman relation, the asset (or the affected portion of such asset) is considered to be transferred by the applicant/recipient when any action is taken, either by the applicant/recipient or by any other individual, acting on behalf of the applicant/recipient (including but not limited to a spouse, representative payee, trustee, guardian, conservator, individuals acting pursuant to a power of attorney), that reduces or eliminates the applicant/recipient's ownership or control of such asset. Any asset transferred to a community spouse in excess of the community spouse resource allowance (CSRA) is considered to be totally available to the institutionalized spouse and must be spent down before eligibility can be established.

A. **Lookback period:** Any transfer of assets made prior to February 8, 2006 is subject to a 36-month look back period prior to the date of application or at any time subsequent to the approval of an application for institutional care medicaid. Transfers made on or after February 8, 2006 are subject to a 60-month look back period.

(1) The lookback period is 60 months if the transfer occurred as the result of payments from a trust or portions of a trust that are treated as assets disposed of by the applicant/recipient.

(2) The lookback period starts on the date the applicant applies for institutional care medicaid and is in an institution.

B. **Transfer of assets for less than fair market value:** If a transfer of assets occurred within the applicable lookback period, or at any time after approval of the application, the ISD [~~worker~~] caseworker must determine whether the applicant/recipient or his/her spouse received fair market value for the transferred asset(s).

(1) **Documentation requirement:** The applicant/recipient or his/her spouse must provide documentation of the transfer, the fair market value of the asset(s) transferred, the circumstances surrounding the transfer and the amount, if any, received as compensation for the transferred asset.

(2) If the applicant/recipient fails to provide this information without good cause within 30 days from the date requested by the ISD [~~worker~~] caseworker, the ISD [~~worker~~] caseworker denies the application or closes the case, as appropriate.

(a) Good cause is considered to exist if the applicant/recipient or representative can show that he/she was effectively precluded from timely reporting because of legal, financial, or other reasons, or because of the existence of a health related problem including death of a family member within the specific degree of relationship [~~(see old AFDC program definition Subsection C of 8.202.400.13 NMAC, *relationship*)~~] (see Subsection C of 8.272.400.27 NMAC, *relationship*) during the period of time in which the applicant/recipient or representative has to report the required information. The health or other problem must have been of such severity and duration as to have effectively precluded the applicant/recipient or representative from reporting in a timely manner.

(b) To document the good cause claim, the applicant/recipient or representative must provide proof of the existence of the health or other problem and must explain the circumstances which precluded provision of the required information.

(c) The ISD [~~worker~~] caseworker makes the determination of good cause subject to review and approval by the county director or designee.

(3) **Restricted coverage:** If a transfer of assets occurred within the applicable lookback period, or at any time subsequent to approval for institutional care medicaid, for which the applicant/recipient or his/her spouse did not receive fair market value, the ISD [~~worker~~] caseworker determines if a penalty period must be calculated. The penalty for transfers of assets for less than fair market value in the institutional care medicaid categories is restricted coverage. "Restricted coverage" means that the applicant/recipient is eligible for all medicaid-covered services except services furnished in a nursing facility or services considered to be long-term care services.

(a) Determine the current average monthly cost of nursing facilities for private patients. See 8.200.510.13 NMAC, *resource exclusions.*

(b) Divide the total uncompensated value (amount) of the resources transferred for less than fair market value by the current average monthly cost of nursing facilities for private patients.

(c) The result is the number of months and partial months for which the applicant/recipient will be on restricted coverage.

(4) **Calculating restricted coverage when the transferred asset is income:** If income has been transferred as a lump sum, the period of restricted coverage is calculated based on the lump sum value. For transfers of the right to an income stream, the period of restricted coverage is calculated using the actuarial value of all payments transferred. See 8.200.520.19 NMAC, *life expectancy tables*.

C. **Transfer rules based on date of transfer:** Two sets of rules govern the calculation of penalty periods if a transfer of assets for less than fair market value has occurred. The date of transfer and approval date for institutional care medicaid governs which set of rules is used to calculate the penalty period.

(1) **For transfers made on or after August 11, 1993:** Periods of restricted coverage are calculated as follows [Omnibus Budget Reconciliation Act of 1993]:

(a) The period of restricted coverage begins the month the resources were transferred. The total uncompensated value of the transferred assets divided by the average cost to a private patient of nursing facility services in the state at the time of application is the methodology used to calculate a period of restricted coverage.

(b) transfers for less than fair market value made by institutionalized SSI recipients or community spouses of institutionalized individuals may subject the institutionalized individual to a period of restricted coverage.

(c) penalty periods are now consecutive rather than concurrent; if multiple transfers occur in different months, the periods of restricted coverage begin with the month of the initial transfer and run consecutively: for example, if an applicant/recipient transfers an asset for less than fair market value in February causing four months of restricted coverage (i.e., February through May) and transfers another asset in April causing three months of restricted coverage, the second period of restricted coverage begins in June and lasts through August; and.

(d) if an institutionalized individual with a community spouse is placed on restricted coverage as the result of a transfer of assets for less than fair market value and the community spouse subsequently becomes eligible for institutional care medicaid, any remaining months in the restricted coverage period must be divided equally between the spouses.

(2) **For transfers made on or after February 08, 2006:** Pursuant to the Deficit Reduction Act of 2005, otherwise eligible institutionalized recipients who transfer assets for less than fair market value after this date are penalized as follows:

(a) the period of restricted coverage begins the first day of the month in which the resources were transferred, or the date on which the individual becomes eligible for medicaid, and would otherwise be receiving institutional level care but for the application of the penalty period, whichever is later, and does not occur during any other period of ineligibility as a result of an asset transfer; see Paragraph (3) of Subsection B of 8.281.500.14 NMAC, *restricted coverage*, for the methodology used to calculate a period of restricted coverage;

(b) once eligibility has been determined and a penalty period has begun to run, it continues until expiration, whether or not there is a break in the institutionalized recipient's eligibility;

(c) the beginning date of restricted

coverage is the first day of the month in which the resources were transferred provided the applicant/recipient is institutionalized and eligible for medicaid; for current recipients who fail to report a transfer, the recipients will continue to receive benefits until the adverse action notice date, but the state may seek to recover any medicaid costs paid for long term care services during what should have been a period of restricted coverage; federal law does not provide a basis to impose a transfer penalty based on date of discovery;

(d) for non-institutionalized individuals, the date restricted coverage begins is the month in which the individual becomes institutionalized;

(e) transfers for less than fair market value made by institutionalized SSI recipients or community spouses of institutionalized individuals may subject the institutionalized individual to a period of restricted coverage; and

(f) multiple transfers occurring in different months are added together and calculated as a single period of ineligibility, that begins on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.

D. **Non-excludable transfers:** Certain financial instruments must be evaluated before they can be considered a transfer of assets.

(1) **Annuities**: Annuities belonging to the applicant/recipient or to the spouse of the applicant/recipient must be declared. Annuities must be actuarially sound with no deferral and no balloon payments. Annuities purchased or issued after February 8, 2006 must meet the following additional requirements for exclusion as a transfer of assets:

(a) the state is named as the remainder beneficiary in the first position for at least the total amount of medicaid expenditures paid on behalf of the institutionalized individual; the state may be named the remainder beneficiary in the second position if there is a community spouse or a minor or a disabled child and is named in the first position if the community spouse or representative of the child disposes of any such remainder for less than fair market value;

(b) when medicaid is a beneficiary of an annuity, issuers of annuities are required to notify medicaid of any changes in the disbursement of income or principal from the annuity as well as any changes to the state's position as remainder beneficiary; and

(c) it is non-assignable and irrevocable.

(2) **Life estates:** If an applicant/recipient purchases a life estate in another individual's home, the applicant/recipient must live in that home for a period of at least 12 months after the date of purchase or the transaction will be treated as a transfer of assets for less than fair market value.

(3) **Promissory notes:** If an applicant/recipient uses funds to purchase a promissory note, the repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it must contain a provision that prohibits cancellation of the balance upon the death of the lender. A promissory note not meeting these requirements shall be treated as a transfer of assets for less than fair market value.

E. **Excludable transfers:** If certain conditions are met, an applicant/recipient is not placed on restricted coverage for transferring assets for less than fair market value.

(1) **Transferred asset was home:** The asset transferred was a home and title to the home was transferred to:

(a) the spouse of the applicant/recipient;

(b) the son/daughter of the applicant/recipient who is under 21 years of age or who meets the social security administration's definition of disability or blindness. If the child is receiving benefits based on disability or blindness from a program other than social security or SSI, or is not receiving benefits based on disability or blindness from any program, the ISD [~~worker~~] caseworker must request a determination of disability or blindness from disability determination services;

(c) sibling of the applicant/recipient who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the applicant/recipient was institutionalized; or

(d) son/daughter of the applicant/recipient who was residing in the home for a period of at least two years immediately before the applicant/recipient was institutionalized. For this exclusion to apply, the ISD [~~worker~~] caseworker must determine that the son/daughter provided care to the applicant/recipient which permitted the applicant/recipient to reside at home rather than in a medical facility or nursing home.

(2) **Other asset transfers:** Sufficient information must be given to the ISD [~~worker~~] caseworker to establish that either:

(a) the applicant/recipient intended to dispose of the asset at fair market value; or

(b) at the time of the transfer the applicant/recipient had no expectation of applying for medicaid and the resources were transferred exclusively for a purpose other than to qualify for medicaid as demonstrated by a preponderance of evidence; unless these conditions are met, the transfer is presumed to have been for the purpose of qualifying for medicaid; or

(c) the state determines that the denial of eligibility would work an undue hardship.

(3) **Asset transferred to or for the sole benefit of the community spouse:** No transfer penalty is assessed when assets are transferred from one spouse to another (e.g., assets are transferred from an institutionalized spouse to a community spouse). Any asset transferred to a community spouse or to another individual for the sole benefit of the community spouse in excess of the community spouse resource allowance (CSRA) is considered to be totally available to the institutionalized spouse and must be spent down before eligibility can be established. No transfer penalty is assessed when assets are transferred to another for the sole benefit of the community spouse if all of the conditions listed in (a) through (c) below are met.

(a) A transfer is considered to be for the sole benefit of the community spouse if it is arranged in such a way that no individual or entity except the community spouse can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, or transfer instrument, that provides for funds or property to pass to a beneficiary who is not the community spouse is not considered to be established for the sole benefit of the community spouse. For a transfer to be considered to be for the sole benefit of the community spouse, the instrument or document must provide for the spending of the funds involved for the benefit of the community spouse on a basis that is actuarially sound based on the life expectancy of the community spouse. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the community spouse, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the community spouse since there is no way to establish, without a document, that only the community spouse will benefit from the transfer.

(4) **Asset transfers to or for the sole benefit of a blind or disabled child of the institutionalized individual:** No transfer penalty is assessed when assets are transferred to a blind or disabled child of the institutionalized individual, or to a trust established solely for the benefit of a blind

or disabled child of the institutionalized individual. For this exemption to apply, the child must meet the social security administration's definition of blindness or disability. [~~See 8.281.500.15 NMAC, *trusts*, and following subsections for rules regarding trusts.~~] The transfer must either meet the criteria set forth in 8.281.510.11 NMAC, *recognized medicaid trusts*, or meet all of the conditions listed in (a) through (c) below to be excluded in the eligibility determination process.

(a) A transfer to such a blind or disabled child is considered to be for the sole benefit of that child if the transfer is arranged in such a way that no individual or entity, except the blind or disabled child, can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, or transfer instrument, that provides for funds or property to pass to a beneficiary who is not the blind or disabled child of the institutionalized individual is not considered to be established for the sole benefit of the blind or disabled child. For a transfer or trust to be considered to be for the sole benefit of a blind or disabled child, the instrument or document must provide for the spending of the funds involved for the benefit of the blind or disabled child on a basis that is actuarially sound based on the life expectancy of the child. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the blind or disabled child of the institutionalized individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the blind or disabled child since there is no way to establish, without a document, that only the blind or disabled child will benefit from the transfer. [~~See 8.281.500.15 NMAC, *trusts*, and following subsections for policy regarding trusts.~~]

(5) **Asset transfers to a trust for the sole benefit of a disabled individual under age 65:** No transfer penalty is assessed when assets are transferred to a trust established for the sole benefit of an individual under age 65 who meets the social security administration's definition of disability. [~~See 8.281.500.15 NMAC, *trusts*, and following subsections for policy regarding trusts.~~] The transfer must either meet the criteria set forth in 8.281.510.11 NMAC, *recognized medicaid trusts*, or meet all of the conditions listed in (a) through (c) below to be excluded in the eligibility determination process.

(a) A transfer is considered to be for the sole benefit of a disabled individual under age 65 as described above if the transfer is arranged in such a way that no individual or entity except the disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not a disabled individual under age 65 as described above, is not considered to be established for the sole benefit of the disabled individual. For a transfer or trust to be considered to be for the sole benefit of the disabled individual, the instrument or document must provide for the spending of the funds involved for the benefit of the disabled individual on a basis that is actuarially sound based on the life expectancy of the disabled individual. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the disabled individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the disabled individual since there is no way to establish, without a document, that only the disabled individual will benefit from the transfer. [~~See 8.281.500.15 NMAC, *trusts*, and following subsections for policy regarding trusts.~~]

F. **Re-establishing eligibility:** If an asset is transferred for less than fair market value and the applicant/recipient is placed on restricted coverage, he/she has options to re-establish full medicaid coverage.

(1) **Reimbursement by transferee:** The individual to whom the asset was transferred can reimburse the applicant/recipient for the asset at fair market value or liquidate/sell the asset and spend an amount equal to the uncompensated fair market value on the applicant/recipient's care or other exempt assets as listed in 8.281.500.13 NMAC, *resource exclusions*, and following subsections.

(2) **Return asset to applicant:** The asset can be transferred back to the applicant/recipient, liquidated, or sold and then spent down to the resource limit on the applicant/recipient's care or other exempt assets as listed in 8.281.500.13 NMAC, *resource exclusions*, and following subsections.

(3) If the transferred asset is restored to an applicant/recipient, he/she may become totally ineligible for medicaid due to excess resources. The ISD [~~worker~~] caseworker must verify that the applicant/recipient's countable assets do not exceed the standard for institutional care medicaid.

[2-1-95, 7-31-97; 8.281.500.14 NMAC - Rn, 8 NMAC 4.ICM.515, 3-1-01; A, 4-1-09; A, 10-1-12]

8.281.500.15 [~~TRUSTS:~~ ~~A trust is a legal device in which property or other assets are held by one or more individuals for the benefit of others. The one who holds the assets is called the trustee. The trustee usually has legal title to the assets held in the trust and is considered the owner of the trust assets in most dealings with third parties. The individual for whose benefit the assets are held by the trustee is called the beneficiary. A trust is usually created by a transfer of assets to the trustee from the owner, who is referred to as the settlor, trustor, or grantor. The transfer may be made while the settlor is alive or it may be made by will. The transfer of assets into a trust divests the original owner of legal title or restricts access to those assets.~~

~~A. **Definitions applicable to trust provisions:**~~

~~(1) "Assets" includes all income and resources of the applicant/recipient and his/her spouse, including any income or resources which the applicant/recipient or his/her spouse is entitled to but does not receive because of action by:~~

~~(a) applicant/recipient or his/her spouse;~~

~~(b) any individual, including a court or administrative body, with legal authority to act in place of or on behalf of the applicant/recipient or his/her spouse; or~~

~~(c) any individual, including any court or administrative body, acting at the direction or upon the request of the applicant/recipient or his/her spouse.~~

~~(2) "Institutionalized individual" is an individual who is a resident in a nursing facility or who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility.~~

~~(3) "Revocable trust" is created when the grantor reserves the right to cancel any provision of the trust.~~

~~(4) "Irrevocable trust" is created when the grantor does not reserve the right to cancel any provision of the trust.~~

~~B. **Medicaid qualifying trusts (MQTs):** This policy applies to trusts created prior to August 11, 1993. A "medicaid qualifying trust" (MQT) is a trust or similar legal device established, other than by will, by an applicant/recipient or his/her~~

spouse, under which the applicant/recipient may be the beneficiary of all or part of the payments from the trust. The distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the applicant/recipient. When the use of an attorney is solicited to establish a trust, the beneficiary of that trust is not exempt from the requirements of MQT provisions. Legal instruments such as trusts are almost always drafted by an attorney. It is the grantor him/herself who actually establishes or creates the trust when he/she signs or executes it.

(1) **Amount deemed available from an MQT:** The amount from an MQT that is deemed available to an applicant/recipient of institutional care medicaid is the maximum amount that could be distributed to the applicant/recipient or for the care of the applicant/recipient, regardless of restrictions imposed by the trust on the allowable use of the funds. This provision applies regardless of whether the MQT was set up for the purpose of qualifying for medicaid or whether the trust is irrevocable.

(2) **Revocable trusts:** Revocable trusts that limit access to the assets held in trust must be dissolved and the assets spent down before eligibility can be established. If the ISD worker determines that all or part of the assets held in a trust are not accessible or available to the applicant/recipient, or the trustees have limited discretion over distribution of the assets held in trust, transfer provisions must be applied. Under transfer of resource policy, an applicant/recipient who transfers resources without fair return may incur a penalty for a specified period of time. See 8.281.500.14 NMAC, *asset transfers*, and following subsections.

(3) **Beneficiary of trust lives in an ICF-MR:** If the beneficiary of a trust is an applicant/recipient who is mentally retarded and resides in an intermediate care facility for the mentally retarded (ICF-MR), that applicant/recipient's trust is not considered an MQT if the trust or trust decree was established prior to April 7, 1986, and is solely for the benefit of that applicant/recipient.

(4) **Treatment of SSI or social security lump sum payments:** SSI or social security lump sum payments for retroactive periods which are placed in an MQT do not qualify for the nine month exclusion from countable resources. The trust is evaluated as an MQT for purposes of medicaid eligibility.

C. **Trusts established on or after August 11, 1993:** Trusts established on or after August 11, 1993 are evaluated using the provisions of OBRA 93. The term "medicaid qualifying trust" is no longer used after that date. Most trusts are considered when determining eligibility for medicaid. Depending on how the trust is structured, the amounts in the trust may count as resources, income, or transfer of assets.

(1) **Trust establishment:** An applicant/recipient is considered to have established a trust and that trust is considered to belong to that applicant/recipient if his/her assets were used to form all or part of the corpus (body) of the trust. The trust must have been established, other than by will, by any of the following individuals:

(a) applicant/recipient;

(b) applicant/recipient's spouse;

(c) an individual, including a court or administrative body, with legal authority to act in place of, or on behalf of, the applicant/recipient or his/her spouse; or

(d) an individual, including a court or administrative body, acting at the direction of, or upon the request of, the applicant/recipient or his/her spouse;

(e) if the corpus of a trust includes assets of an applicant/recipient and assets of any other individual or individuals, the portion of the trust representing the assets of the applicant/recipient is considered in determining his/her eligibility for medicaid;

(f) income or resources from the trust must be considered available to the applicant/recipient without regard to any of the following:

(i) the purposes for which a trust is established;

(ii) whether the trustees have or exercise any discretion under the trust;

(iii) any restrictions on when or whether distribution may be made from the trust; or

(iv) any restrictions on the use of distributions from the trust.

(2) **Revocable trusts:** Assets in a revocable trust may be counted as income, resources, or transfer of assets based on the following rules:

(a) the corpus of the trust is considered as a resource available to the applicant/recipient;

(b) payments from the trust to or for the benefit of the applicant/recipient are considered income of the applicant/recipient; and

(c) any other payments from the trust are considered assets transferred by the applicant/recipient in accordance with the provisions on transfers; see 8.281.500.14 NMAC, *asset transfers*, and following subsections.

(3) **Irrevocable trusts:** Assets in an irrevocable trust may be counted as income, resources, or transfer of assets based on the following rules:

(a) if payments from the trust could be made to or for the benefit of the applicant/recipient, the portion of the corpus from which the payment is made or the corpus income from which payments to the applicant/recipient could be made, are considered resources available to the applicant/recipient; and

(i) payments from that portion of the corpus or income to or for the benefit of the applicant/recipient are considered income of the applicant/recipient;

(ii) payments for any other purpose are considered a transfer of assets by the applicant/recipient which are subject to transfer of asset provisions;

(b) any portion of the trust from which, or any income on the corpus from which, payments could not under any circumstances be made to the applicant/recipient is considered, as of the date of establishment of the trust (or, if later, the date on which payment to the applicant/recipient was foreclosed), to be assets disposed of by the applicant/recipient and the value of the trust is determined by including the amount of any payments made from such portion of the trust after such date.

(4) **Value of the irrevocable trust:** The value of the trust is determined by including the amount of any payments made from portions of the trust after the date of establishment or, if later, the date on which payments to the applicant/recipient were foreclosed.

D. **Other trusts:** The following types of trusts are not subject to the conditions specified under revocable and irrevocable trusts noted above. Only income and resources distributed directly to the applicant/recipient or to a third party on the applicant/recipient's behalf by the trustee are considered available to the applicant/recipient in determining medicaid eligibility if the applicant/recipient could use the payment for food, clothing or shelter for him/herself. The trusts described in this section are reversionary trusts meaning the trust must provide that, upon the death of the applicant/recipient, any funds remaining in the trust revert to the state medicaid agency, up to the amount paid in medicaid benefits on the applicant/recipient's behalf. If the applicant/recipient has resided in more than one state, the trust must provide that the funds remaining in the trust are distributed to each state in which the applicant/recipient received medicaid, based on the state's proportionate share of the total amount of medicaid benefits paid by all of the states on the applicant/recipient's behalf. The trustee may, upon the death of the beneficiary, pay the expenses of the beneficiary's burial or cremation up to the amount then authorized for burial expenses under federal and state medicaid law and regulations, to the extent other resources are not so designated.

(1) **Reversionary trust for certain disabled individuals:** This trust contains the assets of an applicant/recipient who is under 65 years of age at the time the trust is established and who meets the social security administration's definition

~~of disability. A reversionary trust must be established for the sole benefit of the applicant/recipient by a parent, grandparent, legal guardian, or a court. Upon the death of the applicant/recipient, the state receives all amounts remaining in the trust up to the amount of the total medicaid benefits paid on behalf of the applicant/recipient.~~

~~(2) **Income diversion trusts:** To be considered an income diversion trust, a trust must meet the following requirements:~~

~~(a) the trust is composed only of pension, social security, and other income to the applicant/recipient, including accumulated income in the trust; and~~

~~(b) the state receives all amounts remaining in the trust upon the death of the applicant/recipient up to an amount equal to the total medicaid benefits paid on behalf of the applicant/recipient;~~

~~(c) the trusts described in this section are also known in New Mexico as *Maxwell v. Heim* income diversion trusts; those trusts executed on or after August 11, 1993 no longer have to be court ordered or approved.~~

~~(3) **Non-profit trusts for certain disabled individuals:** Trusts containing the assets of applicants/recipients who meet the social security administration's definition of disability and which meet all the following criteria are considered non-profit trusts for certain disabled individuals:~~

~~(a) the trust is established and managed by a non-profit association;~~

~~(b) a separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools these accounts;~~

~~(c) accounts in the trust are established solely for the benefit of applicants/recipients who meet the social security administration's definition of disability and are established by the parent, grandparent, or legal guardian of such applicants/recipients, by such applicants/recipients themselves, or by a court; and~~

~~(d) amounts remaining in the applicant/recipient's account upon his/her death will first be used to pay the state an amount equal to the total amount of medicaid benefits paid on behalf of the applicant/recipient.~~

~~E. **Undue hardship:** An institutionalized spouse who (or whose spouse) has excess resources and is unable to access resources from an existing trust will not be found ineligible for medicaid under Section 1924(c)(3)(C) of the Social Security Act, where the state determines, on a case by case basis, that denial of eligibility on the basis of excess resources would work an undue hardship. Undue hardship is considered to exist if denial of medicaid would deprive the applicant/recipient of food, shelter, or medical care. Cases of undue hardship will be reviewed every six months to monitor changes in circumstances.~~

~~F. **Documentation of trusts:** Upon learning of the existence of a trust, the ISD worker must obtain a copy of the trust document, including all attachments, and forward it to the MAD eligibility unit for review.~~]

[RESERVED]

[2-1-95, 7-31-97; 8.281.500.15 NMAC - Rn, 8 NMAC 4.ICM.517, 3-1-01; A, 4-1-09; Repealed, 10-1-12]

[Replaced by 8.281.510 NMAC, *Trusts*]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

Explanatory paragraph: This is an amendment to Sections 11 and 13 of 6.31.2 NMAC (CHILDREN WITH DISABILITIES/GIFTED CHILDREN), effective September 28, 2012. Subsection D (Performance goals and indicators) of Section 11 (EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES) is amended to add new subparagraphs (a) and (b) to renumbered paragraph (2) to align IEP academic goals in English language arts and mathematics with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC) for students in grades K through three beginning in the 2012-2013 school year and for students in grades four through 12 beginning in the 2013-2014 school year. Subsection G (Conflict management and resolution) of Section 13 is amended by deleting the reference to a facilitated individualized education program (FIEP) meeting in subparagraph (c)(ii) of paragraph (2). Subsection I (Due process hearings) of Section 13 is amended by deleting the reference to the FIEP in subparagraph (a) of paragraph (8). The deletions of the references to FIEP more closely align the rule to the due process timelines required by 34 CFR Secs. 300.510 and 300.515(a).

6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

D. Performance goals and indicators.

(1) Pursuant to the requirements of 34 CFR Sec. 300.157(a), the content standards and benchmarks from the department's Standards for Excellence (Chapter 29 of Title 6 of the NMAC) for all children attending public schools and state-supported educational programs in New Mexico shall provide the basic performance goals and indicators for children with disabilities in the general education curriculum.

(2) The IEP academic goals must align with the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities, however, functional goals do not have to align with the standards and benchmarks.

(a) Beginning in the 2012-2013 school year, IEP academic goals in English language arts and mathematics for students in grades K through three must align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC).

(b) Beginning in the 2013-2014 school year, IEP academic goals in English language arts and mathematics for students in grades four through 12 must align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC).

(3) Unless waivers or modifications covering individual public agencies' programs have been allowed by the department or the secretary of education, the general education curriculum and the content standards and benchmarks shall only be adapted to the extent necessary to meet the needs of individual children with disabilities as determined by IEP teams in individual cases.

[6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11; A, 02/29/12; A, 09/28/12]

6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:

G. Conflict management and resolution.

(2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the public agency shall ensure that the following range of dispute resolution options is available to parents and public agency personnel.

(c) Formal dispute resolution.

(ii) A request for a due process hearing may be filed by parents or their authorized representative, or by a public agency, as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties must be convened by the public agency following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a [~~FIEP meeting or~~] mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

I. Due process hearings.

(8) Preliminary meeting.

(a) Resolution session. Before the opportunity for an impartial due process hearing under Paragraphs (3) or (4) of

Subsection I of 6.31.2.13 NMAC above, the public agency shall convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parents and the public agency agree in writing to waive such a meeting, or agree to use the [~~FIEP or~~] mediation process instead. The resolution session:

(i) shall occur within 15 days of the respondent's receipt of a request for due process;

(ii) shall include a representative of the public agency who has decision-making authority on behalf of that agency;

(iii) may not include an attorney of the public agency unless the parent is accompanied by an attorney; and

(iv) shall provide an opportunity for the parents of the child and the public agency to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute;

(v) if the parties desire to have their discussions in the resolution session remain confidential, they may agree in writing to maintain the confidentiality of all discussions and that such discussions can not later be used as evidence in the due process hearing or any other proceeding; and

(vi) if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind that agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the parties execute an agreement pursuant to a resolution session, a party may void this agreement within three business days of the agreement's execution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.

[6.31.2.13 NMAC - Rp, 6.31.2.13 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11; A, 02/29/12; A, 09/28/12]

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

This is an amendment to 13.14.1 NMAC, Section 25, effective October 1, 2012.

13.14.1.25 DEFINITIONS "S": 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. Schedule of basic premium rates. See basic premium rates (schedule).

B. Simultaneous (issue). Issuing two or more policies bearing the same effective date and insuring the same land.

C. Superintendent. The superintendent of insurance, acting on behalf of the state insurance board, state corporation commission, department of insurance or the state of New Mexico, or anyone acting in an official capacity on his behalf.

D. Supplementary rate information. Rate schedules and manuals, rating rules, and all other information needed to determine the applicable rate in effect or to be in effect.

E. Supporting information. The experience and judgment of the filer and its appointed New Mexico agents, if any, and the experience or data of other insurers and agents relied upon by the filer; the interpretation of any other data relied upon by the filer; descriptions of methods used in making the rates; and any other information required by the superintendent to be filed.

F. Survey (recent). "Recent survey" as used in 13.14.6.14 NMAC and 13.14.7.13 NMAC is a survey [~~not more than six (6) months old which otherwise~~] which meets the requirements of the insurer; provided that:

(1) for condominium units, the term also includes the most recently filed as-built or as-modified survey, confirmed by such site inspections, review of documents including condominium by-laws and regulations, and affidavits, if any, as the underwriter may require;

[~~(2) for existing-owner refinances, the term also includes the most recent survey made after the existing owner purchased the property, or within six (6) months prior to that date, supplemented with the existing owner's affidavit that there have been no known changes since the date of the survey, that the survey is believed to be accurate and complete, and such additional statements as the underwriter may require, confirmed by such site inspections, if any, as the underwriter may require;~~

~~(3)~~] (2) for improved land, the term also includes the most recent survey made which shows the improvements on the land.

[6-16-86...4-1-94; 13.14.1.25 NMAC - Rn & A, 13 NMAC 14.1.25, 5-15-00; A, 12-30-10; A, 10-1-12]

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

This is an amendment to 13.14.2 NMAC, Sections 8, 9 and 11, effective October 1, 2012.

13.14.2.8 LICENSING:

A. Abstracts and title plants: Licensed New Mexico title insurance agents, or authorized title insurers in the case of direct operations must own, operate, or control an abstract or title plant meeting the requirements of NMSA 1978 Section 59A-12-13. Such abstract or title plant must be maintained for a period of not less than twenty (20) years immediately prior to date of application for license of certificate of authority, in the case of direct operations, or date of inspection of such abstract or title plant by the superintendent of insurance as provided for in [~~13.14.3.8.2~~] Subsection B of 13.14.3.8 NMAC. No such abstract or title plant may be more than thirty (30) days in arrears in posting unless such arrearage is caused by delay in indexing of the public records in the county for which such plant is maintained, or by other factors that the superintendent deems as being undue hardships in obtaining the public records or facsimiles thereof, in which event the abstract or title plant must at least be current with the public records as then indexed.

B. Inspection and approval of abstract or title plants. The superintendent of insurance shall inspect, or cause to be inspected, each and every abstract or title plant owned, operated, or controlled within this state, and if such plant is not in compliance with the provisions of NMSA 1978 Section 59A-12-13 and [~~13.14.3.8.1~~] Subsection A of 13.14.3.8 NMAC at the time of such inspection, shall require that such plant be brought into compliance within a period of time, which in his discretion is appropriate and sufficient. A title insurance agent shall not rely on a new or inactive title plant in the issuance of a policy of title insurance without the title plant first being inspected.

[3-1-89, 6-1-98; 13.14.2.8 NMAC - Rn, 13 NMAC 14.3.8, 5-15-00; A, 10-1-12]

13.14.2.9 TITLE INSURANCE AGENT'S LICENSE: An "agent" or "nonresident agent," as defined by NMSA 1978 Section 59A-12-2, who is (1) appointed by a title insurer; (2) is transacting the business of title insurance as defined by NMSA 1978 Section 59A-30-3[~~B~~] C; and, (3) who owns, operates or controls a title abstract plant as defined in NMSA 1978 Section 59A-12-13A, must hold a title insurance agent's license. The scope of such

license is limited to property located in a county or counties for which the licensee has the necessary title abstract plant as specified in NMSA 1978 Section 59A-12-13. For purposes of this definition, the terms "owns, operates, or controls" include the following activities:

A. "Owns" - holding legal or equitable title or controlling interest in a title abstract plant, either as sole or joint proprietor, any partner of a general partnership, or the general partner of a limited partnership, holder of more than ten percent (10%) of the voting stock of a corporation, or as a lessee under a written lease agreement or lease-purchase agreement.

B. "Operates" - directly responsible for the maintenance, updating or retrieval of information contained in a title abstract plant or the searching, abstracting, or examining of title to real property or preparation of abstracts, searches, or commitments relating to real property derived from research from a title abstract plant.

C. "Controls" - ultimate regulating authority or any intermediate supervisory authority over any person directly responsible for the operation of a title abstract plant, who promulgates or administers the general policies providing for the direction and management of a title abstract plant, including general policies of maintenance, updating, and retrieval of information from a title abstract plant or the purchase, sale, or leasing of a title abstract plant.

[3-1-90; 13.14.2.9 NMAC - Rn, 13 NMAC 14.3.9, 5-15-00; A, 10-1-12]

13.14.2.11 TITLE INSURANCE AGENCY LICENSE:

A. All corporations, partnerships, joint ventures, or other business entities (except for title insurers authorized under the laws of New Mexico to transact as insurer the business of title insurance) that hold themselves out as being engaged in the business of title insurance, or who receive or collect premium for title insurance policies, must hold a title insurance agency license. Applications for a title insurance agency license shall comply with NMSA 1978 Section 59A-12-15B.

B. Title insurers transacting the business of title insurance in New Mexico shall notify the superintendent of insurance in writing, within thirty (30) days of the effective date of the cancellation of any appointment of any individual or entity as an agent of said insurer.

C. Title agents engaged in the business of title insurance in New Mexico shall provide written notification to an underwriter that has currently appointed them as an agent, within thirty (30) days of the effective date of the termination of any employee appointed as an individual agent by said underwriter.

[3-1-90; 13.14.2.11 NMAC - Rn, 13 NMAC 14.3.11, 5-15-00; A, 10-1-12]

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

This is an amendment to 13.14.5 NMAC, Section 9, effective October 1, 2012.

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, may be deleted from 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. 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; A, 10-1-12]

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

This is an amendment to 13.14.7 NMAC, Sections 8, 10, 11-15, 17-19, and 26, effective October 1, 2012.

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. 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. 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; A, 10-1-12]

13.14.7.10 STANDARD EXCEPTIONS: All [~~standard~~] loan policies insuring New Mexico property shall contain in Schedule B the standard exceptions listed in 13.14.5.9 NMAC and numbered 1 through 9 inclusively except as otherwise provided by these regulations. Said standard exceptions may be preprinted in Schedule B and, when specifically authorized, may be deleted by crossing out the words as specifically indicated in the regulations immediately following, or by notation in Schedule B or endorsement stating, "exceptions numbered ____ are hereby deleted" [~~and/or~~] or "exception number 3 is hereby amended to read, 'shortages in area.'" [~~All Construction Loan Policies shall omit or delete standard exception numbered 4 from Schedule B.~~] Standard exception numbered 5 shall refer to "spouse of the vestee" in all loan policies.

[6-16-86, 2-6-87; 13.14.7.10 NMAC - Rn, 13 NMAC 14.7.10, 5-15-00; A, 10-1-12]

13.14.7.11 PARTIES IN POSSESSION - STANDARD EXCEPTION 1: The standard exception numbered 1 in 13.14.5.9 NMAC may be deleted from a loan policy [~~(standard or Construction)~~] when the company or agent has been furnished satisfactory proof that there are no parties in possession of the property being insured other than those claiming rights or possession in the property through matters of public record. Each insurer shall establish underwriting standards concerning the necessary proof to be furnished to it or its agents.

[6-16-86; 13.14.7.11 NMAC - Rn, 13 NMAC 14.7.11, 5-15-00; A, 10-1-12]

13.14.7.12 UNRECORDED EASEMENTS - STANDARD EXCEPTION 2: The standard exception numbered 2 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy [~~(standard or Construction)~~] when the insurer or its agent has been furnished a survey of the property being insured which it determines to be satisfactory to determine that there are not easements or claims of easements affecting the insured property other than those shown by the public records. In addition to the survey, the insurer may require as part of its underwriting standards an inspection of the property or other documentation that it may determine is necessary.

[6-16-86; 13.14.7.12 NMAC - Rn, 13 NMAC 14.7.12, 5-15-00; A, 10-1-12]

13.14.7.13 SURVEY COVERAGE - STANDARD EXCEPTION 3: The standard exception numbered 3 in 13.14.5.9 NMAC may be deleted from a loan policy [~~(standard or Construction)~~] in either of two ways. In both instances, the insurer or its agent must be furnished with a recent survey of the insured property meeting the insurer's underwriting standards prior to the deletion being made. If the insurer considers the additional risk acceptable, the entire language of this standard exception may be deleted from the policy, thereby insuring the surveyor's computation of area. If the insurer does not consider the shortage-in-area risk acceptable but considers the remaining additional hazard insurable, the words "encroachments, overlaps, conflicts in boundary lines" and the words "or other matters which would be disclosed by an accurate survey and inspection of the premises" may be deleted, leaving the exception to read, "shortages in area." There are no other circumstances under which this standard exception may be deleted from the policy or otherwise modified.

[6-16-86, 3-1-88; 13.14.7.13 NMAC - Rn, 13 NMAC 14.7.13, 5-15-00; A, 10-1-12]

13.14.7.14 MECHANICS' AND MATERIALMEN'S LIEN COVERAGE - STANDARD EXCEPTION 4:

A. The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted in its entirety from a [~~standard~~] loan policy [~~(or offered in a Construction Loan Policy)~~] under two circumstances.

B. If the insurer's underwriting requirements for evidence of priority have been met, the exception may be deleted from a loan policy [~~(or the "D" endorsement may be issued contemporaneously with a Construction Loan Policy)~~] upon payment of the additional premium required in Subsection G of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes, an NM ___ construction loan endorsement of an NM _____ construction loan direct payment endorsement shall be issued with the loan policy.

C. If the insurer's underwriting requirements for evidence of priority have not been met but the insurer's underwriting requirements of the risk incurred by reason of the lack of priority have been met, the exception may be deleted from a [~~standard~~] loan policy [~~(or endorsement "A" may be attached to a Construction Loan Policy)~~] upon receipt of the additional extra-hazard risk premium specified in Subsection G of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes, an NM _____ construction loan endorsement or an NM _____ construction loan direct payment endorsement shall be issued with the loan policy.

D. Each insurer shall establish written underwriting requirements concerning minimum evidence of priority and requirements of the risk incurred by reason of the lack of priority.

[6-16-86, 2-6-87; 13.14.7.14 NMAC - Rn, 13 NMAC 14.7.14, 5-15-00; A, 10-1-12]

13.14.7.15 SPOUSAL RIGHTS - STANDARD EXCEPTION 5: The standard exception numbered 5 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy [~~(standard or Construction)~~] if the vestee named in such policy is a

corporation, partnership or other artificial entity, or a person holding title as trustee. The exception may be deleted under other circumstances when the insurer or its agent has complied with the written underwriting standards established by the insurer for such deletion.

[6-16-86; 13.14.7.15 NMAC - Rn, 13 NMAC 14.7.15, 5-15-00; A, 10-1-12]

13.14.7.17 ADDITIONAL "A" ENDORSEMENTS TO CONSTRUCTION LOAN POLICY: When a construction loan policy has been issued and an "A" endorsement has been attached thereto at the time of its issue, upon a date down of the title having been made to the date thereof and upon a subsequent disbursement of the loan insured, an additional Endorsement "A" may be issued by the insuring company changing the effective date of the construction loan policy to the date of the most recent disbursement and down date upon payment of the additional charge as provided in Subsection D of 13.14.9.40 NMAC. In no event shall any Endorsement "A" be used to extend the term of the construction loan policy beyond its expiration date. If the date down of the title made in connection with the issuance of such additional Endorsement "A" reveals any change in the condition of title or if the insured requires that the amount of the aggregate disbursements to the date of the Endorsement "A" be shown, such matters must be shown by separate endorsement issued contemporaneously with such additional Endorsement "A". No Endorsement "A" may be issued after ___-___-_____.

[6-16-86; 13.14.7.17 NMAC - Rn, 13 NMAC 14.7.17, 5-15-00; A, 10-1-12]

13.14.7.18 CONSTRUCTION LOAN POLICIES:

A. [~~Construction lenders, if desirous of title protection, may obtain a Construction Loan Policy of title insurance. The use of a construction binder or commitment is prohibited when no policy is issued (or intended to be issued) insuring the construction loan.~~] Construction loan policies may not be issued after ___-___-_____.

B. [~~The Construction Loan Policy may be issued to provide coverage for a two-year period upon payment of the premiums required by subsection A of 13.14.9.40 NMAC. No more than four (4) extension endorsements of six (6) months each may be issued,~~] Upon written request of the insured, acceptance of the risk by the title insurer and receipt of the additional premium required by subsection B of 13.14.9.40 NMAC, a construction loan policy may be extended by issuance of no more than four (4) extension endorsement of six (6) months each. In no event may the coverage provided by a construction loan policy, if extended to its maximum, exceed four years from the date of issue unless it is converted to a [~~standard~~] loan policy by payment of the full premium due for said loan [~~policies~~] policy without credit for any premium paid for the construction loan policy.

[~~**C.** Schedule B of every Construction Loan Policy shall contain the standard exceptions listed in 13.14.7.10 NMAC and paragraphs 1, 2, 3, 5, 6, 7, 8 and 9 of subsection A of 13.14.5.9 NMAC. and the following additional numbered exception: Notwithstanding any other provision of this policy, the company shall be liable only for such loss or damage insured against by this policy which is actually sustained by the insured and reported to the company as provided in the conditions and stipulations on or before two years after the recording of the mortgage described in Schedule A. (Upon payment to the Company of the required full Loan Policy premium prior to the expiration of said policy, the term limitation may be deleted from this policy.) It is permissible to either number said exception "4" or to note "4. Omitted on purpose." and to number said exception "10".~~]

[6-16-86, 2-16-87; 13.14.7.18 NMAC - Rn, 13 NMAC 14.7.18, 5-15-00; A, 10-1-12]

13.14.7.19 PENDING DISBURSEMENT CLAUSE:

A. [~~A construction lender may be issued a standard Loan Policy in lieu of a Construction Loan Policy upon payment of the premiums required by subsection F of 13.14.9.40 NMAC. Such standard Loan Policy insuring a construction loan shall contain an additional numbered exception in Schedule B reading as follows:~~] Prior to, but not on or after ___-___-_____ a construction lender may have been issued a loan policy containing the following pending disbursements clause: "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 face amount of the policy. Prior to each disbursement of the proceeds of the loan, the title must be continued down to such time for possible liens or objections intervening between the date hereof and the date of such disbursement." Loan policies containing this said pending disbursement clause may not be issued on or after ___-___-_____.

B. At the time of each disbursement, [~~a~~] an NM-22 pending disbursement down date endorsement may be issued by the insuring company, showing any changes in title to the security property and stating the total amount of the proceeds of the construction loan advanced by the lender at the date the endorsement is issued. The insurer or its agent shall collect the endorsement premium required by 13.14.10.18 NMAC within fifteen) days of issuing the endorsement.

[6-16-86, 3-1-88; 13.14.7.19 NMAC - Rn, 13 NMAC 14.7.19, 5-15-00; A, 10-1-12]

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~~] 81) 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; A, 10-1-12]

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

This is an amendment to 13.14.8 NMAC, Sections 8, 12, 13, 15, 20 and 28 effective October 1, 2012.

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~~] 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 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.

E. 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 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.)"

[6-16-86, 3-1-89; 13.14.8.8 NMAC - Rn, 13 NMAC 14.8.8, 5-15-00; A, 9-15-10; A, 10-1-12]

13.14.8.12 IDENTIFIED RISK COVERAGE ENDORSEMENT:

A. An identified risk coverage endorsement NM form 85 may be attached to an owner's policy, leasehold owner's policy, loan policy, construction loan policy or leasehold loan policy for the purpose of insuring around an adverse matter or document excepted to in Schedule B. This endorsement shall be issued only when there exists an adverse matter or document which has a generalized affect as to the insurability of title to a number of properties which are similarly situated, and only following the issuance by the superintendent of insurance of a bulletin distributed to the title insurance underwriters and agents licensed to issue title policies in New Mexico specifically identifying the adverse matter or document and authorizing use of the identified risk coverage endorsement with regard to such adverse matter or document.

B. When issuing the identified risk coverage endorsement, the adverse matter or document must appear as an exception in Schedule B of any policy to which the endorsement is attached. It shall not be permissible to insure around any adverse matter or document by intentionally omitting it from any commitment or policy.

C. This endorsement shall be issued only if the underwriter considers the risk acceptable, and only with written approval by the underwriter.

[4-1-93; 13.14.8.12 NMAC - Rn, 13 NMAC 14.8.12, 5-15-00; Repealed, 7-1-05; 13.14.8.12 NMAC - N, 10-1-12]

13.14.8.13 INSURING AROUND ENDORSEMENT:

A. An insuring around endorsement NM form 43 may be attached to an owner's policy, leasehold owner's policy, loan policy[~~,construction loan policy~~] or leasehold loan policy for the purpose of insuring around a lien or other adverse matter excepted to in Schedule B. This endorsement shall only be issued where one or more of the following circumstances exists at the time the policy is issued:

(1) where liens securing obligations which, though not released of record, have been discharged to the satisfaction of the underwriter, and the underwriter or agent has evidence in this file that the lien has been paid in full; provided that the underwriter or agent has the duty to obtain a release within a reasonable time after closing if it is possible to do so;

(2) where an insurer has previously issued a policy, through error or mistake, or pursuant to an indemnity agreement or agreement to defend as provided under Paragraph 3 below, without taking exception to a specific lien or other adverse, and is called upon to issue a new policy and is already obligated under such prior policy;

(3) where an insurer has erred as in (2) above, or has accepted an indemnity or agreement to defend pursuant to this paragraph and another insurer discovers the error in preparing to issue a subsequent policy, the second insurer may rely upon an indemnity agreement [~~and/or~~] or an agreement to defend by the first insurer, and attach the endorsement.

B. In utilizing this insuring-around provision, the lien must appear as an exception in Schedule B of any policy and the endorsement shall be attached thereto. It shall not be permissible to insure around any lien or other adverse matter by intentionally omitting it from any commitment or policy. This endorsement shall only be issued where the underwriter considers the risk acceptable.

[4-3-95, 4-1-96; 13.14.8.13 NMAC - Rn, 13 NMAC 14.8.13, 5-15-00; A, 10-1-12]

13.14.8.15 TRUTH IN LENDING ENDORSEMENT: A truth-in-lending endorsement, NM form 48, may be attached to a New Mexico loan policy[~~, construction loan policy,~~] or leasehold loan policy in those circumstances where the underwriter has determined that the loan to be insured is exempt from the provisions of Regulation Z (12 CFR 226), and the premium provided for in 13.14.10.31 NMAC is paid.

[6-1-97; 13.14.8.15 NMAC - Rn, 13 NMAC 14.8.15, 5-15-00; A, 10-1-12]

13.14.8.20 CONTIGUITY OF PARCELS ENDORSEMENTS: Upon being furnished with a satisfactory survey and the payment of the premium provided in 13.14.10.39 NMAC, the contiguity of single parcel endorsement, NM form 54, or the contiguity of multiple parcel endorsement, NM form 66 may be attached to an owners or leasehold owners policy, or to a loan or leasehold loan policy[~~, or to a construction loan policy~~] which insures any property that is not one to four family residential, subject to Subsections A and B below.

A. For owner's or leasehold owner's policies, the insured must already or at the time the policy is issued have an interest (in fee, leasehold, or easement) in both parcels referred to in NM form 54, or in all parcels referred to in NM form 66.

B. For loan[~~,~~] or leasehold loan[~~, or construction loan~~] policies, the insured lender must already or at the time the policy is issued have a mortgage lien upon an interest (in fee, leasehold, or easement) in both parcels referred to in NM form 54, or in all parcels referred to in NM form 66.

[13.14.8.20 NMAC - N, 5-15-00; A, 7-1-06; A, 10-1-12]

13.14.8.28 ACCESS AND ENTRY ENDORSEMENT: The access and entry endorsement, NM form 67, may be attached to all owner's policies and [~~loan policies, including leasehold policies and/or construction~~] loan policies, for all properties except one to four family residential properties, provided the premium in 13.14.10.49 NMAC is paid and a satisfactory survey is furnished showing that there is vehicular and pedestrian access to the abutting existing public street, road or highway. A separate endorsement is to be issued for each public street, road or highway for which the insured wants access and entry coverage and a separate premium as provided for in 13.14.10.49 NMAC is to be paid for each endorsement issued. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.28 NMAC - N, 7-1-06; A, 7-31-06; A, 10-1-12]

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

This is an amendment to 13.14.9 NMAC, Sections 18, 19, 40 and 41 effective October 1, 2012.

13.14.9.18 PREMIUM RATES FOR ORIGINAL OWNER'S POLICIES: The following schedule of premium rates for original owner's policies shall be in effect from August 1, 2009 until modified by the superintendent:

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	[~~190~~] 195	24,000	[~~312~~] 320	38,000	[~~419~~] 429
11,000	[~~198~~] 203	25,000	[~~319~~] 327	39,000	[~~425~~] 436
12,000	[~~208~~] 213	26,000	[~~328~~] 336	40,000	[~~433~~] 444
13,000	[~~217~~] 222	27,000	[~~336~~] 344	41,000	[~~439~~] 450
14,000	[~~226~~] 232	28,000	[~~345~~] 354	42,000	[~~446~~] 457
15,000	[~~235~~] 241	29,000	[~~352~~] 361	43,000	[~~454~~] 465
16,000	[~~245~~] 251	30,000	[~~360~~] 369	44,000	[~~461~~] 473
17,000	[~~254~~] 260	31,000	[~~369~~] 378	45,000	[~~468~~] 480
18,000	[~~263~~] 270	32,000	[~~375~~] 384	46,000	[~~474~~] 486
19,000	[~~271~~] 278	33,000	[~~383~~] 393	47,000	[~~482~~] 494
20,000	[~~280~~] 287	34,000	[~~389~~] 399	48,000	[~~490~~] 502
21,000	[~~286~~] 293	35,000	[~~397~~] 407	49,000	[~~496~~] 508
22,000	[~~295~~] 302	36,000	[~~405~~] 415	50,000	[~~504~~] 517
23,000	[~~303~~] 311	37,000	[~~411~~] 421		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission, add	Agent retention percentage	Additional rate per $1000 to be collected on policy amounts in excess of $10 million (solely for underwriter)	Total Charged to Consumer
over $50 to $100	$ [~~6.13~~] 6.28	80%		$ [~~6.13~~] 6.28
over $100 to $500	$ [~~4.82~~] 4.94	80%		$ [~~4.82~~] 4.94
over $500 to $2,000	$ [~~3.78~~] 3.87	80%		$ [~~3.78~~] 3.87
over $2,000 to $5,000	$ [~~3.04~~] 3.12	75%		$ [~~3.04~~] 3.12
over $5,000 to $10,000	$ [~~2.53~~] 2.59	70%		$ [~~2.53~~] 2.59
over $10,000 to $25,000	$ [~~2.17~~] 2.22	65%	$ 0.25	$ [~~2.42~~] 2.47
over $25,000 to $50,000	$ [~~1.89~~] 1.94	60%	$ 0.25	$ [~~2.14~~] 2.19
over $50,000	$ [~~1.51~~] 1.55	50%	$ 0.25	$ [~~1.76~~] 1.80

[6-16-86...4-3-95; A, 5-1-99; 13.14.9.18 NMAC - Rn, 13 NMAC 14.9.8.11 & A, 5-15-00; A, 5-31-00; A, 8-1-00; A, 3-1-02; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-06; A, 9-1-07; A, 7-1-08; A, 8-1-09; A, 10-1-12]

13.14.9.19 NON-POLICY RATES:

A. Commitments to insure. The premium for any commitment to insure (or an interim title insurance binder) is [~~fifty ($50.00) dollars~~] one hundred dollars ($100) for the initial six (6) months, and an additional [~~fifty dollars ($50.00)~~] one hundred dollars ($100) for each additional six month (or portion thereof) renewal or extension.

B. Cancellation fee. If the transaction fails to close and no policy is issued by the company issuing its commitment (or binder), the company may charge a cancellation fee that it determines reasonable and appropriate considering the nature and extent of the services rendered by it.

[6-16-86…3-1-89; 6-1-97, 6-1-98; 13.14.9.19 NMAC - Rn, 13 NMAC 14.9.9, 5-15-00; A, 10-1-12]

13.14.9.40 INSURING CONSTRUCTION LOANS AND DELETING STANDARD EXCEPTION 4 IN STANDARD LOAN POLICIES:

[~~A. Construction Loan Policy Rates.~~ ~~A construction loan policy may be issued pursuant to 13.14.7.18 NMAC for a~~

~~premium of thirty dollars ($30.00) plus one (1) dollar per thousand calculated upon the face amount of the construction mortgage.~~]

~~[B.]~~ A. Extension endorsement rates. a construction loan policy may be extended beyond its initial two (2) year term pursuant to 13.14.7.18 NMAC for an additional premium of twenty-five dollars ($25.00) per six (6) month endorsement.

~~[C.]~~ B. No subsequent credit on substitution loan. The issuance of a construction loan policy may not be used as a basis for claiming a credit or discount on a substitution loan pursuant to 13.14.9.36 NMAC.

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

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

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

~~[G.]~~ D. Mechanics' and materialmen's lien coverage in standard loan policy. The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted from a standard loan policy or a standard loan policy insuring a construction loan pursuant to 13.14.7.14 NMAC. The premium for deletion of the exception shall be twenty-five dollars ($25.00) when the insurer's underwriting requirements for evidence of priority have been met or five dollars ($5.00) per thousand of the face amount of the policy if said requirements have not been met as provided in 13.14.7.14 NMAC. If the loan policy insures a construction loan the issuing agent or underwriter shall attach either the NM form 83 construction loan endorsement or the NM 83.1 construction loan - direct payment endorsement.

[6-16-86...4-1-94; 6-1-97; 6-1-98; 13.14.9.40 NMAC - Rn, 13 NMAC 14.9.13, 5-15-00; A, 3-1-02; A, 9-1-07; A, 10-1-12]

13.14.9.41 SINGLE POLICY MULTIPLE COUNTIES: In the event a proposed insured requests that a single policy be issued insuring multiple New Mexico properties that may be located in more than one county, the amount of insurance shall be allocated to each county based upon a supported amount as provided in writing by the proposed insured. The premium shall be calculated as if a policy was being issued separately in each county and the aggregated gross premiums shall be combined to determine the gross premium for the single policy. A New Mexico licensed agent ("agent") or admitted company that maintains an agency or direct operation in one of the counties in which the property is located ("direct operation") (collectively "issuing company") must issue the policy and disburse, or direct the payee to disburse, the gross premium attributable to each county to the agent or direct operation in such county for such policy to be remitted to the insurer in accordance with the division of premium rule in affect at the time of issuance. The policy schedules applicable to the land located in each county shall be countersigned by the agent or direct operation and provided to the issuing company. The issuing company shall provide each agent or direct operation with a complete copy of the final policy which shall be maintained in accordance with underwriter and regulations requirements. Each agency or direct operation shall report the policy utilizing the combined policy number but only the gross premium it received attributable to the property within its county shall be reported. Issuance of a single policy shall not be used when the transaction involves property outside of New Mexico. This rule shall not be interpreted to allow title insurance underwriters to issue what is commonly referred to as home office issued policies.

[13.14.9.41 NMAC - N, 10-1-12]

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

This is an amendment to 13.14.10 NMAC, Sections 8, 20, 41 and 43, effective October 1, 2012.

13.14.10.8 ASSIGNMENTS OF MORTGAGES: When a mortgage upon which a loan policy has been issued is assigned, each successive assignee may obtain an assignment [~~of mortgage~~] endorsement, NM form 24, or an assignment and date down endorsement, NM form 24.1 from the insuring company certifying the title to include the date of recording the assignment, for a premium of twenty-five dollars ($25.00) if issued within six (6) months of the date of the policy or date of the last endorsement reflecting an earlier assignment, or a premium of sixty-five dollars ($65.00) if issued more than six (6) months from the date of the policy or last endorsement reflecting an earlier assignment, if any, whichever is later.

[6-16-86, 2-16-87, 6-1-98; 13.14.10.8 NMAC - Rn, 13 NMAC 14.10.8, 5-15-00; A, 5-31-00; A, 8-17-09; A, 10-1-12]

13.14.10.20 RENEWAL, EXTENSION [~~, MODIFICATION~~] AND PARTIAL RELEASE ENDORSEMENT: Upon request of the named insured and the proper recording of all necessary documents at the expense of the insured, the insuring company or its agent may endorse its loan policy to reflect the renewal, extension, reinstatement, modification, partial release, release of additional collateral or release from personal liability of an insured lien in the manner prescribed by Subsection D of 13.14.8.8 NMAC for a premium of twenty-five dollars ($25.00) if issued within six (6) months from the date of the policy or date of the last endorsement reflecting an earlier assignment, renewal, etc., or a premium of sixty-five dollars ($65.00) if issued more than six (6) months from the date of the policy or last such endorsement, if any, whichever is later.

[6-16-86, 2-16-87, 6-1-98; 13.14.10.20 NMAC - Rn, 13 NMAC 14.10.20, 5-15-00; A, 5-31-00; A. 10-1-12]

13.14.10.41 FIRST LOSS -MULTIPLE PARCEL TRANSACTIONS ENDORSEMENT: When a first loss - multiple parcel transactions endorsement, NM form 58, is issued pursuant to 13.14.8.21 NMAC, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.

[13.14.10.41 NMAC - N, 7-1-03; A, 10-1-12]

13.14.10.43 [~~LOAN POLICY~~] AGGREGATION ENDORSEMENT: When [~~a loan policy~~] an aggregation endorsement, NM form 60, is issued pursuant to 13.14.8.23 NMAC, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.43 NMAC - N, 7-1-03; A, 10-1-12]

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

This is an amendment to 13.14.17 NMAC, Section 12, effective October 1, 2012.

13.14.17.12 FORM 3 - TRANSACTION REPORT:

NEW MEXICO TITLE INSURERS STATISTICAL REPORT
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 Trans-actions	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	
6.1	0601	Plain Language 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~~] – All Assessments (ALTA 4-06)	13.14.10.14			No	
13	1300	Planned Unit Development Endorsement - All Assessments (ALTA 5-06)	13.14.10.15			No	
13.1	1301	Planned Unit Development Endorsement – Unpaid Assessments (ALTA 5.1-06)	13.14.10.15			No	
14	1400	Variable Rate Mortgage Endorsement (ALTA 6-06)	13.14.10.12			No	
15	1500	Variable Rate Mortgage Endorsement - Negative Amortization (ALTA [~~6.1~~] 6.2-06)	13.14.10.12			No	
16	1600	Manufactured Housing Unit Endorsement (ALTA 7-06)	13.14.10.13			No	
16.1	1601	Manufactured Housing Unit (Conversion Loan) Endorsement (ALTA 7.1-06)	13.14.10.13			No	

16.2	1602	Manufactured Housing Unit (Conversion Owner's) Endorsement (ALTA 7.2-06)	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] 2000	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] Owners Policy - [Subsequent] Simultaneous Issue with Owner's Policy	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	
21.1	2101	Leasehold Loan Policy – Simultaneous Issue with Leasehold Owner's Policy	13.14.9.30			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 (ALTA 10-06)	13.14.10.8			No	
24.1	2401	Assignment and Downdate Endorsement (ALTA 10.1-06)	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 - Full Equity Transfer Endorsement (ALTA 15-06)	13.14.10.21			Yes	

28.1	2801	Non-Imputation – Additional Interest Endorsement (ALTA 15.1-06)	13.14.10.21			Yes	
28.2	2802	Non-Imputation – Partial Equity Transfer Endorsement (ALTA 15.2-06)	13.14.10.21			Yes	
29	2900	Environmental Protection Lien Endorsement (ALTA 8.1-06)	13.14.10.22			No	
30	3000	Condominium Endorsement [~~to Owner's Policy~~] Unpaid Assessments (ALTA 4.1-06)	13.14.10.24			No	
31	3100	Owner's Leasehold Conversion Endorsement (to create policy)	13.14.9.38			Yes	
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~~] Title Insurance Policy	13.14.9.28			Yes	
42	4200	Foreclosure [~~Guarantee~~] Title Insurance Policy Down Date Endorsement	13.14.10.18			No	
43	4300	Insuring Around Endorsement	[~~None~~] 13.14.8.13			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 (ALTA JR1)	13.14.10.32			No	
47	4700	Revolving Credit, Variable Rate Endorsement to Residential Limited Coverage Junior Loan Policy (ALTA JR2)	13.14.10.33			No	
48	4800	Truth-in-Lending Endorsement (ALTA 2-06)	13.14.10.31			Yes	

50	5000	Restrictions, Encroachments and Minerals Endorsement - Loan Policy (ALTA 9-06)	13.14.10.34			Yes	
50.1	5001	Restrictions Encroachments, Minerals - Loan Policy Endorsement (ALTA 9.3-06)	13.14.10.34			Yes	
51	5100	Land Abuts Street Endorsement	13.14.10.36			No	
52	5200	[Designation of Improvements, Address] Location Endorsement	13.14.10.37			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] - Owner's Policy (Unimproved Land) Endorsement (ALTA 9.1-06)	13.14.10.34			Yes	
56.1	5601	Restrictions, Encroachments, Minerals - Owner's Policy -(Unimproved Land) Endorsement (ALTA 9.4-06)	13.14.10.34			Yes	
57	5700	Restrictions, Encroachments, [and] Minerals - Owner's Policy [Endorsement] (Improved Land) Endorsement (ALTA 9.2-06)	13.14.10.34			Yes	
57.1	5701	Restrictions, Encroachments, and Minerals Owner's Policy - (Improved Land) Endorsement (ALTA 9.5-06)	13.14.10.34			Yes	
58	5800	First Loss - Multiple Parcel Transactions Endorsement (ALTA 20-06)	13.14.10.41			No	
60	6000	[Loan Policy] Aggregation Endorsement (ALTA 12-06)	13.14.10.43			No	
60.1	6001	Aggregation Endorsement (ALTA 12.1-06)	None			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 (ALTA form revised 2006)	13.14.9.22			Yes	

64	6400	Zoning [~~Endorsement,~~] - Unimproved Land Endorsement (ALTA [~~3.0~~] 3-06)	13.14.10.47			Yes	
65	6500	Zoning [~~Endorsement,~~] - Completed Structure Endorsement (ALTA 3.1-06)	13.14.10.48			Yes	
66	6600	Contiguity [~~of~~] - Multiple Parcels Endorsement (ALTA 19-06)	13.14.10.39			No	
67	6700	Access and Entry Endorsement (ALTA 17)	13.14.10.49			No	
68	6800	Indirect Access and Entry Endorsement (ALTA 17.1-06)	13.14.10.50			No	
69	6900	Utility Access Endorsement (ALTA 17.2-06)	13.14.10.51			No	
70	7000	Commercial Environmental Protection Lien Endorsement (ALTA 8.2-06)	13.14.10.52			No	
71	7100	Reverse Mortgage Endorsement (ALTA 14.3-06)	13.14.10.53			No	
72	7200	Single Tax Parcel Endorsement (ALTA 18-06)	13.14.10.54			No	
73	7300	Multiple Tax Parcel Endorsement (ALTA 18.1-06)	13.14.10.55			No	
74	7400	Doing Business Endorsement (ALTA 24-06)	13.14.10.56			No	
75	7500	Subdivision Endorsement (ALTA 26-06)	13.14.10.57			No	
76	7600	Easement - Damage or Enforced Removal Endorsement (ALTA 28-06)	13.14.10.58			No	
77	7700	Co-Insurance - Single Policy Endorsement (ALTA 23-06)	13.14.10.59			No	
78	7800	Same as Survey Endorsement (ALTA 25-06)	13.14.10.38			No	
79	7900	Same as Portion of Survey Endorsement (ALTA 25.1-06)	13.14.10.38			No	
80	8000	Mortgage Modification Endorsement (ALTA 11-06)	13.14.10.20			No	
83	8300	Construction Loan – Loss of Priority Endorsement (ALTA 32-06)	None			Yes	
83.1	8301	Construction Loan - Loss of Priority - Direct Payment Endorsement (ALTA 32.1-06)	None			No	

84	8400	Disbursement Endorsement (ALTA 33-06)	None			No	
85	8500	Identified Risk Coverage Endorsement	None			No	

2	9240	Loan Policy - Statutory Rate (less than 3 years - 40%)	59A-30-6.1 NMSA 1978			Yes	
2	9250	Loan Policy - Statutory Rate (more than 3 years, less than 5 - 50%)	59A-30-6.1 NMSA 1978			Yes	
2	9260	Loan Policy - Statutory Rate (more than 5 years, less than 10 - 60%)	59A-30-6.1 NMSA 1978			Yes	
2	9280	Loan Policy - Statutory Rate (more than 10 years, less than 20 - 80%)	59A-30-6.1 NMSA 1978			Yes	

TOTAL:				

Crosscheck with Form 1:	
Difference:	

Explanation for Difference (if any):

[13.14.17.12 NMAC - Rp, 13.14.17.12 NMAC, 7-1-06; A, 8-17-09; A, 09-15-10; A, 10-1-12]

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

These are amendments to 13.14.18 NMAC, Sections 9, 10, 13, 15, 25, 26, 27, 49, 61, 103 and 104 effective October 1, 2012; these amendments repeal 13.14.18 NMAC, Sections 20, 35, 44 and 105 effective October 1, 2012; and these amendments add Sections 21, 107, 108, 109 and 110 effective October 1, 2012.

13.14.18.9 ALTERATION OR SUBSTITUTION OF FORMS PROHIBITED:

A. No person, firm or organization may alter or otherwise change any title insurance form promulgated by the superintendent, or use any non-promulgated endorsement or rider, except (1) upon public hearing called for such purpose and upon a determination by the superintendent that the same be proper, or (2) in a manner specifically authorized by these regulations as amended from time to time.

B. Nothing in this regulation shall prevent a title insurer from (1) adding blanks, spaces, labels or brief instructions to the promulgated forms for the purpose of collecting statistical data or (2) from typesetting a promulgated form utilizing type styles, margins or paginations different from the promulgated forms; provided, however, that all language contained in each promulgated form must appear in each form printed or used by each title insurance underwriter or agent verbatim, and further provided that nothing may be added to a promulgated title insurance form which changes any of the terms of such form except as specifically provided by these regulations.

C. Nothing herein shall prohibit the use of the forms in any language other than English, provided, however, that any translated form shall contain the following language in bold-face type on the first page of the form in English and in the translated language: "This translation is provided as a convenience only. The English language version of this form shall control and shall be the operative document for all legal purposes."

D. The following language shall be added at the top of Schedule A of all commitments and policies in a font not less than the font size of the remaining print of Schedule A and be in bold italicized print: "Pursuant to the New Mexico Title Insurance Law NMSA 1978 Section 59A-30-4, control and supervision by superintendent and title insurance regulation 13.14.18.10 NMAC, no part of any title insurance commitment, policy or endorsement form promulgated by the New Mexico superintendent of insurance, nor issued by a person or company not licensed with regard to the business of title insurance by the New Mexico superintendent of insurance, nor issued by a person or company who does not own, operate or control an approved title abstract plant as defined by New Mexico law and regulations for the county wherein the property is located."

[6-16-86, 4-3-95; 13.14.18.9 NMAC - Rn, 13 NMAC 14.2.10, 5-15-00; A, 10-1-12]

13.14.18.10 DELETION OF PREPRINTED TERMS, ADDITION OF UNAUTHORIZED TERMS, AND LETTERS OF INTERPRETATION OR WAIVER THAT CHANGE THE TERMS, PROHIBITED:

A. None of the preprinted terms (or the terms required to be printed) in a promulgated title insurance form may be deleted from such form except in the manner specifically authorized by these rules.

B. Nothing may be added to, inserted in or typed upon a promulgated title insurance form except as specifically authorized by these rules; provided, however, that the information necessary to identify the insured, the insured's estate or interest of record, the property

description, all matters of record affecting the insured's interest which are exceptions to the policy, all matters, facts and circumstances, whether or not shown by the public records, constituting a lien, claim, encumbrance, impairment or limitation upon the estate to be insured, whether arising by operation of law or by reason of no recorded information establishing the insured matters, the amount of liability of the policy and, in case of a commitment or binder, any matter constituting a requirement prior to issuance of a policy, may be inserted in the proper places in the various forms and that other information necessary to complete each form (such as the year in the tax exception clause and any required signature or countersignature) must be inserted in the form prior to its issuance.

C. Additional specific exceptions may be added to Schedule B to except from coverage the effect of encroachments, overlaps, and physical evidence of easement [~~and/or~~] or boundary line disputes, as revealed by a survey or inspection of the property. Additionally, a specific exception as to lack of access to the property may be taken when the search performed fails to reveal that insurable rights of access to the property exist.

D. No person, firm or organization may issue, publish or circulate a letter, memorandum or other writing which directly or indirectly modifies or waives the terms or any part of the terms of any promulgated form, nor may any person, firm or organization agree to directly or indirectly do or not do anything, the effect of which is or would be to offer insurance coverages other than those in the promulgated title insurance forms, whether the same be more, less, substitute, alternative, negative or affirmative coverages or risks, except as specifically authorized by these rules; except that insurers shall waive, at no cost or charge to the insured, either by endorsement or language added to Schedule B of the policy, the right to demand arbitration pursuant to the conditions and stipulations of title insurance policies issued in New Mexico. The endorsement or the language added to Schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the [~~American arbitration association~~] American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

E. In no event may any policy, endorsement, binder, commitment, letter, contract, memorandum or other writing or form issued by a title insurance underwriter or agent concerning an interest in New Mexico property contain coverages not expressly authorized by these rules [~~and/or~~] or the superintendent pursuant to the New Mexico title insurance law.

[6-16-86...3-1-92; A, 2-15-99; 13.14.18.10 NMAC - Rn, 13 NMAC 14.2.11, 5-15-00; A, 8-29-03; A, 10-1-12]

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~~] [Reserved]	13.14.18.20
8	12.1-06	[~~Reserved~~] Aggregation Endorsement	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, 10-16-08	Condominium [~~(Lender's Policy)~~] Endorsement All Assessments	13.14.18.25
13	5-06, 10-16-08	Planned Unit Development Endorsement [~~(Loan Policy)~~] All Assessments	13.14.18.26
13.1	5.1-06 10-16-08	Planned Unit Development Endorsement [~~(Owner's Policy)~~] Unpaid Assessments	13.14.18.27
14	6-06, 6-17-06	Variable Rate, 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~~] [Reserved]	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, 10-16-08	Assignment and 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~~	~~U.S. Policy Down Date Endorsement~~] [Reserved]	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 Unpaid Assessments	13.14.18.49
31		Owner's Leasehold Conversion Endorsement	13.14.18.50
		[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 Title Insurance Policy	13.14.18.60
42		Foreclosure [~~Guarantee~~] Title Insurance 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	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 and Potential Premium Discounts for Future Policies	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		Location Endorsement	13.14.18.72
		[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
		[Reserved]	13.14.18.81
60	12-06, 6-17-06	Aggregation Endorsement	13.14.18.82
60.1	12.1-06	Aggregation Endorsement	13.14.18.21
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	[~~17.1-06~~] 17-06, 6-17-06	Access and Entry Endorsement	13.14.18.89
68	17.1-06, 6-17-06	Indirect Access and Entry Endorsement	13.14.18.90
69	17.2-06, 6-17-06	Utility Access Endorsement	13.14.18.91
70	8.2-06, 6-17-06	Commercial Environmental Protection Lien Endorsement	13.14.18.92
71	14.3-06, 10-22-09	Reverse Mortgage Endorsement	13.14.18.93
72	18-06, 6-17-06	Single Tax Parcel Endorsement	13.14.18.94
73	18.1-06, 6-17-06	Multiple Tax Parcel Endorsement	13.14.18.95
74	24-06, 10-16-08	Doing Business Endorsement	13.14.18.96
75	26-06, 6-17-06	Subdivision Endorsement	13.14.18.97
76	28-06, 10-16-08	Easement - Damage or Enforced Removal Endorsement	13.14.18.98
77	23-06, 6-17-06	Co-Insurance – Single Policy Endorsement	13.14.18.99
78	25-06, 6-17-06	Same as Survey Endorsement	13.14.18.100
79	25.1-06, 6-17-06	Same as Portion of Survey Endorsement	13.14.18.101
80	11-06, 6-17-06	Mortgage Modification Endorsement	13.14.18.102
81		Closing Protection Letter	13.14.18.103
81.1		Closing Protection Letter - [~~Limitations~~] Multiple Transactions	13.14.18.104
[~~81.2~~		~~Closing Protection Letter – Single Transaction Limited Liability~~] [Reserved]	13.14.18.105
82		Inter-Underwriter Indemnification Agreement	13.14.18.106
83	32-06, 2-3-11	Construction Loan - Loss of Priority Endorsement	13.14.18.107
83.1	32.1-06, 2-3-11	Construction Loan - Loss of Priority - Direct Payment Endorsement	13.14.18.108
84	33-06, 2-3-11	Disbursement Endorsement	13.14.18.109
85		Identified Risk Coverage Endorsement	13.14.18.110

[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; A, 10-1-12]

13.14.18.15 NM FORM 2 - LOAN POLICY:

Cover page.

Loan Policy Of Title Insurance
Issued By Blank Title Insurance Company
[NM Form 2; ALTA Form Rev. 2006]

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

Covered risks.

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from

(a) A defect in the Title caused by

(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

(ii) failure of any person or Entity to have authorized a transfer or conveyance;

(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(vii) a defective judicial or administrative proceeding.

(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

3. Unmarketable Title.

4. No right of access to and from the Land.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

(a) the occupancy, use, or enjoyment of the Land;

(b) the character, dimensions, or location of any improvement erected on the Land;

(c) the subdivision of land; or

(d) environmental protection if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage

(a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

(b) failure of any person or Entity to have authorized a transfer or conveyance;

(c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

(d) failure to perform those acts necessary to create a document by electronic means authorized by law;

(e) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(g) a defective judicial or administrative proceeding.

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

11. The lack of priority of the lien of the Insured Mortgage upon the Title

(a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either

(i) contracted for or commenced on or before Date of Policy; or

(ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and

(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title

(a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:_____, PRESIDENT

BY:_____, SECRETARY

Exclusions from coverage.

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risks 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 11, 13, or 14); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is

(a) a fraudulent conveyance or fraudulent transfer, or

(b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

Schedule A.

Name and Address of Title Insurance Company:
[File No.]
Policy No.
Loan No.
Address Reference:
Amount of Insurance: $
[Premium: $]
Date of Policy:_____[at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:

3. Title is vested in:

4. The Insured Mortgage and its assignments, if any, are described as follows:

5. The Land referred to in this policy is described as follows:

[6. This policy incorporates by reference those ALTA endorsements selected below:

__4-06 (Condominium)
__4.1-06 (Condominium Unpaid Assessments)
__5-06 (Planned Unit Development)
__5.1-06 (Planned Unit Development Unpaid Assessments)
__6-06 (Variable Rate)
__6.2-06 (Variable Rate--Negative Amortization)
__8.1-06 (Environmental Protection Lien) Paragraph b refers to the following state statute(s):
__9-06 (Restrictions, Encroachments, Minerals)
__13.1-06 (Leasehold Loan)

Schedule B - Exceptions from coverage.

[File No.]
Policy No.

[Except as provided in Schedule B - Part II,] t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

[PART I

1.

2.

3.

4.

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

Conditions.

1. Definition of Terms. The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of

(i) the amount of the principal disbursed as of Date of Policy;

(ii) the amount of the principal disbursed subsequent to Date of Policy;

(iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;

(iv) interest on the loan;

(v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;

(vi) the expenses of foreclosure and any other costs of enforcement;

(vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;

(viii) the amounts to pay taxes and insurance; and

(ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;

(B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;

(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(D) successors to an Insured by its conversion to another kind of Entity;

(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured, (2) if the grantee wholly owns the named Insured, or (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;

(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D) , and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) "Insured Claimant": An Insured claiming loss or damage.

(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.

(h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(k) "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 for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) "Title": The estate or interest described in Schedule A.

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. Continuation of insurance. The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. Notice of claim to be given by insured claimant. The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. Proof of loss. In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. Defense and prosecution of actions.

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as 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 to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. Duty of insured claimant to cooperate.

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as 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, including any liability or obligation to

defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant 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 Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to 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 Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay. When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security. Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

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 matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance;

(ii) the Indebtedness;

(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy; or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%; and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the

extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. Limitation of liability.

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, 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, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. Reduction of insurance; reduction or termination of liability

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. Payment of loss. When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. Rights of recovery upon payment or settlement

(a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. Arbitration. Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no

joinder or consolidation with claims or controversies of other persons. 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 in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. Liability limited to this policy; policy entire contract

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. Severability. In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. Choice of law; forum

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. Notices, where sent. Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

NOTE: Bracketed [ ] material optional
[6-16-86, 4-3-95; 13.14.18.15 NMAC - Rn, 13 NMAC 14.7.A.8 through 14.7.A.12, 5-15-00 8-01-08; A, 10-1-12]

13.14.18.20 ~~[NM FORM 7 - U.S. POLICY, ALTA 1963:~~

~~Cover page.~~

~~United States of America Policy Of Title Insurance~~
~~Issued By~~
~~Blank Title Insurance Company~~
~~[NM Form 7: ALTA U.S. Policy Form 1963]~~

~~Policy Number _____~~
~~Amount $_____~~

~~Blank Title Insurance Company, a blank corporation, herein called the Company, for a valuable consideration hereby insures THE UNITED STATES OF AMERICA hereinafter called the insured, against loss or damage not exceeding _____ Dollars, together with costs and expenses which the Company may become obligated to pay as provided in the Conditions and Stipulations hereof, which the insured shall sustain by reason of:~~

~~Any defect in or lien or encumbrance on the title to the estate or interest covered hereby in the land described or referred to in Schedule A, existing at the date hereof, not shown or referred to in Schedule B or excluded from coverage by the General Exceptions;~~

~~all subject, however, to the provisions of Schedules A and B and to the General Exceptions and to the Conditions and Stipulations hereto annexed; all as of the ___ day of ___ 20___ , the effective date of this policy.~~

IN WITNESS WHEREOF, Blank Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By: _____, President

Countersigned By:_____, Secretary

Schedule A.

1. The estate or interest in the land described or referred to in this schedule covered by this policy is:

(Will be shown as a fee or such lesser estate or interest owned by the person or party named in paragraph 2 of this Schedule.)

2. Title to the estate or interest covered by this policy at the date hereof is vested in:

3. The land referred to in this policy is situated in the County of _____, State of _____, and is described as follows:

(This phraseology may be modified to eliminate a specific description by including it by reference to the description as contained in a specific instrument.)

Schedule B.

This policy does not insure against loss or damage by reason of the following:

1. Current and delinquent taxes and assessments as follows:

(List all taxing districts in which the land is situated and other taxing authorities that have jurisdiction over said land for the levy of taxes; showing lien date for each and amounts for all such assessments that have not been paid on the date of the policy.)

2. (Continue with the Special Exceptions such as recorded easements, liens, etc., showing in addition the persons or parties holding such interests of record, and who the Company would require to convey such interest or who would be the proper parties defendant in a condemnation proceeding to eliminate such matter. The write-up could be substantially as follows:

An easement for road purposes conveyed to _____, by deed recorded _____

General exceptions.

Governmental Powers

1. Because of limitations imposed by law on ownership and use of property, or which arise from governmental powers, this policy does not insure against:

(a) consequences of the future exercise or enforcement or attempted exercise or enforcement of police power, bankruptcy power, or power of eminent domain, under any existing or future law or governmental regulation; (b) consequences of any law, ordinance or governmental regulation, now or hereafter in force, (including building and zoning ordinances) limiting or regulating the use or enjoyment of the property, estate or interest described in Schedule A, or the character, size, use or location of any improvement now or hereafter erected on said property.

Matters Not Of Record

2. The following matters which are not of record at the date of this policy are not insured against:

(a) rights or claims of parties in possession not shown of record; (b) questions of survey; (c) easements, claims of easement or mechanics' liens where no notice thereof appears of record; and (d) conveyances, agreements, defects, liens or encumbrances, if any, where no notice thereof appears of record; provided, however, the provisions of this subparagraph 2(d) shall not apply if title to said estate or interest is vested in the United States of America on the date hereof.

Matters Subsequent To Date Of Policy

3. This policy does not insure against loss or damage by reason of defects, liens or encumbrances created subsequent to the date hereof.

Refusal To Purchase

4. This policy does not insure against loss or damage by reason of the refusal of any person to purchase, lease or lend money on the property,

~~estate or interest described in Schedule A.~~

~~**Conditions and stipulations.**~~

~~1. Notice of Actions. If any action or proceeding shall be begun or defense asserted which may result in an adverse judgment or decree resulting in a loss for which this Company is liable under this policy, notice in writing of such action or proceeding or defense shall be given by the Attorney General to this Company within ninety days after notice of such action or proceeding or defense has been received by the Attorney General; and upon failure to give such notice then all liability of this Company with respect to the defect, claim, lien or encumbrance asserted or enforced in such action or proceeding shall terminate. Failure to give notice, however, shall not prejudice the rights of the party insured.~~

~~(1) if the party insured shall not be a party to such action or proceeding, or~~

~~(2) if such party, being a party to such action or proceeding be neither served with summons therein nor have actual notice of such action or proceedings, or~~

~~(3) if this Company shall not be prejudiced by failure of the Attorney General to give such notice.~~

~~2. Notice of Writs. In case knowledge shall come to the Attorney General of the issuance or service of any writ of execution, attachment or other process to enforce any judgment, order or decree adversely affecting the title, estate or interest insured, said party shall notify this Company thereof in writing within ninety days from the date of such knowledge; and upon a failure to do so, then all liability of this Company in consequence of such judgment, order or decree or matter thereby adjudicated shall terminate unless this Company shall not be prejudiced by reason of such failure to notify.~~

~~3. Defense of Claims.~~

~~The Company agrees, but only at the election and request of the Attorney General of the United States, to defend at its own cost and expense the title, estate or interest hereby insured in all actions or other proceedings which are founded upon or in which it is asserted by way of defense, a defect, claim, lien or encumbrance against which this policy insured, provided, however, that the request to defend is given within sufficient time to permit the Company to answer or otherwise participate in the proceeding. If any action or proceeding shall be begun or defense be asserted in any action or proceeding affecting or relating to the title, estate or interest hereby insured and the Attorney General elects to defend at the Government's expense, the Company shall upon request, cooperate and render all reasonable assistance in the prosecution or defense of such proceeding and in prosecuting appeals.~~

~~If the Attorney General shall fail to request and permit the Company to defend, then all liability to the Company with respect to the defect, claim, lien or encumbrance asserted in such action or proceeding shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest such defenses and actions as it shall conceive should be taken and the Attorney General shall present the defenses and take the actions of which the Company shall advise him in writing, then the liability of the Company shall continue; but in any event the Company shall permit the Attorney General without cost or expense to use the information and facilities of the Company for all purposes which he thinks necessary to incidental to the defending of any such action or proceeding or any claim asserted by way of defense therein and to the prosecuting of an appeal.~~

~~4. Compromise of Adverse Claims. Any compromise, settlement of discharge by the United States or its duly authorized representative of an adverse claim, without the consent of this Company shall bar any claim against the Company hereunder. Provided, however, that the Attorney General may at his election submit to the issuing company for approval or disapproval any proposed compromise, settlement or discharge of any adverse claim and in the event of the consent of the issuing company to the proposed compromise, settlement or discharge, it shall be liable for the payment of the full amount paid.~~

~~5. Statement of Loss. A statement in writing of any loss or damage sustained by the party insured, and for which it is claimed this Company is liable under this policy, shall be furnished by the Attorney General to this Company within ninety days after said party has notice of such loss or damage and no right of action shall accrue under this policy until thirty days after such statement shall have been furnished. No recovery shall be had under this policy unless suit be brought thereon within five years after said period of thirty days. Failure to furnish such statement of loss or to bring such suit within the times specified shall not affect the Company's liability under this policy unless this Company has been prejudiced by reason of such failure to furnish a statement of loss or to bring such suit.~~

~~6. Policy Reduced by Payments of Loss. All payments of loss under this policy shall reduce the amount of this policy pro tanto.~~

~~7. Amendment of Policy. No provision or condition of this policy can be waived or changed except by writing endorsed hereon or attached hereto signed by the President, a Vice President, the Secretary, an Assistant Secretary or other validating officer of the Company.~~

~~8. Notice, Where Sent. All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at its office at _____.~~] [Reserved]

[6-16-86; 13.14.18.20 NMAC - Rn, 13 NMAC 14.6.C.8 through 14.6.C.12, 5-15-00; Repealed, 10-1-12]

13.14.18.21 NM FORM 60.1: AGGREGATION ENDORSEMENT

ENDORSEMENT

Attached to Policy Nos. Listed Below
Issued By
BLANK TITLE INSURANCE COMPANY
[NM Form 60.1: ALTA Form 12.1 Rev. 2006]

The following ("Policies") are issued in conjunction with one another:

POLICY NUMBER:	COUNTY:	STATE:	AMOUNT:

Notwithstanding the provisions of Section 8(a)(i) of the Conditions of these policies, at no time shall the Amount of insurance under the policies identified above exceed in the aggregate $_____.

At no time shall the Amount of Insurance under this policy when aggregated with the other policies above exceed, in the states set forth below, the amounts shown as follows:

_____: $
_____: $
_____: $
_____: $
_____: $

Subject to the provisions of Section 10(a) of the Conditions of the policies, all payments made by the Company under any of the policies identified above, except the payments made for costs, attorneys fees, and expenses, shall reduce the aggregate Amount of Insurance by the amount of the payment.

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]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

[6-16-86; 13.14.18.21 NMAC - Rn, 13 NMAC 14.2.A.9, 5-15-00; Repealed, 09-15-10; 13.14.18.21 NMAC - N, 10-1-12]

13.14.18.25 NM FORM 12: CONDOMINIUM [~~LENDER'S POLICY~~] ENDORSEMENT ALL ASSESSMENTS:

Condominium Endorsement All Assessments
Attached To Policy No. _____
Issued By
Blank Title Insurance Company
[NM Form 12; ALTA Form 4-06. Rev. 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. 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 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; A, 10-1-12]

13.14.18.26 NM FORM 13 - PLANNED UNIT DEVELOPMENT ENDORSEMENT [~~(LOAN POLICY)~~] ALL ASSESSMENTS:

Planned Unit Development Endorsement [~~(Loan Policy)~~] All Assessments
Attached to Policy No. _____
Issued by
Blank Title Insurance Company
[NM Form 13; ALTA Form 5-06, 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. 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 in favor of any association of homeowners 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; A, 10-1-12]

13.14.18.27 NM FORM 13.1: PLANNED UNIT DEVELOPMENT ENDORSEMENT [~~(OWNER'S POLICY)~~] UNPAID ASSESSMENTS:

Planned Unit Development Endorsement [~~(Owner's Policy)~~] Unpaid Assessments
Attached to Policy No. _____
Issued by
Blank Title Insurance Company
[NM Form 13.1; ALTA Form 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. 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, 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; A, 10-1-12]

13.14.18.35 [~~NM FORM 19: CONSTRUCTION LOAN POLICY ENDORSEMENT:~~

~~**Construction Loan Policy Endorsement**~~
~~**Attached To Policy No. _____**~~
~~**Issued By**~~
~~**Blank Title Insurance Company**~~
~~**[NM Form 19; ALTA Form D, Rev. 6-1-87]**~~

~~The Company hereby insures against loss or damage by reason of loss of priority of the lien of the insured mortgage over any lien imposed by law for services, labor or material heretofore or hereafter furnished.~~

~~This endorsement does not insure against loss or damage by reason of any failure by the insured to comply with or to enforce any of the provisions of law known to the insured or of any agreement to which the insured is a party which relate to the disbursement of the proceeds of the loan secured by the insured mortgage.~~

~~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 that the insurance afforded by this endorsement is not subject to paragraphs 3(d), 6 and 7 of the Exclusions From Coverage. 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]~~

~~Dated:_____~~

~~BLANK TITLE INSURANCE COMPANY~~

~~By: _____~~] [Reserved]
[6-16-86; 13.14.18.35 NMAC - Rn, 13 NMAC 14.8.A.19, 5-15-00; 13.14.18.35 NMAC - Rn, 13.14.18.32 NMAC, 8-1-08; Repealed 10-1-12]

13.14.18.44 [~~NM FORM 27: U.S. POLICY DOWN DATE ENDORSEMENT:~~

~~U.S. Policy Down Date Endorsement~~
~~Attached To Policy No. _____~~
~~Issued By~~
~~Blank Title Insurance Company~~
~~[NM Form 27; ALTA Form 1963]~~

~~1. Schedule A of the above policy is hereby amended in the following particulars:~~

~~(a) Paragraph 1 of Schedule A is hereby deleted and the following is substituted:~~

~~"1. The estate or interest in the land described or referred to in this Schedule covered by this policy is: (An easement for _____)"~~

~~(b) Paragraph 2 of Schedule A is hereby deleted and the following is substituted:~~

~~"2. Title to the estate or interest covered by this policy at the date hereof is vested in:~~

~~THE UNITED STATES OF AMERICA~~
~~(Follow with appropriate reference to Declaration of Taking or Deed)~~

~~(c) Paragraph 3 of Schedule A is hereby deleted and the following is substituted:~~

~~"3. The land referred to in this policy is situated in the County of ___ , State of New Mexico, and is described as follows: (Here give description of land actually acquired.) "~~

~~2. Schedule B of the above policy is hereby amended in the following particulars:~~

~~(a) Paragraphs numbered __, __, __ and __ of Schedule B are hereby deleted. (Enumerate those paragraphs eliminated by proper releases, conveyances, etc.)~~

~~(b) Schedule B of the above policy is amended by adding the following paragraphs numbered __ to __ inclusive.~~

~~3. Subparagraph 2(d) of the General Exceptions of the above policy is hereby deleted.~~

~~4. The effective date of the above policy is hereby extended to _____. (Date of recording of Deed or Notice of Action, since no insurance is to be afforded as to regularity of proceedings.)~~

~~5. The total liability of the Company under said policy and this endorsement thereto shall not exceed in the aggregate, the sum of $_____ and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.~~

~~This endorsement is made a part of said policy and is subject to the Schedules, General Exceptions and the Conditions and Stipulations therein, except as modified by the provisions hereof.~~

~~Dated: _____~~

~~BLANK TITLE INSURANCE COMPANY~~

~~By: _____, President~~] [Reserved]
[3-1-89; 13.14.18.44 NMAC - Rn, 13 NMAC 14.8.A.28, 5-15-00; A, 3-1-02; 13.14.18.44 NMAC - Rn, 13.14.18.40 NMAC, 8-1-08; Repealed, 10-1-12]

13.14.18.49 NM FORM 30: CONDOMINIUM [~~(OWNER'S POLICY)~~] ENDORSEMENT UNPAID ASSESSMENTS:
Condominium [~~(Owner's Policy)~~] Endorsement Unpaid Assessments
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 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, 9-15-10; A, 10-1-12]

13.14.18.61 NM FORM 42: FORECLOSURE [~~GUARANTEE~~] TITLE INSURANCE POLICY DOWN DATE ENDORSEMENT:

Foreclosure [~~Guarantee~~] Title Insurance Policy Down Date Endorsement
Attached To Policy No. _____
Issued By
Blank Title Insurance Company
[NM Form 42]

The following matters appear of record since _____ (date of policy or previous endorsement):

[~~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.~~]
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.

BLANK TITLE INSURANCE COMPANY

Dated: _____

By: _____, Authorized Signatory

[6-1-97; 13.14.18.61 NMAC - Rn, 13 NMAC 14.8.A.40, 5-15-00; 13.14.18.61 NMAC - Rn, 13.14.18.55 NMAC, 8-1-08; A, 10-1-12]

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.)]~~

Closing Protection Letter – Single Transaction
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.]

Transaction ("the Real Estate Transaction"):

Re: Closing Protection Letter

Dear _____,

Blank Title Insurance Company (the "Company") in consideration of your acceptance of this letter agrees, subject to the Conditions and Exclusions set forth below, to indemnify you for actual loss of settlement funds incurred by you in connection with the closing of the Real Estate Transaction hereafter conducted by the Issuing Agent or Approved Attorney, provided:

(A) the Company issues or is contractually obligated to issue title insurance for your protection in connection with the closing of the Real Estate Transaction;

(B) you are to be the (i) lender secured by an Insured Mortgage, as defined in the ALTA Loan Policy (6-17-06), its assignee or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land; and

(C) the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed $_____, and;

further 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, theft, 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, theft, 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 by this letter, your borrower, your assignee and your warehouse lender in connection with an Insured Mortgage shall be protected as if it was addressed to them.

Conditions and Exclusions

1. The Company shall have no liability for loss arising out of:
A. Failure of the Issuing Agent or Approved Attorney to comply with closing instruction that require title insurance protection inconsistent with that set forth in the Company's title insurance binder or commitment.
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. This Exclusion does not affect the coverage afforded in the Company's title insurance policy issued in connection with the Real Estate Transaction.
D. Fraud, theft, dishonesty or negligence of your employee, agent, attorney or broker.
E. Your settlement or release of any claim without the Company's written consent.
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 the Company's title insurance policy 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 indemnified you pursuant to this letter, it shall be subrogated to all rights and remedies you have against any person or property had you not been so indemnified. The Company's liability for indemnification shall be reduced to the extent that you have impaired the value of this right of subrogation.

4. The Company's liability for loss under this letter shall not exceed the least of:
(a) the amount of your settlement funds;
(b) the Company's liability under its title insurance policy at the time written notice of a claim is made under this letter; or
(c) the value of the lien of the Insured Mortgage, or the interest in the land insured or to be insured under the Company's title insurance policy at the time written notice of a claim is made under this letter.

5. Payment to you or to the owner of the indebtedness under the Company's title insurance policy or policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to Section 10 of the Conditions of the policy.

6. 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 closing or settlement services. The Company's liability for your losses arising from those closing or settlement services is strictly limited to the protection expressly provided in this letter. The Company shall have no liability for loss resulting from the fraud, theft, dishonesty, or negligence of any party to the Real Estate Transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

7. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____. If the Company is prejudiced by your failure to provide prompt notice, the Company's liability to you under this letter shall be reduced to the extent of the prejudice. In no event shall the Company be liable for a loss if the written notice is not received by the Company within one year from the date of the closing.

8. This letter will cover the Real Estate Transaction if it closes within one year after the date of this letter. The Company may terminate its obligation to cover the Real EstateTransaction, if it has not closed, by sending written notice to the Addressee.

9. The protection of this letter extends only to real estate in [State].

10. 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 title insurance policy for the Real Estate Transaction with an Amount of Insurance greater than $2,000,000. If you have a policy of title insurance for the Real Estate 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.

No previous letter, endorsement or similar agreement for closing protection applies to the Real Estate Transaction.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

(The words "Underwritten Title Company" maybe inserted in lieu of Issuing Agent)
[13.14.18.103 NMAC - N, 9-15-10; A, 10-1-12]

13.14.18.104 NM FORM 81.1: CLOSING PROTECTION LETTER - [~~LIMITATIONS~~]-MULTIPLE TRANSACTIONS:

Closing Protection Letter – [~~Limitations~~] Multiple Transactions
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.)~~]

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"), in consideration of your acceptance of this letter, agrees, subject to the Conditions and Exclusions set forth below, to indemnify you for actual loss of settlement funds incurred by you in connection with the closing of any real estate transaction ("Real Estate Transaction") hereafter conducted by the Issuing agent or Approved Attorney, provided:

(A) The Company issues or is contractually obligated to issue title insurance for your protection in connection with the closing of the Real Estate Transaction; and

(B) you are to be the lender secured by an Insured Mortgage, as defined in the ALTA Loan Policy (6-17-06), its assignee or a warehouse lender; and

(C) the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for any Real Estate Transaction does not exceed $_____, and;

further 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, theft, 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, theft, 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 by this letter, your borrower, your assignee and your warehouse lender in connection with an Insured Mortgage shall be protected as if it was addressed to them.

Conditions and Exclusions

1. The Company shall have no liability for loss arising out of:

A. Failure of the Issuing Agent or Approved Attorney to comply with closing instructions that require title insurance protection inconsistent with that set forth in the Company's title insurance binder or commitment.

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 the Real Estate Transaction. This Exclusion does not affect the coverage afforded in the Company's title insurance policy issued in connection with the Real Estate Transaction.

D. Fraud, theft, dishonesty or negligence of your employees, agent, attorney or broker.

E. Your settlement or release of any claim without the Company's written consent.

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 the Company's title insurance policy 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 indemnified you pursuant to this letter, it shall be subrogated to all rights and remedies you have against any person or property had you not been indemnified. The Company's liability for indemnification shall be reduced to the extent that you have impaired the value of this right of subrogation.

4. The Company's liability for loss under this letter shall not exceed the least of:
(a) the amount of your settlement funds;
(b) the Company's liability under its title insurance policy at the time written notice of a claim is made under this letter; or
(c) the value of the lien of the Insured Mortgage or the interest in the land insured or to be insured under the Company's title insurance policy at the time written notice of a claim is made under this letter.

5. Payment to you or to the owner of the indebtedness under the Company's title insurance policy or policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to Section 10 of the Conditions of the policy.

6. 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 closing or settlement services. The Company's liability for your losses arising from those closing or settlement services is strictly limited to the protection expressly provided in this letter. The Company shall have no liability for loss resulting from the fraud, theft, dishonesty or negligence of any party to the Real Estate Transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

7. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____. If the Company is prejudiced by your failure to provide prompt notice, the Company's liability to you under this letter shall be reduced to the extent of the prejudice. In no event shall the Company be liable for a loss if the written notice is not received by the Company within one year from the date of the closing.

8. This letter will cover each Real Estate Transaction that closes within one year after the date of this letter. The Company may terminate its obligation to cover Real Estate Transactions, that have not closed by sending written notice to the Addressee.

9. The protection of this letter extends only to real estate in [State].

10. 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 title insurance policy for the Real Estate Transaction with an Amount of Insurance greater than $2,000,000. If you have a policy of title insurance for the Real Estate 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.

No previous letter, endorsement or similar agreement for closing protection applies to the Real Estate Transactions.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

(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; A, 10-1-12]

13.14.18.105 ~~[NM FORM 81.2: CLOSING PROTECTION LETTER - SINGLE TRANSACTION LIMITED LIABILITY:~~

~~**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"' maybe inserted in lieu of Issuing Agent)~~] [Reserved]
[13.14.18.105 NMAC - N, 09-15-10; Repealed, 10-1-12]

13.14.18.107 NM FORM 83: CONSTRUCTION LOAN - LOSS OF PRIORITY ENDORSEMENT:

Construction Loan - Loss of Priority Endorsement

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY
[NM Form 83; ALTA Form 32, Rev. 2006]

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
   a. "Date of Coverage" is [_____] [Date of Policy] unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
   b. "Construction Loan Advance," shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
   c. "Mechanic's Lien," shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.
3. The Company insurer~~s~~ against loss or damages sustained by the Insured by reason of:
   a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
   b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
   c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.
4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, materials or equipment:
   a. furnished after Date of Coverage; or
   b. not designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

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 this policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory
[13.14.18.107 NMAC - N, 10-1-12]

13.14.18.108 NM FORM 83.1: CONSTRUCTION LOAN - LOSS OF PRIORITY - DIRECT PAYMENT ENDORSEMENT:

Construction Loan - Loss of Priority - Direct Payment Endorsement

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY
[NM Form 83.1; ALTA Form 32.1, Rev. 2006

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
   a. "Date of Coverage", is [_____] [Date of Policy] unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
   b. "Construction Loan Advance," shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
   c. "Mechanic's Lien," shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.
3. 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 Construction Loan Advance made on or before the Date of Coverage;
   b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
   c. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic's Lien claimant has been made by the Company or by the Insured with the Company's written approval.
4. This policy does note insure against loss or damage (and the Company will not pay costs, attorneys' fees ore expenses) by reason of any Mechanic's Lien arising from services, labor, material or equipment:
   a. furnished after Date of Coverage; or
   b. to the extent that the Mechanic's Lien claimant was not directly paid by the Company or by the Insured with the Company's written approval.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provision 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]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory
[13.14.18.108 NMAC - N, 10-1-12]

13.14.18.109 NM FORM 84: DISBURSEMENT ENDORSEMENT:

Disbursement Endorsement

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY
[NM Form 84; ALTA From 33, Rev. 2006

1. The Date of Coverage is amended to _____.
   [a The current disbursement is $_____.]
   [b. The aggregate amount, including the current disbursement, recognized by the Company as disbursed by the Insured is: $_____.]
2. Schedule A is amended as follows:

3. Schedule B is amended as follows:

   [Part I]

   [Part II]

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]

BLANK TITLE INSURANCE COMPANY

By: _____

[13.14.18.109 NMAC - N, 10-1-12]

13.14.18.110 NM FORM 85: IDENTIFIED RISK ENDORSEMENT:

Identified Risk Endorsement

Attached to Policy No. _____
Issued By
BLANK TITLE INSURANCE COMPANY
[NM Form 85]

1. As used in this endorsement "Identified Risk" means: [insert description of the title defect, restriction encumbrance or other matter] described in Exception _____ of Schedule B;
2. The Company insures against loss or damage sustained by the Insured by reason of
   a. A final order or decree enforcing the Identified Risk in favor of an adverse party; or
   b. The release of a prospective purchaser or lessee of the Title or lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk, but only if
      i. there is a contractual condition requiring the delivery of marketable title, and
      ii. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement
3. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.
4. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk , but if the Company does establish the Title free of the identified Risk or removes it, Section 9(a) of the Conditions applies.

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]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory
[13.14.18.110 NMAC - N, 10-1-12]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates

2012

Volume XXIII	Submittal Deadline	Publication Date
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Issue Number 20	October 16	October 30
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

2013

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

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