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# New Mexico Register

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

**Volume XXXI - Issue 24 - December 29, 2020**

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## **The New Mexico Register**

Published by the Commission of Public Records,  
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: [staterules@state.nm.us](mailto:staterules@state.nm.us).

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# New Mexico Register

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December 29, 2020

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## Notices of Rulemaking and Proposed Rules

### HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

#### NOTICE OF PUBLIC HEARING

Annual adjustments to the income limits found in 8.102.500 NMAC and 8.106.500 NMAC: Each year the Human Services Department is required to make changes to the income and resource eligibility standards and the deduction amounts available to otherwise eligible households. These amounts are determined by the United States Department of Agriculture (USDA) and Food and Nutrition Services (FNS). The Department received notification of the adjusted amounts on July 24, 2020 and made the adjustments effective for benefit month October 2020 for Federal Fiscal Year (FFY) 2021 to comply with federal law and regulations. Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). The Department promulgated these rules as an emergency rule that were effective October 1, 2020 which does not permanently amend or repeal the existing rule and will only remain in effect until this permanent rule takes effect under the normal rule making process. A public hearing to receive public comment on this proposed rule, pursuant to Section 14-4-5.6 NMSA 1978, will be held on Friday, January 29, 2021 from 9:00am-10:00am. The hearing will be held virtually through GoTo Meeting at this link: <https://global.gotomeeting.com/join/788310221>. If you prefer to join via phone you may call +1 (872) 240-3311, Access Code: 788-310-221. You may provide written comment during the scheduled public hearing by dropping it off at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo

Road, Santa Fe, NM 87505; this drop off site will be for written comment only. The conference room is located on the first floor in the ASD Rodeo Building.

The Human Services Register Vol. 43 No. 22 outlining the proposed regulations are available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7250 or 505-827-7254.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, Friday, January 29, 2021. The agency shall post all written comments on its website, if one exists, as soon as practicable and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency. Please send comments to:

Human Services Department  
P.O. Box 2348,  
Santa Fe, New Mexico 87504-2348

You may send comments electronically to: [HSD-isdrules@state.nm.us](mailto:HSD-isdrules@state.nm.us).

### End of Notices of Rulemaking and Proposed Rules

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## Adopted Rules

### Effective Date and Validity of Rule Filings

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

### GAME AND FISH DEPARTMENT

The New Mexico State Game Commission (Department of Game and Fish) approved, at its 12/03/2020 hearing, to repeal its rule 19.31.3 NMCA, Hunting and Fishing Licenses and Application (filed 1/1/2020), and replace it with 19.31.3 NMCA Hunting and Fishing Licenses and Application, effective January 1, 2021.

### GAME AND FISH DEPARTMENT

**TITLE 19      NATURAL  
RESOURCES AND WILDLIFE  
CHAPTER 31   HUNTING AND  
FISHING REGULATIONS  
PART 3        HUNTING  
AND FISHING LICENSES AND  
APPLICATION**

**19.31.3.1      ISSUING**  
**AGENCY:** New Mexico department of game and fish.  
[19.31.3.1 NMCA - Rp, 19.31.3.1 NMCA, 1/1/2021]

**19.31.3.2      SCOPE:**  
Sportspersons interested in fishing, hunting and trapping and management of big game and furbearers in New Mexico. Additional requirements may be found in Chapter 17 NMSA 1978 and other Parts of Title 19, Chapter 31 NMCA.  
[19.31.3.2 NMCA - Rp, 19.31.3.2 NMCA, 1/1/2021]

**19.31.3.3      STATUTORY**  
**AUTHORITY:** Sections 17-1-14, 17-1-26, 17-3-2, 17-3-5, 17-3-7, 17-3-13, 17-3-14, and 17-3-14.1 NMSA 1978, which pertain to the types of licenses and permits available and grant the state game commission

authority to create regulations setting the license fees and application procedure.

[19.31.3.3 NMCA - Rp, 19.31.3.3 NMCA, 1/1/2021]

**19.31.3.4      DURATION:**  
Permanent.

[19.31.3.4 NMCA - Rp, 19.31.3.4 NMCA, 1/1/2021]

**19.31.3.5      EFFECTIVE**  
**DATE:** January 1, 2020, unless a later date is cited at the end of a section.

[19.31.3.5 NMCA - Rp, 19.31.3.5 NMCA, 1/1/2021]

**19.31.3.6      OBJECTIVE:**  
Basic regulation, rules and procedures governing the issuance of licenses, permits and stamps, as well as special draw permits and licenses issued by the department pertaining to deer, elk, pronghorn, bighorn sheep, Barbary sheep, bear, turkey, oryx, ibex, javelina, furbearers, small game and other species determined by the state game commission.

[19.31.3.6 NMCA - Rp, 19.31.3.6 NMCA, 1/1/2021]

**19.31.3.7      DEFINITIONS:**  
**[RESERVED]**

**19.31.3.8      PUBLIC DRAW**  
**LICENSES AND PERMITS -**  
**APPLICATION FOR:**

**A.      Application form:**  
Application for all public licenses and permits shall be submitted via the department website.

**B.      Application**  
**deadline(s):** Applications for all public licenses and permits, including population management hunts, Sandhill crane, pheasant, turkey, pronghorn, elk, Barbary sheep, bighorn sheep, bear, deer, oryx, javelina, and ibex hunts must be

received by 5:00 p.m. on dates set by the state game commission. If any licenses or permits are available after the drawing is completed, those licenses or permits may be sold online via secondary sale.

**C.      One applicant**  
**per application:** No more than one person may apply under each application number for bighorn sheep, bear, and GMU 5A private land deer.

**D.      Two applicants**  
**per application:** No more than two persons may apply under the same application number for youth-only Sandhill crane, youth-only pheasant, turkey, ibex and oryx.

**E.      Four applicants**  
**per application:** No more than four persons may apply under the same application number for Sandhill crane, pheasant, deer, elk, pronghorn, Barbary sheep and javelina.

**F.      Resident and non-**  
**resident application combination:**  
Any mixture or combination of residents and non-residents may make application for special drawing providing the number of applicants does not exceed the restriction of this section (Subsection D or E).

**G.      Applications**  
**rejected:** Applications for licenses may be rejected by the department if an applicant did not:

- (1)      apply on the proper online form as designated by the director;
- (2)      submit the correct or required information;
- (3)      submit the correct license or application fee, and any other required fee;
- (4)      meet the deadline date; or
- (5)      comply with a current statute or rule.

**H.      More applications**  
**than permits:** If more applications for public licenses or permits are



received than there are licenses or permits available, the available licenses or permits shall be allotted by means of a public drawing.

**I. Increase in licenses or permits:** The number of licenses or permits available may be increased to accommodate corrections or errors by the department which results in the addition of names to the successful list.

**J. Additional choices:** Applicants for public permits or licenses may designate additional choices for hunt periods.

**K. Application categories:** Applications for special drawing hunts will be placed into the appropriate categories, as specified in Section 17-3-16 NMSA 1978 by department personnel or their designee. Special drawings shall continue to draw applicants from the appropriate drawing pool progressively for each respective hunt code, starting with first choice applicants, then proceeding to second and subsequent choice applicants until the quota has been met or the pool of applicants has been exhausted.

**L. Resident and non-resident applications:**

(1) To be placed in the separate pool designated for guided hunts, an applicant must have a valid registration number issued to a New Mexico outfitter as prescribed in Paragraph H of Section 17-3-6 NMSA 1978, on their application.

(2) For an application to be successfully drawn, there must be a sufficient number of licenses or permits available for that hunt code to accommodate all applicants from their respective drawing pools.

(3) Any licenses left over from the appropriate drawing pool will be allocated as prescribed in Subsection C of Section 17-3-16 NMSA 1978.

**M. New Mexico department of game and fish customer identification number:** All persons purchasing licenses, making application to the department for hunt drawings for public licenses

and permits, and converting private landowner authorizations to licenses must have a "New Mexico department of game and fish (NMDGF) customer identification number."

(1) "NMDGF customer identification number" shall be obtained only from the department and must be obtained prior to the submission of any application or private landowner authorization.

(2) Each person making application for public drawing license, permit or private landowner authorization must use their own valid NMDGF customer identification number on his or her application.

(3) Any application received without a valid NMDGF customer identification number or false NMDGF customer number will be rejected.

**N. Trapper license restriction:** No nonresident who resides in a state that does not permit New Mexico residents to procure nonresident trapper licenses may purchase a New Mexico nonresident trapper license.

**O. Director's authority to adjust licenses and permits:** The director may adjust licenses or permit numbers for special drawings, by no more than one per hunt code, to comply with Chapter 17 NMSA 1978 and its corresponding rules.

[19.31.3.8 NMAC - Rp, 19.31.3.8 NMAC, 1/1/2021]

**19.31.3.9 PRIVATE LAND - ELK LICENSES:**

**A.** Private land licenses for elk will not be issued through the public draw.

**B.** The amount due for a private land elk license in the primary and special management zones as defined in 19.31.14 NMAC shall be composed of the "landowner authorization certificate" fee and the appropriate "certificate of application" fee as defined in 19.30.9 NMAC, and the appropriate license fees as defined in Sections 17-3-13 and 17-3-7 NMSA 1978.

**C.** Licenses for primary and special management zones will be issued only up to the number of authorizations allotted for each ranch and only to persons who provide a valid authorization and ranch number and pay the appropriate fees.

**D.** Ranch codes allowing purchase of private-land elk licenses in the secondary management zone, as defined in 19.31.14 NMAC, will be issued to landowners in accordance with 19.30.5 NMAC. [19.31.3.9 NMAC - Rp, 19.31.3.9 NMAC, 1/1/2021]

**19.31.3.10 NEW MEXICO RESIDENT MILITARY AND VETERAN DISCOUNT:**

**A.** A New Mexico resident, as defined in Section 17-3-4 NMSA 1978, who is active duty military or a veteran of the United States military as defined by the New Mexico department of veterans' services is eligible for a fifty percent discount on all licenses, permits and stamps as defined in 19.30.9 NMAC and in Section 17-3-13 NMSA 1978. Exceptions: No discount shall apply to the resident, disabled veteran game hunting and fishing combination license, or to any administrative fee, including the "landowner authorization certificate" fee, the "certificate of application" fee, and the license vendor fee.

**B.** Nonresident military personnel stationed on Fort Bliss who qualify for resident prices on big-game hunts that occur on Fort Bliss are not eligible for the resident military and veteran discount.

**C.** The department shall conduct audits to determine eligibility for benefits as defined under 19.31.3.10 NMAC. Failure to provide requested documentation within the timeframe specified by the department shall result in the removal of the discount and suspension of any future discounts until such time as the requested documents are received and verified.

**D.** Any license, permit or stamp obtained by falsely claiming this discount is unlawful.

[19.31.3.10 NMAC - Rp, 19.31.3.10 NMAC, 1/1/2021]

**19.31.3.11 RESTRICTIONS/ REQUIREMENTS:**

**A. One license per big game species per year:** It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

**B. Improper license and permit:** Any person who attempts to capture or shoot, hunts, kills, injures or takes, in any manner any big-game, small game or fur-bearing animal, turkey or game fish other than in accordance with the specified hunt code or dates, legal sporting arm, bag limit allowance or area designated on a license or permit issued by the department to that person is deemed to be hunting, fishing or trapping without a proper license as required by Section 17-3-1 NMSA 1978 unless otherwise exempted by a valid commission rule.

**C. Transfer of permits or licenses:** The director may grant the transfer of a hunting license or permit once it has been determined that prior to the hunt start date, a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. Transfer requests must be submitted in writing prior to the hunt start date. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

**D. Refunds:** The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to

deployment by the United States military that prohibits the licensee from hunting. Refund requests must be submitted in writing prior to the hunt start date.

**E. Donation of permits or licenses:** Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a youth 17 years of age or younger, a New Mexico resident veteran of the United States military as approved by the New Mexico department of veterans' services, or a "first responder" who is a resident of the state of New Mexico as defined by Subsection B of Section 12-10D-2 NMSA 1978 who has been qualified through an approved nonprofit organization that promotes hunting, fishing and trapping activities. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit organizations prior to their participation in receiving, identifying or submitting recipients for donated licenses or permits. In order to be an approved nonprofit organization, the organization must demonstrate to the state game commission their history and ability to promote hunting, fishing, and trapping activities. A once-in-a-lifetime licensee may be reinstated as eligible to participate in future drawings for the same species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit organization. Donation of a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.

**F. More than one application:** It shall be unlawful to submit more than one application per species for any license or permit issued through a special drawing,

unless otherwise permitted by regulation.

**G. Handicapped fishing or handicapped game hunting license qualifications:**

To hold a handicapped fishing or handicapped game hunting license, the individual must be a resident of New Mexico and must attest to having a severe physical or developmental disability that substantially limits one or more major life activities. Reasonable accommodation may be made, relating to these licenses, upon request.

**H. Mobility impaired (MI) deer, elk, oryx, or pronghorn license qualifications:**

To hold a mobility impaired deer, elk, oryx, or pronghorn license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a permanent mobility restriction which limits their activity to a walker, wheelchair, or crutches; or one or more permanent disabilities or conditions which substantially limit the individual's ability to walk; and then obtain department approval for MI hunt eligibility. Every person qualified as MI shall have their card/eligibility expire 48 months from the issuance date, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

**I. Youth only hunts:** Only applicants who are 17 years of age or younger on the opening day of the hunt are eligible to apply for or participate in any youth-only hunt, including federal youth waterfowl hunt days. Applicants must have a valid hunter education certificate number, or mentor youth number for appropriate species.

**J. Required information:** An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social security number prior to an application form being processed or a license being awarded.

**K. Military only**

**hunts:** Applicants must be full time active military and proof of military status must be received by the department prior to applying for any military only hunt.

**L. Returning Iraq/**

**Afghanistan veteran oryx hunts:** Only New Mexico residents who served on active duty military during the Iraq or Afghanistan conflict are eligible to apply for Iraq/Afghanistan veteran oryx licenses. Applicants must provide proof of appropriate active-duty military service prior to applying for any returning Iraq/Afghanistan veteran oryx hunt.

**M. NMDGF customer**

**identification number:** It shall be unlawful for an applicant to use another person's NMDGF customer identification number or to provide false information to obtain a NMDGF customer identification number.

**N. Application fee:**

Prior to the drawing, all applicants for special hunt drawings for public draw licenses shall pay the applicable species license fees including depredation damage stamp, the required game hunting license fee and the non-refundable draw application fee as defined by 19.30.9.9 NMAC. Disabled American veterans certified as holders of lifetime general hunting and fishing licenses are exempt from paying the application fee when applying for deer hunt drawings.

**O. License, permit**

**and stamp requirements:** A game hunting or game hunting and fishing license is required to hunt any small game species, and an annual game hunting or game hunting and fishing license is required to apply for or purchase any big-game or turkey license (exception: disabled veteran card holders). A habitat management and access validation is required in conjunction with any hunting, fishing, or trapping license (exceptions: persons under age 18, free fishing license holders over age 70, and disabled veteran card holders). A habitat stamp is required in conjunction with any hunting, fishing, or trapping license on forest service or bureau of land

management (BLM) properties (exceptions: anglers and trappers under age 12, free fishing license holders over age 70, and disabled veteran card holders). Migratory bird hunters must possess a Harvest Information Program (HIP) number. Waterfowl hunters must also possess a federal duck stamp. Nonresidents must have a nongame hunting license or any valid hunting license to hunt unprotected or nongame species. Draw permits must be accompanied by the appropriate hunting license(s) and stamp(s). Additional permits may be required for specific hunting and fishing activities pursuant to 19.31.6.9 NMAC, 19.31.5.8 NMAC and 19.31.4.13 NMAC.

**P. Penalty**

**assessments:** When a person is issued a penalty assessment citation for fishing without a license, hunting small game without a license, or failing to possess an applicable habitat management and access validation, habitat stamp or second rod validation; the citation will serve as a license for that specific activity for 15 calendar days. The person must remit the prescribed penalty amount indicated on the face of the citation within 30 days of the date of citation issuance.

[19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 1/1/2021]

**19.31.3.12 DENIAL OR**

**REVOCAATION:** Any applicant for any license, permit, certificate or registration will be automatically rejected if their name and other identifying factors appears on the department's revocation list or a list of provided by the wildlife violator compact.

[19.31.3.12 NMAC - Rp, 19.31.3.12 NMAC, 1/1/2021]

**History of 19.31.3 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Regulation No. 482, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And

Barbary Sheep, filed 5/31/1967; Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/1967; Regulation No. 489, Establishing Turkey Seasons For The Spring of 1968, filed 3/1/1968; Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/1968; Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/1968; Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/1968; Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/1968; Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/1969; Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/1969; Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/1969; Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/1969; Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/1970; Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/1970; Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/1970; Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/1971; Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/1971; Regulation No. 523, Establishing Seasons On Deer, Turkey, Bear,

Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/9/1971; Regulation No. 531, Establishing A Season On Javelina, filed 12/17/1971; Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/1972; Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/1972; Regulation No. 536, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/26/1972; Regulation No. 542, Establishing A Season On Javelina, filed 12/1/1972; Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/1973; Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/1973; Regulation No. 547, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, And Javelina, filed 5/31/1973; Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/1974; Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/1974; Regulation No. 558, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex, filed 5/29/1974; Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/1975; Regulation No. 567, Establishing 1975 Seasons On Deer, Bear, And Turkey On The Jicarilla Apache And Navajo Indian Reservations And On Elk On The Jicarilla Apache Indian Reservation, filed 3/24/1975;

Regulation No. 568, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 6/25/1975; Regulation No. 573, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/1976; Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/1977; Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/1978; Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/1979; Regulation No. 603, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1980 through March 31, 1981, filed 2/22/1980; Regulation No. 609, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1981 through March 31, 1982, filed 2/17/1981; Regulation No. 614, Establishing Open Seasons On Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1982 through March 31, 1983, filed 3/10/1982; Regulation No. 622, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1983 through March 31, 1984, filed 3/9/1983; Regulation No. 628, Establishing

Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1984 through March 31, 1985, filed 4/2/1984; Regulation No. 634, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1985 Through March 31, 1986, filed 4/18/1985; Regulation No. 640, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1986 through March 31, 1987, filed 3/25/1986; Regulation No. 645, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1987 through March 31, 1988, filed 2/12/1987; Regulation No. 653, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1988 through March 31, 1989, filed 12/18/1987; Regulation No. 658, Establishing A System For Allocating Elk Licenses On Private And Public Lands Within Game Management Units, filed 6/1/1988; Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/1989; Regulation No. 664, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1989 through March 31, 1990, filed 3/20/1989; Regulation No. 674, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1990 through March 31, 1991, filed 11/21/1989; Regulation No. 683, Establishing

Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1991 through March 31, 1992, filed 2/8/1991;

Regulation No. 689, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1992 through March 31, 1993, filed 3/4/1992;

Regulation No. 700, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1993 through March 31, 1995, filed 3/11/1993.

**History of Repealed Material:**

19.31.3 NMAC, Hunting and Fishing License Applications, filed 1/17/2001 - Repealed effective 12/30/2004.

19.31.3 NMAC, Hunting and Fishing License Applications, filed 12/30/2004 - Repealed effective 4/1/2016.

19.31.3 NMAC, Hunting and Fishing Licenses and Application, filed 4/1/2016 - Repealed effective 10/31/2017.

19.31.3 NMAC, Hunting and Fishing Licenses and Application, filed 10/5/2017 - Repealed effective 1/1/2019.

19.31.3 NMAC, Hunting and Fishing Licenses and Application, filed 12/7/2018 - Repealed effective 1/1/2020.

**GAME AND FISH DEPARTMENT**

**This is an amendment to 19.36.3 NMAC, Sections 1, 2, 4, 8, 9 and 11, effective 1/1/2021.**

**19.36.3.1 ISSUING**

**AGENCY:** New Mexico ~~[Department of Game and Fish]~~ department of game and fish. [12/30/95; 19.36.3.1 NMAC - Rn, 19 NMAC 36.1.1, 1/1/2013; A, 1/1/2021]

**19.36.3.2 SCOPE:** Hunters under the age of eighteen ~~[(+18)]~~ years. [12/30/95; 19.36.3.2 NMAC - Rn & A, 19 NMAC 36.1.2, 1/1/2013; A, 1/1/2021]

**19.36.3.4 DURATION:** ~~[Permanent]~~ January 1, 2021 through December 31, 2024.

[12/30/1995; 19.36.3.4 NMAC - Rn, 19 NMAC 36.1.4, 1/1/2013; A, 1/1/2021]

**19.36.3.8 HUNTER TRAINING COURSE**

**REQUIRED:** It shall be unlawful for any person under the age of eighteen ~~[(+18)]~~ years to purchase or apply for any type of firearm hunting license unless that person has first successfully completed the New Mexico hunter training course or a hunter training course of another state which is approved by the New Mexico department of game and fish. [6/25/1990; 19.36.3.8 NMAC - Rn & A, 19 NMAC 36.1.7, 1/1/2013; A, 1/1/2021]

**19.36.3.9 TYPES OF COURSES:**

**A.** A person under the age of eighteen ~~[(+18)]~~ years who satisfies the requirements of either of the following training courses shall be issued a certificate following successful completion of a hunter training course:

**(1)** ~~[completion]~~ Completion of a hunter training course comprised of class work and firearms proficiency training and testing; or

**(2)** completion of ~~[an abbreviated]~~ a hunter training course comprised of a written ~~[lessons]~~ lesson and testing and current registration in the department's mentored-youth program.

**B.** Registration in the department's mentored-youth program is limited to first-time youth hunters, ~~[+0]~~ eight to 17 years of age, for a period of two consecutive license years and a person shall ~~[only]~~ register in the program only once. ~~[Any mentored-youth hunter-~~

~~that is currently registered with the Department as of November 13, 2014 shall remain eligible to hunt the species listed in Subsection D. of 19.36.3.9 NMAC for the remaining two consecutive license year cycle.]~~

**C.** Mentored-youth program hunters ~~[shall]~~ may hunt with a firearm only after successful completion of the written lesson and testing portion of the course and while supervised by a licensed and mentor certified or hunter education certified parent, guardian or another licensed adult with consent of the parent or guardian who is within unaided voice and sight distance.

**(1)** Mentors shall possess a mentor certification number obtained after completion of a hunter training course comprised of a written lesson and testing and current registration in the department's mentored-youth program; or

**(2)** shall possess a hunter education certification number obtained through a New Mexico hunter training course or a hunter training course of another state which is approved by the New Mexico department of game and fish.

**D.** Mentored-youth program hunters shall be limited by age to [hunting] hunt as follows: ~~[small-game, turkey, deer and javelina for the license year beginning April 2015 and continuing thereafter.]~~

**(1)** Mentored-youth under the age of ten years shall be limited to hunting small-game; or

**(2)** mentored-youth ten to seventeen years of age shall be limited to hunting small-game, turkey, deer, pronghorn antelope and javelina.

[19.36.3.9 NMAC - N, 1/1/2013; A, 12/30/2014; A, 1/1/2021]

**19.36.3.11 REVOCATION OF HUNTER TRAINING CARD:**

**A.** Hunter training ~~[cards]~~ certification will be revoked in accordance with 19.31.2 NMAC.

**B.** Hunter training ~~[cards]~~ certification may also be revoked for negligent use of a firearm.

[6/25/1990, 12/30/1995; 19.36.3.11 NMAC - Rn, 19 NMAC 36.1.9, 1/1/2013; A, 1/1/2021]

## HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.99.1 NMAC, Sections 7, 10, 12, 16, and 18 effective 12/29/2020.

### 5.99.1.7 DEFINITIONS:

**A. "Accreditation"**  
means a verified accreditation status with an accrediting agency recognized by the United States department of education.

**B. "Department"**  
means the New Mexico higher education department.

**C. "Distance education"** means instruction offered online or through correspondence or interactive video or other means enabling a student to receive instruction from a higher education provider. Instruction may be either synchronous (instruction in which a group of students engage in learning at the same time), asynchronous (instruction that does not occur in the same place or at the same time), or experiential learning activity.

**D. "Distance education authorization" or "DEA"** means a post-secondary institution that has been deemed by the department to satisfactorily meet criteria, as set by the department, to provide distance education, under the Interstate Distance Education Act.

**E. "Educational activity"** means distance education which is synchronous (instruction in which a group of students engage in learning at the same time) or asynchronous (instruction that does not occur in the same place or at the same time).

**F. "Exempt" or "exemption"** means an institution that meets criteria in 5.99.1.10 NMAC to be exempt from obtaining distance education authorization and has completed all documentation required by the department.

**G. "Experiential learning activity"** means application of previously studied skills through practica, student teaching, clinical placements, research, internships, or other similar placements by a student receiving supervised field experience at an experiential learning site.

**H. "Experiential learning site"** means a clinical, practicum, internship, student teaching or other similar site location where a student participates in a supervised field experience.

**I. "Higher education"** means education or training beyond secondary education.

**J. "Home state"**  
means a state or territory where the institution holds its legal domicile and accreditation. To operate under the act an institution must have a single home state.

**K. "Non-New Mexico home state SARA institutions"** means an institution which holds its legal domicile and accreditation in a state or territory in the United States and outside of New Mexico and is an approved member institution of SARA.

**L. "Physical presence"** means the ongoing occupation of a physical location in the state, the ongoing maintenance of an administrative office to support the provision of higher education instruction, or engaging in one or more of the activities detailed in 5.99.1.8 NMAC.

**M. "Post-secondary educational institution" or "institution"** means public post-secondary educational institutions and private post-secondary educational institutions.

**N. "Portal entity"**  
means the state agency or other state body designated by each SARA member state to serve as the interstate point of contact for SARA questions, complaints and other communications. In New Mexico, the portal entity is the department.

**O. "Private post-secondary educational institution"** means a post-secondary educational institution not primarily funded by public funds.

**P. "Public post-secondary educational institution"** means a post-secondary educational institution primarily funded by public funds.

**Q. "SARA Manual"**  
means a manual which codifies existing SARA policy and includes procedures for use by states and institutions to regulate SARA. A current version of the manual will be maintained on the NC-SARA website.

**R. "State authorization reciprocity agreement" or "SARA"** means an agreement, developed by the national council for state authorization reciprocity agreements (NC-SARA) that provides uniform standards and parameters for the interstate provision of post-secondary distance education courses and programs.

**S. "State portal agent"** means the portal entity employee responsible for SARA duties.

**[S] T. "Student location" or "students located"** means the physical location in which the student engages in distance education. The student's legal state of residence will not be a criterion for determining the student's physical location for purposes of the act.

**[F] U. "Supervised field experience"** means a form of distance education which enables instruction from an experiential learning site, through an agreement with an institution pursuant to 5.99.1.11 NMAC. To be considered supervised field experience, the student location must be in a different state or territory than that of the institution.  
[5.99.1.7 NMAC - Rp. 5.99.1.7 NMAC, 12/11/2018; A, 12/29/2020]

### 5.99.1.10 INSTITUTIONS EXEMPT FROM DISTANCE EDUCATION AUTHORIZATION:

An institution may be granted an exemption from obtaining distance education authorization, if the institution meets the criteria for exemption, set by the department. An institution seeking an exemption shall complete a DEA exemption form, published by the department. An

institution shall meet one or more of the following criteria to be eligible for DEA exemption:

- A. the institution is authorized to operate as a member institution under SARA;
- B. the institution has a physical presence in New Mexico exclusively offering distance education to students located only in New Mexico;
- C. the department has entered into a reciprocal agreement pursuant to Subsection B of Section 21-23B-3 NMSA 1978.
- D. the institution offers distance education courses on a military base or vessel, if enrollment in such courses is limited to active and reserve military personnel and their spouse or dependents;
- E. the institution has contractual arrangements in New Mexico for course offerings through consortium agreements (for example an agreement between two or more institutions to partner and provide program offerings) and has previously notified the department of the agreement;
- F. the institution is only offering distance education courses as a means of continuing education units and the units meet the criteria set out by the professional organization or authority requiring the continuing education; or
- G. the institution is offering supervised field experience pursuant to the parameters established in 5.99.1.11 NMAC.

H. the institution is a chartered, nonprofit religious institution whose sole purpose is to train students in non-degree or degree granting religious or non-secular courses to prepare them to assume a vocational objective relating primarily to religion.  
[5.99.1.10 NMAC - Rp. 5.99.1.10 NMAC, 12/11/2018; A, 12/29/2020]

**5.99.1.12 DISTANCE EDUCATION AUTHORIZATION APPLICATION REQUIREMENTS:** Institutions operating under the act shall apply for distance education authorization

unless exempt pursuant to 5.99.1.10 NMAC. The department shall promulgate forms and require the institution to meet criteria as applicable to each of the following sectors:

- A. Public post-secondary educational institutions must submit to department:
  - (1) a complete distance education authorization application set out by the department;
  - (2) certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;
  - (3) certification of compliance with the western interstate commission for higher education principles outlined in 5.99.1.20 NMAC;
  - (4) a surety bond or alternate form of surety in the amount of twenty percent of the gross New Mexico distance education tuition and fees revenue;
  - (5) current accreditation;
  - (6) proof that the public post-secondary educational institution has adopted a complaint procedure that complies with the department's requirements in 5.99.1.15 NMAC;
  - (7) certification that the public post-secondary educational institution has adopted a plan for records maintenance and retention that complies with the department's requirements in 5.99.1.21 NMAC; and
  - (8) a fully executed participation agreement with the department.

B. Private post-secondary educational institutions must submit to the department:
 

- (1) a complete distance education authorization application set out by the department;
- (2) certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of

regional accrediting commission;

- (3) certification of compliance with the western interstate commission for higher education principles outlined in 5.99.1.20 NMAC;
- (4) a surety bond or alternate form of surety in the amount of twenty percent of the gross New Mexico distance education tuition and fees revenue, in no case shall the bond be less than five thousand dollars (\$5,000);
- (5) current accreditation;
- (6) financial responsibility composite score of 1.5 or above as assigned by the United States department of education in the private post-secondary educational institution's most recent fiscal report;
- (7) proof that the private post-secondary educational institution has adopted a complaint procedure that complies with the department's requirements in 5.99.1.15 NMAC;
- (8) certification that the private post-secondary educational institution has adopted a plan for records maintenance and retention that complies with the department's requirements in 5.99.1.21 NMAC; [and]
- (9) a fully executed participation agreement with the department; and
- (10) for profit institutions with anticipated New Mexico student gross tuition revenues of one hundred thousand dollars (\$100,000) or more shall submit a letter of good standing from the office of the secretary of state of New Mexico and proof of registration with the New Mexico taxation and revenue department.  
[5.99.1.12 NMAC - Rp. 5.99.1.12 NMAC, 12/11/2018; A, 12/29/2020]

**5.99.1.16 SARA INSTITUTIONS:**  
A. Non-New Mexico SARA member institutions providing distance education to students located in New Mexico shall be governed by rules set forth by the national council

for state authorization reciprocity agreements, the SARA manual, and the applicable regional compact.

**B.** If a non-New Mexico SARA member institution seeks to place students at experiential learning sites in New Mexico to complete supervised learning experience, the institution must comply with SARA manual regarding maximum placements for an individual academic program at one clinical or practicum site. If the institution seeks to exceed placement limitations in the SARA manual for an individual academic program at one clinical or practicum site, the institution must notify and seek permission from the department. Non-New Mexico SARA member institutions that place students in supervised learning experiences within New Mexico and exceed the maximum number of placements without department approval or do not adhere to rules for placements set out pursuant to the SARA manual, placements may be subject to objection by the department. The department will follow procedures for objection pursuant to the SARA manual. If a non-New Mexico SARA member institution seeks to place students from an individual academic program simultaneously at one clinical or practicum site within New Mexico in excess of the amount permitted pursuant to the SARA rules, the department will consider the demonstrated ability of the non-New Mexico SARA member institutions and the clinical or practicum site to provide adequate learning opportunity and resources to the student. In making its determination, factors the department may consider include, but are not limited to:

**(a)** (1) the size of the facility or location of the experiential learning site;

**(b)** (2) the number of distinct divisions, departments, or units to which students will be placed within the experiential learning site;

**(c)** (3) whether the divisions, departments, or units engage in distinct specializations or disciplines;

**(d)** (4) whether the number of supervisors, mentors, faculty member or other qualified professionals available to provide oversight to fulfill the terms of any agreement between the institution and the clinical or practicum site;

**(e)** (5) overall demand for student placements by all institutions seeking to establish agreements with the clinical or practicum site.

**C.** New Mexico home state SARA member institutions providing distance education from New Mexico shall be governed by rules set forth by the national council for state authorization reciprocity agreements, the SARA manual, and the western interstate commission on higher education compact. Application fees for New Mexico home state SARA member institutions shall be assessed by the department pursuant to Section 5.99.1.18 NMAC. [5.99.1.16 NMAC - Rp. 5.99.1.16 NMAC, 12/11/2018; A, 12/29/2020]

**5.99.1.18 APPLICABLE SARA FEES [AND], SURETY BOND AND INITIAL APPLICATION APPEAL**

**PROCESS:** Acting in the capacity of the state portal entity, the department will assess a non-refundable application fee for SARA home state applicants and publish a fee schedule. New Mexico home state institutions shall pay the state application fee prior to application or renewal application review by the portal entity. The designated New Mexico state portal agent will conduct the review of initial and renewal applications. If the state portal agent determines an initial or renewal application should not be approved, the state portal agent shall review the determination with the portal entity's general counsel prior to providing the applicant institution a written reason for denial. A denial shall not be issued unless the general counsel concurs with the determination. If the applicant institution believes an eligibility provision has been misinterpreted or misapplied the institution may appeal the denial of its initial application

within 30 calendar days to the portal entity's cabinet secretary. The appeal must be submitted in writing. The cabinet secretary's determination will be final and will be communicated in writing to the applicant institution within 30 days of receipt of appeal. If an institution is approved by the portal entity to become a SARA member institution, the institution shall pay fees set out by the national council for state authorization reciprocity agreements. The department may require institutions to obtain a surety bond in the amount of twenty percent of the gross or projected distance education tuition and fees revenue from students enrolled pursuant to SARA as a condition of SARA membership approval. [5.99.1.18 NMAC - Rp. 5.99.1.18 NMAC, 12/11/2018; A, 12/29/2020]

**HIGHER EDUCATION DEPARTMENT**

**This is an amendment to 5.100.6 NMAC, Sections 7, 13, and 20 effective 12/29/2020.**

**5.100.6.7 DEFINITIONS:**

**A. "Accreditation"** means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions, as a means of assuring quality instruction.

**B. "Career school"** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree or comparable confirmation of completion of the curriculum.

**[B] C. "College" or "university"** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral



degree or comparable confirmation of completion of the curriculum.

**[C] D. “Department”** means the New Mexico higher education department or its designated employee.

**E. “Enrollment agreement”** means an agreement, instrument or note executed before a person begins coursework that creates a binding obligation between the person and the post-secondary educational institution.

**[D] E. “Exemption”, or “Exempt”** means a written acknowledgment by the department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the department to provide educational services in New Mexico, and is not subject to the Post-Secondary Educational Institution Act.

**[E] G. “Institution”** means a regionally accredited college or university.

**[F] H. “License”, “Licensed”, or “Licensure”** means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department to offer a formal educational curriculum within New Mexico.

**[G] I. “Manager”** or “Managers” means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of a New Mexico private post-secondary educational institution.

**[H] J. “Management plan of action”** means a plan that has been developed, reviewed and implemented by managers of the institution which details specific steps the institution will commit to taking in order to remediate an identified weakness, shortcoming or insufficiency.

**[H] K. “Physical presence”** means the ongoing occupation of a physical location in the state, the ongoing maintenance

of an administrative office to support the provision of higher education instruction, or engaging in one or more of the activities detailed in Paragraph 1 of Subsection A of 5.100.6.6 NMAC.

**[J] L. “Post-secondary educational institution”** or “post-secondary institution” includes an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education from a physical site in New Mexico, through distance education, correspondence or in person.

**M. “Private post-secondary educational institution”** means a non-publicly funded post-secondary educational institution that offers post-secondary education for a fee to members of the general public.

**N. “Prospective student”** means a person who demonstrates interest in signing an enrollment agreement with a post-secondary educational institution.

**[K] O. “Regional accreditation”** means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions operating in a designated geographic region.

**[L] P. “Registration”** or “Registered” means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate and offer a formal educational curriculum within New Mexico.

**[M] Q. “State Authorization”** means a private post-secondary educational institution has been deemed by the department to satisfactorily meet criteria, as determined by the department, for registration or licensure under the Post-Secondary Educational Institution Act. All degree-granting institutions seeking state authorization through application for registration

or licensure shall be accredited or be seeking appropriate external accreditation. State authorization does not serve as an endorsement of a particular institution, but confirms that an institution has met the minimum criteria set by the department to operate in New Mexico.

[5.100.6.7 NMAC - N, 12/26/2017; A, 12/11/2018; A, 12/29/2020]

**5.100.6.13 MATERIALS**

**AND INFORMATION:** The department shall regulate the use of deceptive and misleading materials and information. An institution shall not disseminate material or information that is deceptive, misleading or untrue. The institution shall certify compliance with all laws and regulations related to materials and information. The department may request copies of publications, advertisements, agreements, marketing collateral, or contracts in order to regulate the use of deceptive and misleading information. All materials and information shall comply with the following requirements:

**A.** Representation of accreditation and state authorization status:

**(1)** An institution may not make claims to or advertise an accreditation status if the accrediting agency is not recognized by the U.S. department of education.

**(2)** An institution not accredited by a U.S. department of education recognized accreditor shall clearly state that the institution is not accredited.

**(3)** An institution registered by the department may not use terms such as “accredited,” “endorsed,” or “recommended” in reference to its approval by the department.

~~**[B.]—Enrollment agreement:** Before a student begins coursework at an institution, the institution shall execute an enrollment agreement with the student. An enrollment agreement will be binding only when it has been fully completed, signed, and dated by the student and authorized institution~~

representative prior to the beginning of instruction. The institution shall retain the original enrollment agreement and a copy shall be delivered to the student at the time of execution or by mail when the enrollment is solicited by mail. Each enrollment contract or agreement shall include at least the following:

- (1) information that will clearly and completely define the terms of the agreement between the student and the school;
- (2) names and addresses of the school and the student;
- (3) the program or course title in which the student enrolling and the applicable catalog date or version reference;
- (4) program start date and estimated end date;
- (5) the number of hours or units of instruction;
- (6) the school's cancellation and refund policies;
- (7) an itemization of all charges, fees and required purchases being incurred by the student or their sponsor in order to complete the training, e.g., tuition, books, supplies and all other items of expense required by the school;
- (8) the method of payment and payment schedule being established; and
- (9) when applicable, a statement detailing the institution's academic placement policy.]

**B. Information** provided to students: Information shall be provided to students prior to their signing an enrollment agreement and the institution shall make reasonable effort to assure and verify that each student understands their academic and financial obligations prior to enrolling in the institution and maintain records of the institution's effort for at least five years after the students enroll at the institution. An institution shall publish and make available to all students a catalog or other materials that clearly describe:

- (1) admission policies and procedures that provide criteria and methods used to assess and admit or deny admission;
- (2) admission methods and criteria used to assess student ability to complete program requirement;
- (3) programs offered, the program completion requirements of each program offered, and descriptions of all courses offered;
- (4) requirements and costs for those occupations that require professional or trade licensure and for which the institution is offering preparation;
- (5) tuition, fees, books and supplies, including cost for rental or purchase of equipment or materials required of all students;
- (6) room, board and transportation expenses incurred by a student;
- (7) reasonable costs associated with a program of study abroad approved for credit by a student's home institution, if applicable;
- (8) expenses related to a student's disability, including special services, personal assistance, transportation, equipment and supplies;
- (9) refund policies, consistent with the requirements in Subsection C of 5.100.7.10 NMAC;
- (10) types of financial aid available to students and the procedure for applying for such aid;
- (11) the institution's policy regarding program or course cancellations;
- (12) rules and regulations pertaining to academic progress;
- (13) rules and regulations pertaining to student conduct;
- (14) the procedure to be followed in the instance that a student decides to withdraw from the institution prior to completing a program;

(15) the institution's policy regarding student complaints and the resources available to students for resolving differences with the institution. The institution must adopt the student complaint process established by the department and published by the department; and

(16) the institution's policy regarding release of transcripts.

**C. Advertising,** marketing, promotional materials and recruitment: All advertisements and promotional literature must be truthful regarding the content of an institution's educational program(s), the duration of the program(s), student attributes and skills needed for successful completion of the program(s), and costs of the program(s). An institution shall use no advertisements or promotional materials that are false, deceptive, inaccurate, or misleading. Materials must comply with all of the following regulations:

(1) Advertisements and promotional literature shall not contain promises of job placement or employment, either explicitly or implicitly, but may refer to an institution's services to assist students in obtaining employment.

(2) Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training and may not either explicitly or implicitly suggest that the institution is offering employment.

(3) An institution advertising salary ranges or averages for its graduates must have on file and available to inspection by students, the department, or their representatives current and accurate data that includes New Mexico employers and that validates such claims.

(4) An institution shall not advertise the transferability of its courses or programs to another institution unless it has signed transfer or articulation agreements with that institution.

(5) An institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve predominantly as sites of instruction or related activities provided by the institution, either in New Mexico or in other states. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.

(6) No person shall for a fee solicit enrollment at an institution who is not employed by and under supervision of the institution. The institution shall be responsible for the representations of its employees.

(7) Prospective students shall not be solicited by any representative of an institution on the sites of any government agency such as motor vehicle registration offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be made available at such sites.

(8) Prospective students shall not be solicited by any representative of an institution on the site of any public school, except at the invitation of school personnel. No institution shall offer or provide financial inducement to any public school in return for permission to solicit students.

(9) No institution shall solicit the enrollment of any student who is currently attending another institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.

(10) On all materials, an institution shall use the full name in which it is registered and list any other names in which the institution holds other government registrations. Permutations of its name, e.g., initials, or shortened name or nicknames, cannot be employed without prior written permission of the department.

(11) On all materials, the name of an institution shall not be misleading.

[5.100.6.13 NMAC - N, 12/26/2017; A, 12/29/2020]

**5.100.6.20 REPORTING REQUIREMENTS:**

A. Registered colleges or universities shall annually submit a standard reporting form on a deadline set by the department and make available to the prospective student.

B. The department shall promulgate a standard form for ~~[annual]~~ annual reporting [to include: curriculum and enrollment information, financial information, all publication material requested by the department, and certification of compliance with current New Mexico Administrative Code or statutes applicable to post-secondary educational institutions.] including but not limited to:

(1) curriculum and enrollment information;

(2) financial information;

(3) completion rates for both full-time and part-time students;

(4) withdrawal rates of students;

(5) satisfaction of students and employers;

(6) median combined loan debt for federal loans, institutional loans and private loans certified by the institution, for all students who completed the most recently completed award year;

(7) placement rates;

(8) median earnings at ten years after entering the institution of former students of the institution who received federal financial aid, if available;

(9) all publication material requested by the department; and

(10) certification of compliance with current New Mexico Administrative Code or statutes applicable to post-secondary educational institutions.

C. An institution renewing application with the department must submit required reporting and maintain records of

the institution's efforts to provide the information of this section to prospective student for at least five years after the student enrolls at the institution.

[5.100.6.20 NMAC - N, 12/26/2017; A, 12/29/2020]

the institution's efforts to provide the information of this section to prospective student for at least five years after the student enrolls at the institution.

[5.100.6.20 NMAC - N, 12/26/2017; A, 12/29/2020]

**HIGHER EDUCATION DEPARTMENT**

**This is an amendment to 5.100.7 NMAC, Sections 7, 9, 10, 11, 14 and 16 effective 12/29/2020.**

**5.100.7.7 DEFINITIONS:**

**A. "Accreditation"**

means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits institutions, as a means of assuring quality instruction.

**B. "Career school"**

means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree, or comparable confirmation of completion of the curriculum.

**C. "College" or**

**"university"** means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral degree or comparable confirmation of completion of the curriculum.

**D. "Continuing education"**

means only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be considered a program of training for employment. Typically, a student only enrolls for one course rather than a sequence of courses. The continuing education units must meet the criteria set out by the professional organization or

authority requiring the continuing education.

**E. “Cooling off period”** means at least three work days from the date of agreement or payment or from the date that the student first visits the institution, whichever is later.

**F. “Credit hour”** means an institution’s count of the amount of work represented in the intended learning outcomes and verified by evidence of student achievement, proof of commonly-accepted industry practices or consistent with the federal definition of the credit hour.

**G. “Degree”** means any title, designation, mark, abbreviation, appellation, or series of letters or words, including “associate”, “bachelor’s”, “master’s”, “doctor’s” and their equivalents, which are generally taken to signify satisfactory completion of the requirements of a program of study designed to be comparable to those provided by institutions accredited by agencies recognized by the United States department of education.

**H. “Department”** means the New Mexico higher education department or its designated employee.

**I. “Enrollment agreement”** means any agreement, instrument or note executed before a student begins course work which creates a binding obligation between the student and the institution.

**J. “Exemption”,** or “**Exempt**” means a written acknowledgment by the department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the department to provide educational services in New Mexico, and is not subject to the Post-Secondary Educational Institution Act.

**K. “Institution”** means a career school or nonregionally accredited college or university.

**L. “License”,** “**Licensed**”, or “**Licensure**” means a written acknowledgment by the

department that a career school or nonregionally accredited college or university has met the requirements of the department to offer a formal educational curriculum within New Mexico.

**M. “Manager”** or “**Managers**” means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of a New Mexico private post-secondary educational institution.

**N. “Management plan of action”** means a plan that has been developed, reviewed and implemented by managers of the institution which details specific steps the institution will commit to taking in order to remediate an identified weakness, shortcoming or insufficiency.

**O. “Owner”** or “**Ownership**” means all individuals or entities that have any ownership interest in the institution.

**P. “Physical presence”** means the ongoing occupation of a physical location in the state, the ongoing maintenance of an administrative office to support the provision of higher education instruction, or engaging in one or more of the activities detailed in Paragraph (1) of Subsection A of 5.100.7.6 NMAC.

**Q. “Post-secondary educational institution”** or “**post-secondary institution**” means an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education from a physical site in New Mexico, through distance education, correspondence or in person.

**R. “Private post-secondary educational institution”** means a non-publicly funded post-secondary educational institution that offers post-secondary education for a fee to a member of the general public.

**S. “Prospective student”** means a person who

demonstrates interest in signing an enrollment agreement with a post-secondary educational institution.

**[R] T. “Regional accreditation”** means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions operating in a designated geographic region.

**[S] U. “Registration”** or “**Registered**” means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate and offer a formal educational curriculum within New Mexico.

**[F] V. “Review committee”** means a committee established by the department pursuant to 5.100.7.11 NMAC.

**[H] W. “State authorization”** means a private post-secondary educational institution has been deemed by the department to satisfactorily meet criteria, as determined by the department, for registration or licensure under the Post-Secondary Educational Institution Act. All degree-granting institutions seeking state authorization shall be accredited or be seeking appropriate external accreditation. State authorization does not serve as an endorsement of a particular institution, but confirms that an institution has met the minimum criteria set by the department to operate in New Mexico.

**[V] X. “Work day”** means a week day, Monday through Friday that is not recognized as a federal holiday.

[5.100.7.7 NMAC - N, 12/26/2017; A, 12/11/2018; A, 12/29/2020]

**5.100.7.9 TYPES OF LICENSURE:** The department will determine the type of license an institution is eligible to receive based on standards set by the department. An institution [holding] with a provisional license or license holds state authorization to operate in New Mexico:

**A.** Provisional License: An institution that has never applied for licensure or a degree granting institution seeking accreditation status is required to submit an annual application for a provisional license to the department. [~~An institution must reapply for a provisional license for a minimum of two consecutive years.~~] The department will review the annual application to ensure the institution satisfactorily meets the application requirements in 5.100.7.10 NMAC. An institution may be required to [~~hold a provisional license status for a period beyond two consecutive years if the institution fails to meet the requirements for full licensure. Provisional license does not imply automatic eligibility for licensure~~] keep the provisional license status if the institution fails to meet the requirements for full licensure or receives unsatisfactory audits by the department within the first full academic year. The outcome of a triggered site visit of any licensed institution as stated in Subsection E of 5.100.7.6 NMAC may be a recommendation for a provisional license.

**B.** License: After successful completion of the provisional license period, an institution is required to submit an application for a license to the department. The department will review the application to ensure the institution satisfactorily meets the application requirements in 5.100.7.10 NMAC. A renewal application must be submitted annually to the department on forms created by the department within deadlines set by the department. [5.100.7.9 NMAC - N, 12/26/2017; A, 12/29/2020]

**5.100.7.10 APPLICATION REQUIREMENTS:** The institution must provide complete and accurate information to the department. The department may request additional supporting documentation. Upon request of the department, the applicant must supply any missing or requested information to the department. An applicant must respond to the department within deadlines set by the department. The department application will require institutions to supply information described in Subsections A through W of 5.100.7.10 NMAC:

**A.** Evaluation plan: The plan shall include measures of institutional success. The institution shall provide a plan for evaluation of the following:

- (1) the satisfaction of its graduates and shall make available to the department all reports of these satisfaction assessments prepared during the past five years;
- (2) a written plan for keeping courses current;
- (3) a written plan for faculty improvement in terms of content knowledge and relevant instructional techniques and the use of new and applicable technologies to support instruction; and
- (4) if the institution is subject to the Student-Right-to-Know Act, it shall provide the department with copies of all reports submitted to the federal agency.

**B.** Tuition policy: Tuition and fee charges shall be the same for all students admitted to a given program for a given term of instruction. An institution may not discount its tuition and fees charged to individual students as an incentive for quick enrollment or early payment. An institution may negotiate special rates with business, industrial, governmental, or similar groups for group training programs and may establish special rates for students who transfer between programs. An institution may charge a reasonable carrying fee associated with deferred payments or payment plans. All tuition and fees must be comprehensively listed in the institution's catalog as required in Subsection G of 5.100.7.10 NMAC.

**C.** Tuition refund policy: An institution licensed by the department shall adhere to the following tuition refund policy:

(1) An institution accredited by agencies recognized by the United States department of education shall adhere to the tuition refund schedule established by the institution's accrediting body or the United States department of education. If an institution is required to adopt such refund schedule, it is required to provide proof of adoption and a copy of the refund schedule policy from either the accreditor or the United States department of education.

(2) If an institution is not required to adopt a refund schedule policy by an accreditor or the United States department of education, the following refund schedule policy set out by the department shall be adopted:

Date of student withdrawal as a % of the enrollment period for which the student was obligated	Portion of tuition and fees obligated and paid that are eligible to be retained by the institution
On 1st class day	0%
After 1st day; within 10%	10%
After 10%; within 25%	50%
After 25%; within 50%	75%
50% or thereafter	100%

(3) Any student signing an enrollment agreement or making an initial deposit or payment toward tuition and fees of the institution shall be entitled to a cooling off period as defined in 5.100.7.7 NMAC. During the cooling off period the agreement can be withdrawn and all payments shall be refunded. Evidence of personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means shall be deemed as

meeting the terms of the cooling off period.

(4) Following the cooling off period, but prior to the beginning of instruction, a student may withdraw from enrollment, effective upon personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or five percent in tuition or fees, whichever is less, as the institution's registration charges.

(5) In the case of students enrolling for non-traditional instruction, a student may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or five percent in tuition or fees, whichever is less, as the institution's registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(6) Upon request by a student or by the department, the institution shall provide an accounting for such amounts retained under this standard within five work days.

**D.** Record maintenance and retention policy: Each private career school or non-regionally accredited college or university licensed by the department shall provide a records maintenance and retention plan. The plan shall consist of a records maintenance and disposal schedule that is in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, regulations of any other authorizing agency, or laws, regulations, and rules of any other authorizing jurisdiction or territory, whichever is longest in time. If another authorizing agency of the institution requires a longer period of retention than that of 1.21.2 NMAC,

the longest retention period shall prevail. The plan must include a description of how records will be maintained in the event of closure, which includes, but is not limited to, designation of a custodian of records, digitization, and a process for obtaining transcripts from the custodian of record.

**E.** Materials and information: The department shall regulate the use of deceptive and misleading materials and information. An institution shall not disseminate material or information that is deceptive, misleading or untrue. The institution shall certify compliance with all laws and regulations related to materials and information. The department may request copies of publications, advertisements, agreements, marketing collateral, or contracts in order to regulate the use of deceptive and misleading information. All materials and information shall comply with the following requirements:

(1)

Representation of accreditation and state authorization status:

(a)

An institution may not make claims to or advertise an accreditation status if the accrediting agency is not recognized by the United States department of education.

(b)

An institution not accredited by a United States department of education recognized accreditor shall clearly state that the institution is not accredited.

(c)

An institution licensed by the department may not use terms such as "accredited," "endorsed," or "recommended" in reference to its approval by the department.

(2) Enrollment

agreement: Before a student begins coursework at an institution, the institution shall execute an enrollment agreement with the student. An enrollment agreement will be binding only when it has been fully completed, signed, and dated by the student and authorized institution representative prior to

the beginning of instruction. The institution shall retain the original enrollment agreement and a copy shall be delivered to the student at the time of execution or by mail when the enrollment is solicited by mail. A copy of the blank agreement or contract shall be submitted to the department. Each enrollment contract or agreement shall include at least the following:

(a)

information that will clearly and completely define the terms of the agreement between the student and the school;

(b)

names and addresses of the school and the student;

(c)

the program or course title in which the student is enrolling and the applicable catalog date or version reference;

(d)

the program start date and estimated end date;

(e)

the number of hours or units of instruction;

(f)

the school's cancellation and refund policies;

(g)

an itemization of all charges, fees and required purchases being incurred by the student or their sponsor in order to complete the training, e.g., tuition, books, supplies and all other items of expense required by the school;

(h)

the method of payment and payment schedule being established; and

(i)

when applicable, a statement detailing the institution's academic placement policy.

(3)

Advertising, marketing, promotional materials and recruitment: All advertisements and promotional literature must be truthful regarding the content of an institution's educational program(s), the duration of the program(s), student attributes and skills needed for successful completion of the program(s), and costs of the program(s). An

institution shall use no advertisements or promotional materials that are false, deceptive, inaccurate, or misleading. Materials must comply with all of the following requirements:

(a)

Advertisements and promotional literature shall not contain promises of job placement or employment, either explicitly or implicitly, but may refer to an institution's services to assist students in obtaining employment.

(b)

Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training and may not either explicitly or implicitly suggest that the institution is offering employment.

(c)

An institution advertising salary ranges or averages for its graduates must have on file and available to inspection by students, the department, or their representatives current and accurate data that includes New Mexico employers and that validates such claims.

(d)

An institution shall not advertise the transferability of its courses or programs to another institution unless it has signed transfer or articulation agreements with that institution.

(e)

An institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve predominantly as sites of instruction or related activities provided by the institution, either in New Mexico or in other states. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.

(f)

No person shall for a fee solicit enrollment at an institution who is not employed by and under supervision of the institution. The institution shall be responsible for the representations of its employees.

(g)

Prospective students shall not be solicited by any representative

of an institution on the sites of any government agency such as motor vehicle division offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be made available at such sites.

(h)

Prospective students shall not be solicited by any representative of an institution on the site of any public school, except at the invitation of school personnel. No institution shall offer or provide financial inducement to any public school in return for permission to solicit students.

(i)

No institution shall solicit the enrollment of any student who is currently attending another institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.

(j)

On all materials, an institution shall use the full name in which it is licensed and list any other names in which the institution holds other government approvals. Permutations of its name, e.g., initials, or shortened name or nicknames, cannot be employed without prior written permission of the department.

(k)

On all materials, the name of an institution shall not be misleading.

**F. Name of the institution:** The department reserves the right to deny licensure to an institution proposing to operate under a name that the department determines to be misleading or so similar to that of another institution operating within the state that it may result in substantial confusion. Institution names must comply with each of the following regulations:

(1) institutions

including the term "college" in their name must offer at least an associate degree and enroll a substantial portion of their students in such degree programs; and

(2) institutions

including the term "university" in their name must offer graduate degree programs and must enroll a

preponderance of their students in baccalaureate and graduate degree programs.

**G. Information**

provided to students: Information shall be provided to students prior to their signing an enrollment agreement and the institution shall make reasonable effort to assure and verify that each student understands their academic and financial obligations prior to enrolling in the institution and maintain records of the institution's effort for at least five years after the students enroll at the institution. An institution shall publish and make available to all students a catalog or other materials that clearly describe:

(1) accurate

representation of accreditation and state authorization status as described in Paragraph 1 of Subsection E of 5.100.7.10 NMAC;

(2) admission

policies and procedures that provide criteria and methods used to assess and admit or deny admission;

(3) admission

methods and criteria used to assess student ability to complete program requirement;

(4) programs

offered, the program completion requirements of each program offered, and descriptions of all courses offered;

(5)

requirements and costs for those occupations that require professional or trade licensure and for which the institution is offering preparation;

(6) tuition

[and], fees and [refund policies, consistent with the requirements in 5.100.7 NMAC] books and supplies, including cost for rental or purchase of equipment or materials required of all students;

(7) room,

board and transportation expenses incurred by a student;

(8) reasonable

costs associated with a program of study abroad approved for credit by a student's home institution, if applicable;

(9) expenses

related to a student's disability.

including special services, personal assistance, transportation, equipment and supplies:

~~(10)~~ refund policies, consistent with the requirements in Subsection C of 5.100.7.10 NMAC;

~~(7)~~ **(11)** types of financial aid available to students and the procedure for applying for such aid;

~~(8)~~ **(12)** the institution's policy regarding program or course cancellations;

~~(9)~~ **(13)** rules and regulations pertaining to academic progress;

~~(10)~~ **(14)** rules and regulations pertaining to student conduct;

~~(11)~~ **(15)** the procedure to be followed in the instance that a student decides to withdraw from the institution prior to completing a program;

~~(12)~~ **(16)** the institution's policy regarding student complaints and the resources available to students for resolving differences with the institution. The institution must adopt the student complaint process established by the department and published by the department; and

~~(13)~~ **(17)** the institution's policy regarding release of transcripts.

**H.** Financial aid: Prior to a student signing a financial aid agreement, each student must be informed in writing regarding his or her obligations associated with receipt of financial aid and the institution must take reasonable steps to assure that the student understands that obligation. The institution shall provide financial aid resources to students.

**I.** Proof of teach-out agreement: Each institution shall submit a teach-out plan or agreement.

**(1)** An institution must submit proof of a teach-out agreement with at least one other private or public institution operating in the state or provide a teach-out plan that allows students to complete their program of study

at the institution within a timeframe accepted by the department. Proof of such teach-out agreement(s) with another institution must be submitted to the department. The teach-out plan or agreement must address the ability of students to complete programs within a reasonable proximity to the physical location of the institution and shall be arranged at no additional cost to the students beyond that originally agreed to by the students.

**(2)** The department may determine that a teach-out plan or agreement is not feasible after consideration of evidence submitted to the department. The department may find that teach-out arrangements are not feasible for students in one or more programs offered by the institution, in which case the institution shall plan to refund all tuition and fees paid by the students in question for the current period of enrollment and shall plan to provide appropriate transcripts and evaluations to assist students in transferring their work to another institution.

**(3)** A teach-out plan or agreement shall be evaluated and updated by the institution annually upon submitting a license renewal application. If an institution closes or has a substantial change in location, the institution is subject to 5.100.8 NMAC. If the teach-out plan or agreement presented to the department during application for licensure becomes impossible or is no longer feasible due to institutional changes, the plan must be updated and submitted to the department within 90 days of the change.

**J.** Adoption of degree standards: Institutions accredited by a recognized United States department of education accreditor shall adopt degree standards governed by their accrediting body. Any non-accredited degree granting institution shall adopt the following degree standards for each credential as listed below:

**(1)** Associate degree program:

**(a)** associate degree programs must

include both technical or vocational and general education instruction. Associate degree programs shall consist of 60 credit hours of study or the equivalent;

**(b)** associate of applied science degrees, associate of occupational studies degrees or comparable appellations must be based upon the institution's certification that the recipient is prepared for immediate employment in a specified career field and must be comprised primarily of technical or vocational study; and

**(c)** associate of arts or associate of science degrees must be based upon the institution's certification that the recipient is prepared both for immediate employment in a specified career field and transfer to another institution for more advanced study; associate of arts and associate of science degree programs will normally consist of approximately equal numbers of technical or vocational and general education courses.

**(2)** Baccalaureate degree programs:

**(a)** baccalaureate degree programs must be comparable in quality to those offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs; award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited; and

**(b)** at a minimum, issuance of a baccalaureate degree shall require 120 credit hours or the equivalent; the degree program must include 30 credit hours of general education core requirements.

**(3)** Master's degree programs:

**(a)** master's degree programs must be comparable in quality to those



offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs; award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited; and

**(b)**

at a minimum, issuance of a master's degree shall require 30 credit hours of academic credit or the equivalent beyond a baccalaureate degree.

**(4) Doctoral degree programs:**

**(a)**

at a minimum, issuance of a doctoral degree shall require 90 credit hours of academic credit or the equivalent beyond a baccalaureate degree or 60 credit hours or the equivalent beyond the master's degree and shall require successful completion and defense of a major independent project, involving original research or application of knowledge. The research component shall provide no more than thirty percent of the degree credit requirement;

**(b)**

research or project committees composed of no fewer than three qualified readers shall review the project at various stages of development; documentation shall be provided to support this requirement. The final version of the research or project shall be accompanied by the original signature of each committee member; and

**(c)**

the institution shall maintain a copy of the final report of the research or project and make it available upon request.

**(5) Honorary degree or certificate:**

Licensed, private degree-granting institutions may issue honorary degrees or certificates. An honorary degree or certificate shall identify in its title or name that it is an honorary degree or certificate and shall bear such on its face.

**(6) Credit for**

life experience: If an institution offers academic credit for life experience or employment related experience, the institution must have and adhere to the following requirements:

**(a)**

applicable life experience shall be limited to work experience, military experience or a combination of the two;

**(b)**

no more than ~~[30]~~ thirty percent of the credit in a student's degree program may be awarded for life or work experience;

**(c)**

the institution shall utilize the methodologies outlined by the council for adult and experimental learning (CAEL) for evaluating life experience or shall have in place a comparable plan which describes procedures and requirements for the assessment of experiential learning;

**(d)**

the institution shall maintain documentation for at least three years of all materials used to assess and award credit for experiential learning;

**(e)**

the institution shall clearly indicate on the student degree plan the course(s) for which the experiential learning is being substituted;

**(f)**

the institution shall evaluate extra-institutional learning only in subject areas in which it has or can arrange for faculty expertise or where it can rely on nationally validated examinations or other procedures for establishing credit equivalencies; and

**(g) no**

life experience credit shall be awarded toward the doctorate degree beyond master's level study.

**K. Accreditation:**

**(1) Accredited**

institutions shall be governed by their accrediting agencies in establishing degree and program standards. Accredited institutions shall submit:

**(a)**

formal documentation from the accreditor listing all approved campuses, degrees and programs; and

**(b)**

written notification of any changes related to accreditation.

**(2) Institutions**

proposing to change or add programs must formally notify the department. If the change or addition of the program requires the accreditor's approval, the institution must provide written proof of the approval. If the change or addition does not require approval by the accreditor, the institution shall provide proof that the accreditor was notified of the change or addition. The department shall review proposed changes. The department may review proposed changes on a set schedule defined by the department and charge an administrative fee for the processing of such requests. Upon final review, the department will provide a formal acknowledgment of the approved new degrees and programs. The institution may begin to advertise the program based on the department's letter of acknowledgement. The complete list of programs offered by an institution will be listed on the license issued to the institution.

**L. Accreditation for**

new degree-granting institutions or degree-granting institution seeking accreditation: New degree-granting institutions making application with the department will be required to obtain accreditation with an accrediting agency recognized by the United States department of education within ~~[two]~~ three years of submitting the initial application. Non-accredited degree-granting institutions must submit a written accreditation plan, which shall include:

**(1) the United**

States department of education recognized accrediting agency with which the applicant intends to apply for institutional accreditation;

**(2) the**

planned timeline for application with and approval by the United States department of education recognized accrediting agency;

**(3) any**

contracts already made with the United States department of education

recognized accrediting agency, including supporting documents;

(4) certification that the institution will complete the accreditation process within the planned timeline provided to the department;

(5) submit all documents as required for non-accredited non-degree granting institutions; and

(6) any additional information which the department may request.

**M.** Non-accredited non-degree granting institutions: Applications for non-accredited non-degree granting institutions shall be evaluated by a department review committee described in 5.100.7.11 NMAC. A new non-accredited non-degree granting institution applying for licensure will be approved to offer no more than six degree programs during the first two years of operation. Non-accredited non-degree granting institutions shall submit the following for review:

(1) Institution curriculum requirements: For each program and course of instruction offered by an institution, the institution shall submit:

(a) program outline, syllabus and curriculum materials that accurately describe the objectives, content, and methods of the program or course;

(b) objectives, content, and methods of each program and course of instruction which demonstrate curriculum quality;

(c) details of equipment and facilities utilized by a program which shall be sufficient for the number of students using them, and shall be applicable to the objectives set for the program; and

(d) a report that demonstrates that each program is designed to provide training for an occupation that is recognized in New Mexico and that the training provided is sufficient in length and quality to prepare students for immediate employment in the

occupation(s) or prepare students to complete licensing assessments.

(2) Faculty qualifications: The institution must demonstrate the following:

(a) each member of the teaching faculty has an educational background, including licensure or occupational or credential, and experience applicable to teaching assignments;

(b) faculty degrees, licensure, certification, and credentials are in the applicable field of instruction unless the institution demonstrates to the satisfaction of the department and review committee, on an individual basis, that alternative qualifications are sufficient;

(c) for degree-granting institutions faculty must hold degrees in the field of instruction from an accredited institution at a minimum of one degree level higher than the level of instruction, and in no case less than a baccalaureate unless the institution demonstrates to the satisfaction of the department that alternative qualifications are sufficient;

(d) for degree-granting institutions no more than twenty percent of the faculty of an institution may be employed under alternative qualifications;

(e) for each proposed credential offering, the institution employs at least one faculty member with the applicable training who shall have the responsibility for providing oversight of the instructional program; and

(f) faculty are sufficient in number to provide instruction and attention to the work of students of the institution.

(3) Student outcomes: New institutions submitting first time application shall provide a plan for tracking program completion rates, withdrawal rates and satisfaction of students, and employers. Institutions renewing application with the department must submit required reporting for program completion rates, withdrawal

rates, and satisfaction of students and employers.

(4) Non-accredited non-degree institutions proposing to change existing programs or add new degree programs to their curriculum shall submit application on a form acceptable to the department, for review committee approval prior to marketing the program and enrolling students in the proposed program.

**N.** Maintenance of records certification: Each institution must submit a certification of compliance with all applicable laws, rules and regulations that govern records management for closed institutions.

**O.** Surety bond: Each institution licensed by the department shall maintain in force a surety bond or alternative surety accepted by the department, in an amount set by the department, and payable to the department. The institution must have and adhere to the following requirements:

(1) the amount of the bond or alternative surety shall be sufficient to indemnify any student damaged as a result of fraud or misrepresentation by a licensed institution or as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted. If a licensed institution closes, the department may draw upon the bond to pay costs associated with preservation of student records. The bond must also meet the following criteria:

(a) the bond required for each institution shall be twenty percent of the institution's projected or actual gross annual tuition and fee revenue in New Mexico, which takes into consideration the size, number of students and total income and assets of an institution. In no case shall the bond be less than \$5,000; and

(b) bonds provided by institutions must be accompanied by the name, office address and phone number of the issuing company representative.

(2) If an institution seeks to cancel a surety bond, written notice must be delivered to the department. The institution may not cancel the surety bond until provided with written release by the department. The institution shall provide the department with a like surety or acceptable alternative in order to maintain licensure.

(3) Alternative forms of surety: An institution may request a waiver from the bond requirement and provide to the department an explanation of the alternative form for which they are seeking approval. The department has the authority to accept or reject any request. Such alternative may be a cash deposit escrow account, irrevocable letter or credit, or similar alternative payable to the department in the amount equal to the bond requirement.

**P. Proof of financial stability:** Standards for reviewing and analyzing financial stability are a critical component of the institution's overall assessment. The institution's financial stability will be reviewed by the department to assess the institution's ability to meet financial obligations including, but not limited to, obligations to enrolled students. In determining financial stability of the institution the department shall review the following requirements:

(1) Insurance: Institutions licensed by the department shall maintain valid standard, commercial liability insurance, worker's compensation insurance, and property insurance sufficient to protect students, employees, and other citizens from hazards in the institution's facilities. Where applicable, institutions shall have liability insurance covering students involved in internships at sites and locations other than the institution.

(2) Financial statement analysis: The department shall consider an institution's financial history when reviewing an application for licensure. In the case where an institution submits an audit report and management letter provided by

a certified public accountant, the department shall normally accept the report as accurate and rely on the auditor's professional responsibility to evaluate and to make known their professional opinion.

(3) New institutions not previously operating in any capacity in any state or jurisdiction shall demonstrate liquid assets sufficient to operate the institution for a period of one year exclusive of anticipated revenue from tuition and fees. These assets shall be sufficient to pay all projected salary and benefits of employees and the rent, utilities, insurance and other costs of operating the institution's facilities for a period of one year. If an institution has audited financials available for the year prior to that of the application, such audited financials shall be submitted for review. Any new institution shall submit the following:

(a) bank statements, investor agreements, any other financial donations or gifts used to develop the institution;

(b) the institution's projected income statement certified as accurate by the institution. The income statement must include details of projected salaries and benefits of employees, rent, utilities, insurance, any financial obligations made by the institution, and any other operating costs; and

(c) any additional information which the department may request.

(4) Existing institutions: If an institution has previously operated in any capacity in any jurisdiction, it must submit documents based on the following thresholds:

(a) An institution with seven hundred fifty thousand dollars (\$750,000) or more in gross annual tuition revenue and all federal Title IV financial aid institutions shall submit, on a schedule set by the department, an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy

Act, Section 61-28B-1 et seq. NMSA 1978 as amended. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(b) An institution with gross annual tuition revenue of two hundred fifty thousand dollars (\$250,000) or more but less than seven hundred forty nine thousand nine hundred ninety-nine dollars (\$749,999) shall submit, on a schedule set by the department, either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Section 61-28B-1 et seq. NMSA 1978 as amended or a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(c) An institution with gross annual tuition revenue of less than two hundred forty nine thousand

nine hundred ninety-nine dollars (\$249,999) shall submit on a schedule set by the department either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, 61-28B-1 et seq. NMSA 1978 as amended, a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, or an income statement and balance sheet certified as accurate by the institution. In addition to the audit report and management letter, the review of financial statements, or the income statement and balance sheet as described in this paragraph, the institution shall submit copies of business tax returns and bank statements for the most current year. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(5) Failure to satisfactorily meet financial requirements: If considerable concern is established as to the institution's ability to maintain its operation, department staff may contact the school to request additional information regarding the institution's financial picture. If concerns are not addressed through the additional information provided to the department, a department financial analyst may conduct a second financial review. If after the second review, substantial doubt remains about the institution's ability to continue, the department may contract for further independent review of the records. All costs associated with

contracting a third party independent reviewer will be charged to the institution. Following review and based on the determination of the department

(a) the institution may be authorized for operation; or

(b) the institution may be placed on probationary status and required to submit a management plan of action; and

(c) the department may report the failure to satisfactorily meet financial requirements to the United States department of education and the institution's accreditor. If the issue is not resolved, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny licensure.

Q. Procedure for resolution of student complaints: An institution shall provide proof of an adopted complaint procedure that complies with the minimum requirements set by the department. The institution shall have and make available to all students, the adopted complaint procedure that describes, in detail, how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

(1) requirement that students or other parties with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;

(2) a time frame within which the institution will investigate the complaint and respond to the complainant;

(3) assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;

(4) assurance that no adverse action will be taken

against the complainant for registering the complaint; and

(5) identification of the higher education department as the agency to be contacted in cases where a complaint cannot be resolved.

R. Student services: The institution shall certify that it will provide the following:

(1) Financial aid counseling: Institutions offering financial aid to students shall provide adequate personnel qualified to administer the financial aid programs according to the regulations of all applicable agencies;

(2) Academic counseling and progress: Institutions shall provide adequate counseling for students regarding their academic progress. An institution shall have a clear policy and procedure for assessing the progress of students toward their program objectives and to inform student of progress. Students shall receive warning when their academic status is at risk and shall be given clear information about their academic status and whatever actions are needed to maintain satisfactory progress. The institution shall have a policy for terminating enrollment in manner that minimizes the financial cost to the student, when the student fails to meet the standards for academic progress. Records of the institution, including individual student records, shall reflect consistent application of such policy and procedure. The institution's catalog and other publications shall clearly inform students about the institution's standards for academic progress and any academic counseling and support services available to students.

(3) Employment counseling and placement: Institutions shall provide services that assist students in locating and qualifying for employment opportunities. Employment counseling and placement services must be provided at no additional charge to students. No institution shall be expected to provide employment counseling and

placement services beyond providing academic and financial aid transcripts for more than one year following a student's receipt of a diploma, certificate, or degree, except by such policy of the institution. An institution offering placement services for its students and graduates shall maintain records listing, for each student who has been assisted, each placement conference held with the student and each placement contact made in behalf of the student.

**S. Records standards and access:**

**(1) Transcript standards:** An institution shall prepare for students a transcript of record. A sample transcript shall be submitted and include at minimum the following:

**(a)** designation of the program(s) of study for which the student has been enrolled;

**(b)** each course completed by the student and the grade or other indication of performance assigned; and

**(c)** a dated statement of completion of the program and award of any certificate, diploma, or degree earned by the student.

**(2)** The method by which students and graduates may obtain transcripts and financial aid documents and applicable fees shall be described clearly in the institution's catalog or in other documents provided to students. All documents with reference to the method for obtaining transcripts and financial aid documents and fees must be submitted to the department for review.

**(3)** The institution shall certify that an official student file will be kept for each student and include at a minimum the following:

**(a)** admission application and enrollment agreement;

**(b)** official transcripts indicating qualification for admission;

**(c)** when applicable actual test and scores from an ability-to-benefit assessment;

**(d)** grades received (up-dated transcript);

**(e)** all obligations incurred and all funds paid by the student to the institution;

**(f)** student attendance information;

**(g)** academic counseling and employment counseling records; and

**(h)** financial aid records.

**T. Academic support resources:** The institution shall provide or otherwise assist students in gaining access to learning resources needed for completion of their programs, including library materials, laboratories, facilities, equipment and materials, and relevant experiences needed to meet program requirements. No institution shall absolve itself from this requirement solely by referring students to the resources of other private or public institutions or facilities, except by written agreement with such institutions or facilities.

The institution will certify that:

**(1)** students have access to learning resources;

**(2)** resources are adequate to support the programs;

**(3)** students are adequately informed about learning resources available to them and how to access such resources and services;

**(4)** training is made available for accessing learning resources;

**(5)** resources are delivered within a reasonable period of time;

**(6)** the facilities have satisfactorily met all applicable health and fire inspections; and

**(7)** compliance with regulations pursuant to the American with Disabilities Act (ADA).

**U. Admission policy:** Each institution shall adopt an admission policy that includes the following standards:

**(1)** No student shall begin a certificate or diploma program who has not received a high school diploma or the equivalent or who has not demonstrated ability to benefit from the program through a process of assessment that meets standards of the United States department of education or the department or who is participating in a concurrent enrollment program with a secondary school.

**(2)** Institutions enrolling students who are of compulsory school age or who are concurrently attending an elementary or secondary school shall have in their possession a signature or other written acknowledgement by elementary or secondary officials and by the student's parent or guardian.

**(3)** Institutions using an ability-to-benefit admission option shall provide the department with a clear and detailed statement describing their ability-to-benefit assessment programs (including cut off scores and validity data for any test used) and shall be able to demonstrate that ability-to-benefit assessment is performed in a consistent and valid manner.

**(4)** No student shall be admitted to an associate degree or baccalaureate degree program who has not received a high school diploma or the equivalent.

**(5)** No student shall be admitted to a graduate degree program who has not received a baccalaureate degree from an institution accredited by an agency recognized by the United States department of education, or received a baccalaureate degree from a non-accredited institution licensed by the department or by the cognizant state agency in another state, or qualified in an alternative manner approved by the department.

**V. Cooperation:** The institution shall provide copies of valid certificates from other federal, state and municipal agencies, and any other higher education authorities as proof of compliance with applicable bodies. At minimum the application submission must include:

(1) a copy of the notification of good standing and ability to do business in New Mexico issued by the New Mexico secretary of state's office;

(2) a copy of the New Mexico taxation and revenue department registration;

(3) as applicable, a copy of the national council of state authorization reciprocity agreements (NC-SARA) welcome letter;

(4) as applicable, a list and copy of authorizations granted by other jurisdictions;

(5) as applicable, a list and copy of authorizations granted by other New Mexico boards, commission or agencies.

**W. Ownership and administration:** The institution shall provide the department with information about ownership, owners, and managers. An institution shall notify the department in writing within 10 working days whenever the institution changes ownership, whenever there is a change in control of the institution, or whenever changes are made to managers. No institution will be licensed in the state of New Mexico without completion certifications required by the department. Any changes or events that may trigger any certification to be untrue, must be immediately reported to the department, and shall be reported in no less than 10 working days.

(1) The institution shall provide a list of principal owners and provide a list of managers.

(2) The institution shall certify that no owner of the institution has:

(a) been convicted of or has pled no contest or guilty to a crime involving abuse of public funds;

(b) been convicted of or has pled no contest or guilty to a crime of dishonesty or felony within the last five years;

(c) controlled or managed an institution that has ceased operation during the past five years without providing for the completion of programs by its students; or

(d) filed bankruptcy associated with the operation of an educational institution during the past five years.

(3) The institution shall certify that no manager of the institution has:

(a) been convicted of or has pled no contest or guilty to a crime involving abuse of public funds;

(b) been convicted of or has pled no contest or guilty to a crime of dishonesty or felony within the last five years;

(c) controlled or managed an institution that has ceased operation during the past five years without providing for the completion of programs by its students; or

(d) filed bankruptcy associated with the operation of an educational institution during the past five years.

(4) The institution shall certify it:

(a) has not filed bankruptcy during the past five years;

(b) is not under the ownership of any person who has filed bankruptcy associated with the operation of an educational institution during the past five years;

(c) is not managed by any person who has filed bankruptcy associated with the operation of an educational institution during the past five years;

(d) has not been found to be operating illegally in another state for a least five years.

[5.100.7.10 NMAC - N, 12/26/2017; A, 12/11/2018; A, 12/29/2020]

**5.100.7.11 REVIEW COMMITTEE:**

**A.** The purpose of the review committee is to assist

the department in assuring that non-accredited institutions maintain high quality programs and operations. The committee will review applications of licensure for non-accredited institutions seeking state authorization. The committee shall also conduct programmatic review and approval for non-accredited institutions. The committee will make a final recommendation to the department for state authorization or program approval. The review committee will evaluate the following criteria:

(1) adequacy of the administration of the institution;

(2) adequacy of the curriculum and program requirements of the institution and of its programs;

(3) adequacy of qualifications and performance of the teaching faculty of the institution; and

(4) the institution's effectiveness as reflected in student outcomes such as program completion rates, withdrawal rates, and satisfaction of students and employers.

**B.** The review committee membership shall:

(1) be composed of an odd number of members appointed by the department and serving at the pleasure of the department;

(2) be representatives of education providers and consumers, including owners and operators of career schools and nonregionally accredited colleges and universities. Private post-secondary institutions shall be consulted in selection of their representatives; however, appointment and service shall be at the discretion of the department;

(3) have no less than two members representing the public interest. The public interest representatives shall be representative of the general public with particular interest in post-secondary education. Appointment and service shall be at the discretion of the department;

(4) have committee members who serve two year staggered terms or until their successors are appointed. A member may be reappointed for successive terms;

(5) not have more than one representative from any one institution among the members of the committee; and

(6) not allow a representative of an institution that is designated in another state as an institution offering fraudulent or substandard education.

C. Operation and work of the review committee shall be coordinated by staff of the department. The review committee:

(1) shall organize itself as it deems appropriate, at a minimum designating a chairperson to collaborate with department staff in arranging meetings, other operations, and reports of the committee;

(2) shall assist in reviewing applications, upon the request of the department. When assisting staff of the department in reviewing private post-secondary institutions, members of the committee must recuse themselves in actions in which they have a conflict of interest with their own institution or a direct competitor or that would otherwise have the appearance of impropriety. For example, a member representing a private post-secondary institution shall avoid participation in a review of or visit to an institution that is a direct competitor for students, defined as an institution offering a similar program of instruction within the same community;

(3) shall convene at minimum [twice] once a year to conduct review;

(4) shall report to the department at least once each year regarding the status of private post-secondary education in the state of New Mexico and any recommendations for improving the quality and operation of private post-secondary institutions;

(5) shall be reimbursed for travel expenses

associated with convening and conducting review; and

(6) may form ad hoc work groups composed of any persons it deems appropriate, to help fulfill its responsibilities.

[5.100.7.11 NMAC - N, 12/26/2017; A, 12/29/2020]

**5.100.7.14 REPORTING REQUIREMENTS:**

A. Licensed institutions shall annually submit a standard reporting form on a deadline set by the department and make available to the prospective student.

B. The department shall promulgate a standard form for [amnt] annual reporting [to include: curriculum and enrollment information, financial information, all publication material requested by the department, and certification of compliance with current New Mexico administrative code or statutes applicable to post-secondary educational institutions.] including, but not limited to:

(1) curriculum and enrollment information;

(2) financial information;

(3) completion rates for both full-time and part-time students;

(4) withdrawal rates of students;

(5) satisfaction of students and employers;

(6) median combined loan debt for federal loans, institutional loans and private loans certified by the institution, for all students who completed the most recently completed award year;

(7) placement rates;

(8) median earnings at ten years after entering the institution of former students of the institution who received federal financial aid, if available;

(9) all publication material requested by the department; and

(10) certification of compliance with current New Mexico administrative

code or statutes applicable to post-secondary educational institutions.

C. An institution must comply with reporting requirements in order to be eligible for annual license renewal.

D. An institution renewing application with the department must submit required reporting [for program completion rates, withdrawal rates, and satisfaction of students and employers] and maintain records of the institution's efforts to provide the information of this section to prospective student for at least five years after the student enrolls at the institution.

[5.100.7.14 NMAC - N, 12/26/2017; A, 12/29/2020]

**5.100.7.16 PENALTY:**

A. Institutions that do not have state authorization or have not been granted express exemption by the department, and meet the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately offering instruction or enrolling new students until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of Section 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

B. A private post-secondary institution that does not submit an application for renewal within deadlines set by the department and has a lapse in state authorization for one or more years will be required to complete a provisional period of [two years] one full academic year.

C. The department shall provide notification for public viewing on the department's website if a licensed private post-secondary institution has been sanctioned or penalized by their accreditor or the United States department of education.

**D.** The department may report any failures to comply with provisions of 5.100.7 NMAC to the United States department of education and the institution's accreditor. If the institution does not comply, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny licensure.  
[5.100.7.16 NMAC - N, 12/26/2017; A, 12/29/2020]

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**This is an amendment to 8.215.500 NMAC, Sections 8, 9 and 12 effective 1/1/2021.**

**8.215.500.8 [RESERVED]**  
**MISSION STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.  
[8.215.500.8 NMAC - N, 1/1/2021]

**8.215.500.9 NEED DETERMINATION:** This section describes the methodology to be used in determining countable resources and income for medicaid eligibility categories which use supplemental security income (SSI) methodology. [~~These guidelines are used for retroactive medicaid eligibility for SSI recipients as well as initial and on-going eligibility for qualified medicare beneficiaries (QMB), qualified disabled working individuals (QD), medicaid extension and specified low income medicare beneficiaries (SLIMB).~~] Medicaid eligibility is determined prospectively. Applicants/recipients must meet, or expect to meet, all financial and nonfinancial eligibility criteria in the month for which a determination of eligibility is made. Applicants for and recipients of medicaid must apply for

and take all necessary steps to obtain any income or resources to which they may be entitled. Such steps must be taken within 30 days of the date the human services department (HSD) furnishes notice of the potential entitlement.

**A. Failure to apply for and take steps to determine eligibility for other benefits:**

Failure or refusal to apply for and take all necessary steps to determine eligibility for other benefits after notice is received results in an applicant/recipient becoming ineligible for medicaid.

**B. Exceptions to general requirement:** Applicants/recipients who have elected a lower VA payment do not need to reapply for veterans administration improved pension (VAIP) benefits. Crime victims are not required to accept victims compensation payments from a state-administered fund as a condition of medicaid eligibility.

[8.215.500.8 NMAC - Rp, 8.215.500.8 NMAC, 3/1/2018; A, 1/1/2021]

**8.215.500.12 APPLICABLE RESOURCE STANDARDS:** The resource standard for medicaid extension as well as retroactive SSI medicaid eligibility determinations is \$2,000. [~~See Section 8.240.500.10 NMAC for resource standards applicable to QMB. See Section 8.242.500.10 NMAC for standards applicable to the qualified disabled working individuals program. See Section 8.245.500.10 NMAC for standards applicable to the SLIMB program.~~]

**A. Liquid resources:** The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.

**(1)** An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified

by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the ISD worker sends a bank or postal savings clearance to the appropriate institution(s).

**(2)** If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

**B. Non-liquid resources:** The value of non-liquid resources is computed at current fair market value. See below for discussion of equity value.

**(1) Real property:** If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource. If an applicant/recipient owns property with one or more individuals and the applicant/recipient has the right, authority or power to liquidate the property or his/her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property.

**(2) Vehicles:** One automobile is totally excluded 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. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

**(3) Household goods and personal effects:** Household goods and personal effects are considered countable resources



if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles. [8.215.500.12 NMAC - Rp, 8.215.500.12 NMAC, 3/1/2018; A, 1/1/2021]

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**This is an amendment to 8.240.500 NMAC, Sections 8, 9, 10, 11 & 13 effective 1/1/2021.**

**8.240.500.8 [RESERVED] MISSION STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities. [8.240.500.8 NMAC - N, 1/1/2021]

**8.240.500.9 GENERAL NEED DETERMINATION:** Applicants for, or recipients of, the qualified medicare beneficiaries (QMB) program must apply for and take all necessary steps to obtain any income [or resources] to which they may be entitled. [Recipients of supplemental security income (SSI) or aid to families with dependent children (AFDC) who apply for QMB are excluded from this requirement.] A victim of crime is not required to accept victim compensation payments from a state-administered fund established to aid crime victims as a condition of eligibility. [2/1/1995; 9/15/1995; 8.240.500.9 NMAC - Rn, 8 NMAC 4.QMB.500 & A, 7/15/2010; A, 1/1/2021]

**8.240.500.10 RESOURCE STANDARDS:** [The value of an applicant/recipient's individual countable resources must not exceed the amount set forth in Section 8.200.510.14 NMAC, resource

amounts for supplemental security income (SSI) related medicare savings programs (QMB and SLIMB/QI). The resource limit for an applicant couple is the amount set forth in Section 8.200.510.14 NMAC. An applicant/recipient with an ineligible spouse is eligible if the couple's countable resources do not exceed the amount set forth in Section 8.200.510.14 NMAC, when resources are deemed. The resource determination is always made as of the first moment of the first day of the month. The applicant/recipient is ineligible for any month in which the countable resources exceed the current resource standard as of the first moment of the first day of the month. Changes in the amount of resources during a month do not affect eligibility for that month. See Section 8.215.500.13 NMAC, countable resources, and Section 8.215.500.14 NMAC, resource exclusions, for specific information on exclusions, disregards, and calculation of countable resources.] There are no resource standards for this category of eligibility. [2/1/1995; 9/15/1995; 8.240.500.10 NMAC - Rn, 8 NMAC 4.QMB.510 & A, 7/15/2010; A, 1/1/2021]

**8.240.500.11 [RESOURCE TRANSFERS]:** The social security administration excluded transfer of resources as a factor of eligibility for non-institutionalized SSI recipients. Transfer of resources is not a factor for consideration in categories that use SSI methodology in the eligibility determination.] [RESERVED] [2/1/1995; 9/15/1995; 8.240.500.11 NMAC - Rn, 8 NMAC 4.QMB.515, 7/15/2010; Rp, 1/1/2021]

**8.240.500.13 INCOME STANDARDS:** The income ceiling for QMB eligibility is one hundred percent of the federal income poverty guidelines. These guidelines are updated annually effective April 1st. See Section 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 Section 8.215.500.13 NMAC, *countable resources*, and Section 8.215.500.14 NMAC, *resource exclusions*, for specific information on exclusions, disregards, and calculation of countable income.] [2/1/1995; 9/15/1995; 8.240.500.13 NMAC - Rn, 8 NMAC 4.QMB.522 & A, 7/15/2010; 8.240.500.13 NMAC - Rn, 8.240.500.12 NMAC, 10/1/12; A, 1/1/2020]

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**This is an amendment to 8.242.500 NMAC, Section 8 effective 1/1/2021.**

**8.242.500.8 MISSION:** [~~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.] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities. [8.242.500.8 NMAC - N, 1/1/2014; A, 1/1/2021]

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**This is an amendment to 8.245.500 NMAC, Sections 8, 9, 10 and 11 effective 1/1/2021.**

**8.245.500.8 MISSION:** [~~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.] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the

security and promote independence for New Mexicans in their communities.

[8.245.500.8 NMAC - N, 12/1/2009; A, 10/1/2012; A, 1/1/2021]

#### 8.245.500.9 NEED

**DETERMINATION:** SLIMB applicants/recipients must apply for and take all necessary steps to obtain any [resources] income to which they may be entitled.

[2/1/1995; 8.245.500.9 NMAC - Rn, 8 NMAC 4.SMB.500, 12/1/2009; A, 1/1/2021]

#### 8.245.500.10 RESOURCE

**STANDARDS:** [The value of an applicant/recipient's countable resources must not exceed the amount set forth in 8.200.510.14 NMAC, *resource amounts for supplemental security income (SSI)-related medicare savings programs (QMB and SLIMB/QH)*. The resource limit for an applicant couple is cannot exceed the amount for a couple set forth in 8.200.510.14 NMAC. An applicant/recipient with an ineligible spouse is eligible if the couple's countable resources do not exceed the amount set forth in 8.200.510.14 NMAC, when resources are deemed. A resource determination is always made as of the first moment of the first day of the month. An applicant/recipient is ineligible for any month in which the countable resources exceed the current resource standard as of the first moment of the first day of the month. Changes in the amount of resources during a month do not affect eligibility for that month. See 8.215.500.13 NMAC, *countable resources*, and 8.215.500.14 NMAC, *resource exclusions*, for information on exclusions, disregards, and countable resources.] There are no resource standards for this category of eligibility.

[2/1/1995; 8.245.500.10 NMAC - Rn, 8 NMAC 4.SMB.510 & A, 12/1/2009; A, 7/15/2010; A, 1/1/2021]

**8.245.500.11 [RESOURCE-TRANSFERS:** The social security administration excluded transfer of resources as a factor of eligible for

non-institutionalized SSI recipients. Transfer of resources is not a factor for consideration in the medicare savings programs.] **[RESERVED]** [2/1/1995; 8.245.500.11 NMAC - Rn, 8 NMAC 4.SMB.515 & A, 12/1/2009; 8.245.500.11 NMAC - Rp, 1/1/2021]

### HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

**This is an amendment to 8.250.500 NMAC, Sections 8, 10, 11 and 12 effective 1/1/2021.**

**8.250.500.8 MISSION:** [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.] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.250.500.8 NMAC - Rp, 8.250.500.8 NMAC, 1/1/2014; A, 1/1/2021]

#### 8.250.500.10 NEED

**DETERMINATION:** An applicant or a re-determining recipient for the medical MAD eligibility Category 042 QI1s must apply for and take all necessary actions to obtain any [resources] income to which he or she may be entitled. [See 8.215.500 NMAC.]

[8.250.500.10 NMAC - Rp, 8.250.500.9 NMAC, 1/1/2014; A, 1/1/2021]

#### 8.250.500.11 RESOURCE

**STANDARDS:** [The value of an applicant or re-determining recipient's countable resources must not exceed the amount set forth in 8.200.510 NMAC. The resource limit for an applicant or re-determining recipient couple is cannot exceed the amount for a couple set forth in 8.200.510 NMAC. An applicant

or re-determining recipient with an ineligible spouse is eligible if the couple's countable resources do not exceed the amount set forth in 8.200.510 NMAC, when resources are deemed. A resource determination is always made as of the first moment of the first day of the month. An applicant or re-determining recipient is ineligible for any month in which the countable resources exceed the current resource standard as of the first moment of the first day of the month. Changes in the amount of resources during a month do not affect eligibility for that month. See 8.215.500 NMAC for information on exclusions, disregards, and countable resources.] There are no resource standards for this category. [8.250.500.11 NMAC - Rp, 8.250.500.10 NMAC, 1/1/2014; A, 1/1/2021]

**8.250.500.12 [RESOURCE-TRANSFERS:** The social security administration excluded transfer of resources as a factor of eligibility for a non-institutionalized recipient who receives supplemental security income (SSI) benefits. Transfer of resources is not a factor for consideration in categories that use SSI methodology in the eligibility determination.] **[RESERVED]** [8.250.500.12 NMAC - Rp, 8.250.500.11 NMAC, 1/1/2014; Rp, 1/1/2021]

### HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

**This is an amendment to 8.320.2 NMAC, Sections 8 and 16, effective 1/1/2021.**

**8.320.2.8 [RESERVED] MISSION STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.320.2.8 NMAC - Rp, 8.320.2.8 NMAC, 1/1/2014; A, 2/1/2020; A, 1/1/2021]

**8.320.2.16 EPSDT SPECIAL REHABILITATION (FAMILY INFANT TODDLER EARLY INTERVENTION) SERVICES:**

MAD special rehabilitation services are furnished through the New Mexico ~~[department of health (DOH)]~~ early childhood education and care department (ECECD) family infant toddler (FIT) program. FIT provides early intervention services for a MAP eligible that has or is at risk of having a developmental delay from birth to his or her third birth year. Developmental delay or at risk of is defined by ~~[DOH]~~ ECECD. A MAP eligible recipient with a developmental delay or who is at risk of having a developmental delay is not considered to have a diagnosis of an intellectual or developmental disability. FIT services include evaluation, diagnostics and treatment necessary to correct or treat any defects or conditions or to teach compensatory skills for deficits that directly result from a medical or behavioral health condition. The appropriate information from evaluation and diagnostics is interpreted and integrated in the individual family service plan (IFSP). If the need for special rehabilitation is identified outside of the tot to teen healthcheck process, the MAP eligible recipient's PCP must be notified of the results and be included in the treatment plan development, if the PCP so elects.

**A.** MAD EPSDT special rehabilitation eligible providers: An enrolled MAD agency certified by ~~[DOH]~~ ECECD as a special rehabilitation services provider is eligible to be reimbursed for furnishing special rehabilitation services to a MAP eligible recipient. Individual providers rendering special rehabilitation services that are employed by or contracted by a MAD special rehabilitation provider agency must meet applicable ~~[DOH]~~ ECECD standards. A provider shall:

(1) render special rehabilitation services under the direction of a professional acting within his or her scope of practice as defined by state law;

(2) render special rehabilitation services in the most appropriate least restrictive environment;

(3) assure that claiming for special rehabilitation services does not duplicate claiming for EPSDT administrative outreach services or services funded under the state general fund ~~[DOH]~~ ECECD contract.

**B.** EPSDT special rehabilitation MAP eligible recipients: An individual who has been determined through a multidisciplinary developmental evaluation to have, or be at risk for, a developmental delay and to be in need of special rehabilitative services as defined by ~~[DOH]~~ ECECD is eligible to receive special rehabilitation services. Any individual that has been diagnosed with an intellectual or developmental disability is not eligible for FIT services.

**C.** EPSDT special rehabilitation treatment plan for a MAP eligible recipient: The need for special rehabilitation services must be documented in the MAP eligible recipient's treatment plan or in his or her IFSP. The treatment plan must be developed in accordance with applicable ~~[DOH]~~ ECECD policies and procedures and federal regulations governing Part C of the Individuals with Disabilities Education Act. The treatment plan or IFSP must be developed within 45 calendar days of the initiation of services and reviewed every six months or more often as indicated. The following must be contained in the treatment plan or IFSP documents and must be available for review in the MAP eligible recipient's agency file:

(1) a statement of the MAP eligible recipient's present levels of physical development including vision, hearing, and health status;

(2) an assessment of his or her communications development;

(3) an assessment of his or her behavioral health status, to include his or her social or emotional development;

(4) an assessment of his or her cognitive development;

(5) an assessment of his or her adaptive development;

(6) his or her family history and other relevant family information;

(7) a description of his or her intermediate and long-range goals, with a projected timetable for their attainment and dates, and the duration and scope of services;

(8) the procedures and timelines to determine the progress made toward achieving the outcomes and whether modifications to or revisions of the outcomes or services are needed; and

(9) statement of the specific special rehabilitation services needed to meet the MAP eligible recipient's unique needs and also achieve the outcomes specified, including the frequency, intensity and method of delivering each service, the environment in which each service will be provided, and the location of each service.

**D.** EPSDT special rehabilitation covered services:

(1) MAD only covers special rehabilitation services necessary to enhance development in one or more of the following developmental domains:

(a) physical and motor;

(b) communication;

(c) adaptive;

(d) cognitive;

(e) behavioral health to include social or emotional; or

(f) sensory.

(2) Special rehabilitation services generally involve the MAP eligible recipient's family and are designed to support and enhance the MAP eligible recipient's developmental services and are provided through FIT. The following are a list of covered services:

(a) Developmental evaluation and rehabilitation services are the assessments performed to determine if motor, speech, language and psychological problems exist with the MAP eligible recipient or to detect the presence of his or her developmental lags. Services include diagnostic, evaluative and consultative services for the purposes of identifying or determining the nature and extent of, and rehabilitating a MAP eligible recipient's medical or other health-related condition. Services also include consultation with the family and other professional staff. These services are provided as a result of a referral from the MAP eligible recipient's PCP.

(b) Nursing services are performed by a MAD enrolled certified nurse practitioner (CNP), registered nurse (RN) or licensed practical nurse (LPN) within the scope of his or her practice relevant to the medical and rehabilitative needs of the MAP eligible recipient. These services are provided as the result of a referral from the MAP eligible recipient's PCP. Services include the administration and monitoring of medication, catheterization, tube feeding, suctioning, and the screening and referral for other health needs. Nursing services also include explanations to the MAP eligible recipient's family or other professional staff concerning the treatments, therapies, and physical or social emotional health conditions.

(c) Physical therapy services are provided by or under the direction of a qualified MAD enrolled physical therapist (PT) as a result of a referral from the MAP eligible recipient's PCP. Physical therapy services are

the evaluations required to determine the MAP eligible recipient's need for physical therapy and the provision of therapies that are rehabilitative, active or restorative, and designed to correct or compensate for a medical problem interfering with age appropriate functional performance. Services also include consultation with the family and other professional staff.

(d) Occupational therapy services are provided by or under the direction of a qualified MAD enrolled occupational therapist (OT) as the result of a referral from the MAP eligible recipient's PCP. Occupational therapy services include the evaluation of the MAP eligible recipient to determine if he or she is experiencing problems that interfere with his or her functional performance and the provision of therapies that are rehabilitative, active or restorative, and designed to correct or compensate for a medical problem interfering with age appropriate functional performance. Services also include consultation with the MAP eligible recipient's family and other professional staff.

(e) Behavioral health services are diagnostic or active treatments with the intent to reasonably improve the MAP eligible recipient's condition; see 8.321.2 NMAC for a detailed description of behavioral health services.

(f) Speech, language and hearing services provided by or under the direction of a MAD enrolled SLP or audiologist, as the result of a referral by the MAP eligible recipient's PCP. Speech, language and hearing services are the evaluations required to determine the MAP eligible recipient's need for these services and recommendations for a course of treatment. Treatment is provided to a MAP eligible recipient with a diagnosed speech, language or hearing disorder which adversely affects his or her functioning. Services also include consultations with the MAP eligible recipient's family and other professional staff.

E. EPSDT special rehabilitation noncovered services: Special rehabilitation services are subject to the limitations and coverage restrictions which exist for other MAD services. See Section 14 of this rule for general non-covered MAD EPSDT services or activities.

F. EPSDT special rehabilitation prior approval and utilization: All MAD EPSDT services are subject to UR for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. Specifically, for special rehabilitation services, a maximum of 14 hours per month of services to a MAP eligible recipient can be furnished by a provider before prior approval is required from [DØH] ECECD. [8.320.2.16 NMAC - Rp, 8.320.4 NMAC, 1/1/2014; A, 1/1/2021]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

**TITLE 15 GAMBLING AND LIQUOR CONTROL  
CHAPTER 8 TOBACCO PRODUCTS  
PART 2 DEFINITIONS**

**15.8.2.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division. [15.8.2.1 NMAC – N, 1/1/2021]

**15.8.2.2 SCOPE:** These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act. [15.8.2.2 NMAC – N, 1/1/2021]

**15.8.2.3 STATUTORY AUTHORITY:** Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division. [15.8.2.3 NMAC – N, 1/1/2021]

**15.8.2.4 DURATION:**  
Permanent.  
[15.8.2.4 NMAC – N, 1/1/2021]

**15.8.2.5 EFFECTIVE DATE:** January 1, 2021 unless a later date is cited at the end of a section.  
[15.8.2.5 NMAC – N, 1/1/2021]

**15.8.2.6 OBJECTIVE:**  
This rule is intended to locate all definitions of terms used in the act or in Title 15, Chapter 8 in one rule.  
[15.8.2.6 NMAC – N, 1/1/2021]

**15.8.2.7 DEFINITIONS:**  
Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

**A. “The Act”** means the New Mexico Tobacco Products Act, Sections 61-37-1 through 61-37-25 NMSA 1978.

**B. “Age-controlled locations”** means an area of a licensed location that is restricted to persons age 21 and older.

**C. “Approved operator”** means the licensee approved by the division to operate a license pursuant to the act.

**D. “Director”** means the director of the alcoholic beverage control division.

**E. “Division”** means the alcoholic beverage control division of the New Mexico regulation and licensing department.

**F. “Employee”** means any person, whether paid or not, who works under the direction of a licensee or a licensee’s designate selling tobacco products, for whom which the licensee is responsible for.

**G. “Licensed location”** means the contiguous areas or areas connected by indoor passageways of a structure that are under the direct control of the licensee and from which the licensee is authorized to manufacture or sell tobacco products under the provisions of its license.

**H. “Manufacture”** means the process of a licensee using the licensee’s equipment and ingredients on the licensed location

to make, produce, create, fabricate, assemble, combine or mix tobacco products.

**I. “School”** means:

**(1)** a public or private educational institution accredited as such by the state or federal government;

**(2)** a discernible building or group of buildings generally recognized as a preschool, kindergarten, elementary, secondary, middle school, junior high, high school, or combination thereof; or

**(3)** a center for attendance where educational instruction is offered by certified school instructors; a “school” must be located in a zoning area in which the local municipality or county permits schools, but shall not include a home school as defined in Public School Code, or adult career training classes, or facilities used exclusively for daycare services.  
[15.8.2.7 NMAC – N, 1/1/2021]

**History of 15.8.2 NMAC:**  
[RESERVED]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

**TITLE 15 GAMBLING AND LIQUOR CONTROL  
CHAPTER 8 TOBACCO PRODUCTS  
PART 3 APPLICATIONS AND RENEWALS**

**15.8.3.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.  
[15.8.3.1 NMAC – N, 1/1/2021]

**15.8.3.2 SCOPE:** These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.  
[15.8.3.2 NMAC – N, 1/1/2021]

**15.8.3.3 STATUTORY AUTHORITY:** Section 61-37-22

NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.  
[15.8.3.3 NMAC – N, 1/1/2021]

**15.8.3.4 DURATION:**  
Permanent.  
[15.8.3.4 NMAC – N, 1/1/2021]

**15.8.3.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
[15.8.3.5 NMAC – N, 1/1/2021]

**15.8.3.6 OBJECTIVE:**  
This rule is intended to establish general standards for the application, renewal, and transfer of licenses under the act.  
[15.8.3.6 NMAC – N, 1/1/2021]

**15.8.3.7 DEFINITIONS:**  
Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.  
[15.8.3.7 NMAC – N, 1/1/2021]

**15.8.3.8 APPLICATIONS FOR NEW LICENSES:**

**A.** The director is authorized to prescribe all forms necessary for or required by the act or these rules. All filings with the division shall be accompanied by such affidavits, documents, fees and other supporting data as the director shall require.

**B.** All documents, records, affidavits, fees, supporting data or information requested by the division with regard to any application shall be furnished within 30 days from the date requested by the division, or the application may be disapproved, unless good cause is shown by the applicant.

**C.** All applications for licenses issued pursuant to the act shall be made on the forms prescribed by the director whether filed electronically, by mail, or in person.  
[15.8.3.8 NMAC – N, 1/1/2021]

**15.8.3.9 MANUFACTURER LICENSE REQUIREMENTS:** An application

for a manufacturer license or manufacturer license renewal shall include:

**A.** The name, telephone number, mailing address and email address of the applicant and:

**(1)** if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

**(2)** if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

**B.** The address of the applicant's principal place of business and every location where the applicant manufactures tobacco products;

**C.** Documentation as required by the division affirming that the applicant will comply with applicable and proper tobacco products manufacturing practices as required pursuant to 21 USCA Section 387d(a) and will comply with any applicable health directives issued by the department of health pursuant to the Public Health Act;

**D.** Documentation as required by the division affirming that the applicant will submit the applicable ingredient listing to the federal secretary of health and human services as required pursuant to 21 USCA Section 387d(a)(1);

**E.** Documentation as required by the division establishing compliance with all state Taxation and Revenue Department requirements;

**F.** A list of all distributors in which the manufacturer sells tobacco products; and

**G.** A non-refundable application fee.  
[15.8.3.9 NMAC – N, 1/1/2021]

**15.8.3.10 DISTRIBUTOR LICENSE REQUIREMENTS:** An application for a distributor license or distributor license renewal shall include:

**A.** The name, telephone number, mailing address and email address of the applicant and:

**(1)** if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

**(2)** if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

**B.** The address of the applicant's principal place of business and every location from which the applicant distributes tobacco products;

**C.** Documentation as required by the division establishing compliance with all state taxation and revenue department requirements;

**D.** A list of all manufacturers the applicant purchases from and all retailers applicant distributes to; and

**E.** A non-refundable application fee.

[15.8.3.10 NMAC – N, 1/1/2021]

**15.8.3.11 RETAILER LICENSE REQUIREMENTS:** An application for a retailer license or retailer license renewal shall include:

**A.** The name, telephone number, mailing address and email address of the applicant and:

**(1)** if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or

more of the profits earned by the firm, partnership or association; or

**(2)** if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

**B.** The address of the applicant's principal place of business and every location from which the applicant sells tobacco products;

**C.** A list of all distributors from whom the applicant received tobacco products;

**D.** Documentation as required by the division establishing compliance with all state Taxation and Revenue Department requirements; and

**E.** A non-refundable application fee.

[15.8.3.11 NMAC – N, 1/1/2021]

**15.8.3.12 NEED FOR MULTIPLE LICENSE TYPES:**

**A.** A manufacturer license does not allow a licensee to distribute tobacco products or sell tobacco products directly to consumers.

**B.** A distributor license does not allow a licensee to manufacture tobacco products or sell tobacco products directly to consumers.

**C.** A retailer license does not allow a licensee to manufacture tobacco products or distribute tobacco products to retailers for resale.

**D.** Licensees who wish to conduct any combination of manufacturing, distributing, or retailing tobacco products at a single location must obtain each of the necessary license types.

**E.** Licensees are not prohibited from holding multiple license types at one location.

[15.8.3.12 NMAC – N, 1/1/2021]

**15.8.3.13 LICENSE LOCATION TO BE AT LEAST 300 FEET FROM A SCHOOL:**

**A.** A license shall not be issued, retained, transferred or

renewed if the location for the license or license transfer is within three hundred feet of a school; provided that this restriction does not apply to a location at which tobacco products have been lawfully manufactured, distributed or sold prior to July 1, 2020.

**B.** For purposes of the act, the distance to be measured is the distance between the outer boundary of the licensed location, that is the premises actually used to sell tobacco products, and the school.

**C.** Applicant is responsible from providing proof of distance from a school in a form required by the division.  
[15.8.3.13 NMAC – N, 1/1/2021]

**15.8.3.14 DESIGNATION OF RESIDENT AGENT:**

**A.** Except for sole proprietors, every licensee shall designate a “resident agent” to accept service of all orders and notices of the division. The resident agent must have:

(1) authority to bind the applicant to matters related to tobacco product sales and operations;

(2) authority and ability to accept service of all orders, subpoenas, notices and other legal documents from the division, including any notice of charge pursuant to the act on behalf of its principal; and

(3) residency in the state of New Mexico.

**B.** To designate a resident agent a licensee shall file an application on a division approved form. The designation of resident agent may be terminated upon written notification to the department by either the licensee or the resident agent. A licensee shall have 10 days from the date of termination of the agency relationship to file an application for a new resident agent.

**C.** A licensee may designate as many resident agents as it deems necessary for the operation of business.

**D.** The designation of a resident agent shall not relieve

the licensee of any responsibilities or liabilities to the division for violations or compliance with the act.  
[15.8.3.14 NMAC – N, 1/1/2021]

**15.8.3.15 RENEWAL OF LICENSES:**

**A.** A complete renewal application and payment of all applicable renewal fees shall be filed with the division no earlier than sixty days and no later than 30 days before the license is set to expire.

**B.** Applicant must provide proof of meeting all state taxation and revenue department requirements.

**C.** The renewal application shall be in a form prescribed by the director.

**D.** All licensees who fail to renew their licenses or who are not issued a renewed license shall suspend all tobacco product operations until such time as a renewed license is issued and displayed at the licensed location.

**E.** Licenses shall be renewed in the name of the licensee shown on division records, regardless of who pays the renewal fee.

**F.** Any licensee that fails to submit a properly completed renewal application, including all applicable fees, by the renewal deadline must pay a late renewal fee in the amount of three hundred fifty dollars (\$350) plus ten dollars (\$10) per day for each additional day the renewal application is late.

**G.** The division may waive late fees if the licensee shows good cause for not filing a timely renewal application, taking into consideration hardship to the licensee, and whether the licensee filed a late renewal application the preceding five years.

**H.** Any license not renewed shall be subject to cancellation and shall not be reinstated, unless the renewal application is filed with the division within 30 days of the expiration date of the license. All applicable fees must be paid and all citations must be resolved prior to a license being reinstated after being subject to cancellation.

**I.** A licensee who fails to get its license reinstated following expiration may apply for a new license by filing an application with the division.

**J.** A license shall not be renewed with any outstanding citations for violations of the act, or these rules, unless the applicant is currently making good faith efforts to resolve said citations with the division.  
[15.8.3.15 NMAC – N, 1/1/2021]

**15.8.3.16 APPLICATION FEES AND RENEWAL FEES:**

**A.** Manufacturer license application fees are as follows:

(1)

Application fee for each licensed location: \$750;

(2) Renewal fee for each licensed location: \$400;

**B.** Distributor license application fees are as follows:

(1)

Application fee for each licensed location: \$750;

(2) Renewal fee for each licensed location: \$400;

**C.** Retailer license application fees are as follows:

(1)

Application fee for each licensed location: \$750;

(2) Renewal fee for each licensed location: \$400.  
[15.8.3.16 NMAC – N, 1/1/2021]

**15.8.3.17 CHANGE IN OWNERSHIP**

**A.** A change in ownership occurs when:

(1) if the

licensee is a corporation: when a total of ten percent or more of its stock is transferred or when there is a merger or consolidation of the licensee with another entity;

(2) if

the licensee is a limited liability company: when ten percent or more of the membership interests are transferred or when there is a merger or consolidation of the licensee with another entity;

(3) if the

licensee is a general partnership:

when there is any change or removal of any general partners;

(4) if the licensee is a limited partnership: when there is any change of general partners, or any change of limited partners contributing ten percent or more of the total value of the contributions made to the limited partnership or any change in the limited partners entitled to ten percent or more of the profits earned, or other compensation by way of income paid by the limited partnership;

(5) if the licensee is a trust: when there is any change in the trustees or beneficiaries; or

(6) if the licensee is any other legal entity that is not a corporation, limited liability company, general partnership, or limited partnership: any person or entity becomes the owner of ten percent or more interest through one or more transactions or when a total of ten percent or more interest in the licensee entity or license has been transferred.

**B.** Within 60 days of a change in ownership, licensee must submit an application with the division for issuance of an initial license as licenses shall not be transferred from licensee to another person pursuant to Section 61-37-10 NMSA 1978.

**C.** A temporary license may be issued if application process exceeds the 60 days. Issuance of a temporary license, pending the application process for a new license due to a change in ownership, does not indicate or guarantee the issuance of a new license to applicant. [15.8.3.17 NMAC – N, 1/1/2021]

**15.8.3.18 BUSINESS NAME CHANGE:**

**A.** Any licensee that changes the doing business name under which it operates a license issued pursuant to the act must file an application for change of DBA (“doing business as”) name with the division together with the application filing fee.

**B.** DBA name change, or any change, shall not be knowingly attractive to minors.

**C.** If the division approves the application, the division shall change the name on its records and issue a license which reflects the new name. The licensee may not use the new name until a license is issued. [15.8.3.18 NMAC – N, 1/1/2021]

**15.8.3.19 TRANSFER OF LOCATION:**

**A.** Approval from the division is required before a licensee may transfer a license from one location to another.

**B.** Licensee must submit an application in a form prescribed by the division along with all supporting documents to establish the license is not within 300 feet of a school and does not violate a zoning or other ordinance of the governing body of the location, as required by the act. [15.8.3.19 NMAC – N, 1/1/2021]

**History of 15.8.3 NMAC:**  
[RESERVED]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE  
CONTROL DIVISION**

**TITLE 15 GAMBLING AND LIQUOR CONTROL  
CHAPTER 8 TOBACCO PRODUCTS  
PART 4 GENERAL OPERATIONS REQUIREMENTS**

**15.8.4.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division. [15.8.4.1 NMAC – N, 1/1/2021]

**15.8.4.2 SCOPE:** These rules apply to all licensees under the New Mexico Tobacco Products Act. [15.8.4.2 NMAC – N, 1/1/2021]

**15.8.4.3 STATUTORY AUTHORITY:** Section 61-37-22 NMSA 1978, of the Tobacco Products

Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division. [15.8.4.3 NMAC – N, 1/1/2021]

**15.8.4.4 DURATION:** Permanent. [15.8.4.4 NMAC – N, 1/1/2021]

**15.8.4.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section. [15.8.4.5 NMAC – N, 1/1/2021]

**15.8.4.6 OBJECTIVE:** These regulations are intended to establish standards for the general operation and maintenance of licensed location. [15.8.4.6 NMAC – N, 1/1/2021]

**15.8.4.7 DEFINITIONS:** Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act. [15.8.4.7 NMAC – N, 1/1/2021]

**15.8.4.8 OPERATION AND PROFITING BY AUTHORIZED PERSONS:**

**A.** No person other than the approved operator or employees of the approved operator shall sell tobacco products at a licensed location.

**B.** Only the approved operator shall directly profit from the sale of tobacco products sold pursuant to a license. A person directly profits from the sale of tobacco products in violation of this rule when any person other than the approved operator receives any portion of the profits earned, or receipts, from the sale of tobacco products, except:

- (1) payment of rent based in whole or in part on the licensee’s gross sales;
- (2) payment of employees;
- (3) revenues received by an affiliate of the licensee from the sale of products other than tobacco products;

**C.** It is a violation of the act for any licensee to divide, split, or in any way share the right



to sell tobacco products with any person not named as a licensee on the license.

[15.8.4.8 NMAC – N, 1/1/2021]

**15.8.4.9 LIGHTING OF LICENSED LOCATION:**

At any licensed location open for business, the interior lighting shall be sufficient to make easily discernible to persons of average vision, the appearance and age of all persons purchasing tobacco products.

[15.8.4.9 NMAC – N, 1/1/2021]

**15.8.4.10 SANITATION REQUIREMENTS:**

All licensees shall comply with all applicable sanitation requirements prescribed by the state of New Mexico and local sanitation ordinances, including but not limited to public health orders issued by New Mexico department of health.

[15.8.4.10 NMAC – N, 1/1/2021]

**15.8.4.11 DISPLAY OF LICENSE:**

The current tobacco products license, or licenses, shall be prominently displayed within the licensed location so that it is in full public view at all times. A copy or scanned image or facsimile of the license may be displayed only for 30 days or until the original license is received by the licensee, whichever occurs first, provided the copy or scanned image or facsimile is of the original, current, and duly issued license.

[15.8.4.11 NMAC – N, 1/1/2021]

**15.8.4.12 POSTERS:**

**A.** Licensees that sell tobacco products directly to the public shall display a printed sign or decal, in full public view within the licensed location at a point of sale and where a tobacco product vending machine is located, that reads “IT IS ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO PURCHASE TOBACCO PRODUCTS.”

**B.** The sign or decal shall be of a size prescribed by the director, except that the licensee may make the sign or decal larger than what is prescribed. The division

will provided access to an electronic copy to be printed and displayed by licensee.

**C.** Licensees may, with the director’s prior approval, develop and use printed signs or decals that contain the same information required in this section. Any such sign or decal shall be valid only if bearing the director’s stamp of approval.

[15.8.4.12 NMAC – N, 1/1/2021]

**15.8.4.13 NONCOMPLIANCE WITH REQUIREMENTS:**

Noncompliance with the requirements of Chapter 8 Part 4 of these rules shall be deemed a violation of the Act.

[15.8.4.13 NMAC – N, 1/1/2021]

**15.8.4.14 CONTINUING NONCOMPLIANCE:**

**A.** After notification of a violation, the requirements of Chapter 8 Section 4 of these rules, a licensee’s continued noncompliance with the requirements shall be deemed a separate and additional violation of the act.

**B.** Continuing noncompliance shall also be considered an aggravating factor for penalty enhancement purposes.

[15.8.4.14 NMAC – N, 1/1/2021]

**History of 15.8.4 NMAC:**  
[RESERVED]

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

**TITLE 15 GAMBLING AND LIQUOR CONTROL CHAPTER 8 TOBACCO PRODUCTS PART 5 PROHIBITED ACTS**

**15.8.5.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.5.1 NMAC – N, 1/1/2021]

**15.8.5.2 SCOPE:** These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act. [15.8.5.2 NMAC – N, 1/1/2021]

**15.8.5.3 STATUTORY AUTHORITY:** Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division. [15.8.5.3 NMAC – N, 1/1/2021]

**15.8.5.4 DURATION:** Permanent. [15.8.5.4 NMAC – N, 1/1/2021]

**15.8.5.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section. [15.8.5.5 NMAC – N, 1/1/2021]

**15.8.5.6 OBJECTIVE:** This rule is intended to establish conduct prohibited by the Act. [15.8.5.6 NMAC – N, 1/1/2021]

**15.8.5.7 DEFINITIONS:** Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act. [15.8.5.7 NMAC – N, 1/1/2021]

**15.8.5.8 UNLICENSED SALE BY NONLICENSEES:**

**A.** Unlicensed sale of tobacco products by person occurs when a person manufactures, distributes, or sells tobacco products without first obtaining a manufacturer, distributor, or retailer license issued by the division.

**B.** The unlicensed sale of tobacco products may be subject to criminal penalties, administrative penalties, or both. [15.8.5.8 NMAC – N, 1/1/2021]

**15.8.5.9 UNLICENSED SALE BY LICENSEE:**

**A.** The unlicensed sale of tobacco products by a licensee occurs when:

**(1)** A person holding a license issued pursuant to the act then manufactures, distributes,

or sells tobacco products at a location that is not a licensed location;

(2) A licensee who has experienced a change in ownership, without submitting an application for a new license continues to manufacture, distribute, or sell tobacco products; or

(3) A licensee who has manufactured, distributed, or sold tobacco products after letting their license expire.

**B.** Unlicensed sale of tobacco products includes:

(1) A manufacturer licensee distributing tobacco products without being issued a distributor license or selling tobacco products to consumers without being issued a retailer license;

(2) A distributor licensee manufacturing tobacco products without being issued a manufacturer license or selling tobacco products to consumers without being issued a retailer license; and

(3) A retailer licensee manufacturing tobacco products without being issued a manufacturer license or distributing tobacco products to retailers for resale without being issued a distributor license.  
[15.8.5.9 NMAC – N, 1/1/2021]

**15.8.5.10 SALES TO MINORS:**

**A.** It is a violation of the act for a licensee or their employee to knowingly, intentionally, or negligently sell, offer to sell, barter, or give a tobacco product to a person under 21 years of age.

**B.** Use of third-party age verification service may be evidence of mitigating factors.  
[15.8.5.10 NMAC – N, 1/1/2021]

**15.8.5.11 FAILURE TO VERIFY AGE:** It is a violation of the act for a retailer or an employee of a retailer to knowingly, intentionally, or negligently fail to verify the age of before selling, or providing, tobacco products to the consumer.  
[15.8.5.11 NMAC – N, 1/1/2021]

**15.8.5.12 MINORS IN AGE-CONTROLLED LOCATIONS:** It is a violation of the act for licensee to allow persons under the age of 21 into age controlled locations where tobacco products vending machines and the sales and display of cigars are present.  
[15.8.5.12 NMAC – N, 1/1/2021]

**15.8.5.13 SALES OF TOBACCO PRODUCTS NOT IN ORIGINAL SEALED PACKAGE:** It is a violation of the act for a licensee to sell, offer to sell, or deliver a tobacco product in a form other than original manufacturer-sealed package, except for individually sold cigars or loose leaf pipe tobacco.  
[15.8.5.13 NMAC – N, 1/1/2021]

**15.8.5.14 SALE OF TOBACCO PRODUCT NOT IN CHILD-RESISTANT PACKAGING:**  
**A.** It is a violation of the act for a licensee to sell, offer to sell, or deliver nicotine liquid unless such liquid is in child-resistant packaging.  
**B.** For the purpose of Section A, nicotine liquid does not include nicotine liquid in a cartridge that is pre-filled and sealed by the manufacturer and that is not intended to be opened by the consumer.  
[15.8.5.14 NMAC – N, 1/1/2021]

**15.8.5.15 SALE OF TOBACCO PRODUCTS KNOWINGLY ATTRACTIVE TO MINORS:** It is a violation of the act for a manufacturer to produce and a distributor or retailer to sell, or provide, tobacco products that are knowingly attractive to minors.  
[15.8.5.15 NMAC – N, 1/1/2021]

**15.8.5.16 PROVIDING FREE SAMPLES:**  
**A.** It is violation of the act to provide free samples of tobacco products without the written approval of the director.  
**B.** Subsection A shall not apply to an individual who provides free samples of tobacco products, e-cigarettes, or nicotine

liquid containers in connection with the practice of cultural or ceremonial activities in accordance with the federal American Indian Religious Freedom Act or its successor act.  
[15.8.5.16 NMAC – N, 1/1/2021]

**History of 15.8.5 NMAC:**  
**[RESERVED]**

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

**TITLE 15 GAMBLING AND LIQUOR CONTROL  
CHAPTER 8 TOBACCO PRODUCTS  
PART 6 FINES AND PENALTIES**

**15.8.6.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.  
[15.8.6.1 NMAC – N, 1/1/2021]

**15.8.6.2 SCOPE:** These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.  
[15.8.6.2 NMAC – N, 1/1/2021]

**15.8.6.3 STATUTORY AUTHORITY:** Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.  
[15.8.6.3 NMAC – N, 1/1/2021]

**15.8.6.4 DURATION:** Permanent.  
[15.8.6.4 NMAC – N, 1/1/2021]

**15.8.6.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
[15.8.6.5 NMAC – N, 1/1/2021]

**15.8.6.6 OBJECTIVE:** This rule is intended to establish violations of the Act and the fines and penalties for such violations.  
[15.8.6.6 NMAC – N, 1/1/2021]

**15.8.6.7 DEFINITIONS:**  
 Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.  
 [15.8.6.7 NMAC – N, 1/1/2021]

**15.8.6.8 PENALTIES:**  
 The division, when it finds that the licensee, an employee of the licensee, or a contractor acting on behalf of the licensee has violated a provision of the act or these rules, may:

**A.** Suspend or revoke a license of a licensee;

**B.** Require the use of identification verification software for a designated period of time;

**C.** Impose an administrative penalty against a licensee in an amount not to exceed ten thousand dollars; or

**D.** any combination thereof.  
 [15.8.6.8 NMAC – N, 1/1/2021]

**15.8.6.9 PENALTIES FOR VIOLATION OF SALES TO MINORS:**

**A.** Generally, after a first violation, at a location, imposition of an one-day suspension and \$1,000 fine;

**B.** Generally, after a second violation, at a location within three years of the first such violation, imposition of a seven-day suspension and \$4,000 fine;

**C.** Generally, after a third violation, at a location within three years of the first such violation, imposition of a thirty-day suspension and \$7,000 fine;

**D.** Generally, after a fourth violation at a location within three years of the first such violation, permanent revocation of the licensee’s license will be imposed.  
 [15.8.6.9 NMAC – N, 1/1/2021]

**15.8.6.10 PENALTIES FOR ALL OTHER VIOLATIONS INVOLVING MINORS:**

**A.** Generally, after a first violation, at a location, imposition of a \$1,000 fine;

**B.** Generally, after a second violation, at a location within

three years of the first such violation, imposition of one-day suspension and \$2,000 fine;

**C.** Generally, after a third violation, at a location within three years of the first such violation, imposition of a seven-day suspension and a \$5,000 fine;

**D.** Generally, after a fourth violation, at a location within three years of the first such violation, imposition of a fourteen-day suspension and a \$10,000 fine.  
 [15.8.6.10 NMAC – N, 1/1/2021]

**15.8.6.11 PENALTIES FOR NON-AGE SPECIFIC VIOLATIONS**

**A.** Generally, after a first violation, at a location, imposition of a \$100 fine;

**B.** Generally, after a second violation, at a location within three years of the first such violation, imposition of a \$200 fine;

**C.** Generally, after a third violation, at a location within three years of the first such violation, imposition of a \$400 fine;

**D.** Generally, after a fourth violation, at a location within three years of the first such violation, imposition of a \$750 fine;  
 [15.8.6.11 NMAC – N, 1/1/2021]

**15.8.6.12 COMPROMISING LIABILITY:**  
 The division is authorized to compromise the penalty for any violations of the act or of any division regulation or order when it is deemed in the best interest of the state.  
 [15.8.6.12 NMAC – N, 1/1/2021]

**15.8.6.13 ENHANCEMENT OF SCHEDULED PENALTIES:**  
 Any penalty set forth in these rules may be enhanced if the facts and circumstances warrant enhancement of the penalties, up to the maximum allowed by the act.  
 [15.8.6.13 NMAC – N, 1/1/2021]

**History of 15.8.6 NMAC:**  
**[RESERVED]**

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

**TITLE 15 GAMBLING AND LIQUOR CONTROL  
 CHAPTER 8 TOBACCO PRODUCTS  
 PART 7 HEARING PROCEDURE**

**15.8.7.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.  
 [15.8.7.1 NMAC – N, 1/1/2021]

**15.8.7.2 SCOPE:** These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.  
 [15.8.7.2 NMAC – N, 1/1/2021]

**15.8.7.3 STATUTORY AUTHORITY:** Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.  
 [15.8.7.3 NMAC – N, 1/1/2021]

**15.8.7.4 DURATION:** Permanent.  
 [15.8.7.4 NMAC – N, 1/1/2021]

**15.8.7.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
 [15.8.7.5 NMAC – N, 1/1/2021]

**15.8.7.6 OBJECTIVE:**  
 This rule is intended to establish the hearing procedures for the suspension or revocation of a license and the imposition of administrative penalties.  
 [15.8.7.6 NMAC – N, 1/1/2021]

**15.8.7.7 DEFINITIONS:**  
 Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.  
 [15.8.7.7 NMAC – N, 1/1/2021]

**15.8.7.8 COMPLAINTS AND INVESTIGATION:**

**A.** The division, the

department of public safety, and the appropriate law enforcement authorities in each county and municipality may investigate any allegation of a violation and inspect licensed locations for compliance with the act and the rules promulgated thereof, and licensee’s compliance during an inspection is required.

**B.** Whenever probable cause exists that a licensee has violated a provision of the act or these rules, a citation may be issued to the licensee for such violation and a copy of the citation shall be filed in the division.  
[15.8.7.8 NMAC – N, 1/1/2021]

**15.8.7.9 INFORMAL CONFERENCE:**

**A.** Whenever probable cause exists that a licensee has violated a provision of the act or these rules, a citation may be issued to the licensee for such a violation. An informal conference may be held with the licensee to determine whether a compromise of the penalty for the violation would be in the best interest of the state.

**B.** When a citation is issued at the licensed premises, a copy of the citation may be provided to the licensee, or the resident agent, or given to an employee who indicates he is in charge, or, if no such employee is in charge, to any employee. Providing an employee with the citation shall be considered the same as giving it to the licensee. Citations may be mailed to the licensee.

**C.** A copy of the citation shall be filed in the division.

**D.** The fines and suspension imposed shall not exceed those which could be imposed after hearing.

**E.** Any portion of the fine or penalties imposed may be suspended.  
[15.8.7.9 NMAC – N, 1/1/2021]

**15.8.7.10 ADMINISTRATIVE PROCEEDINGS, ORDER TO SHOW CAUSE AND HEARING:**

**A.** If a violation of the act is not resolved through

informal conference, a formal charge document shall be filed in the division. Charges filed in the division against a licensee will state the nature of the grounds relied upon for the filing, the approximate date of the alleged violation, and the names and addresses of the witnesses who are expected to give testimony or evidence against the licensee.

**B.** Licensees will receive an order for the licensee to appear at a hearing to explain, on the basis of any ground set out in the charge, why the license should not be revoked or suspended or why the licensee should not be fined, or both.

**C.** A hearing officer will be appointed no later than ten days prior to the date set for the hearing at which the licensee shall appear to explain why licensee’s license should not be revoked or suspended or why the licensee should not be fined, or both.

**D.** At any hearing on an order to show cause, a record of hearing will be made, to include:

- (1) the style of the proceedings;
- (2) the nature of the proceedings, including a copy of the charge and a copy of the order to show cause;
- (3) the place, date, and time of the hearing and all continuances or recesses of the hearing;
- (4) the appearance or nonappearance of the licensee;
- (5) if the licensee appears with an attorney, the name and address of the attorney;
- (6) a record of all evidence and testimony and a copy or record of all exhibits introduced in evidence;
- (7) the findings of fact and law as to whether or not the licensee has violated the Act as set out in the charge; and
- (8) the decision of the director.

**E.** If the licensee fails to appear without good cause at the time and place designated in the order to show cause for the hearing, the

nonappearance of the licensee will be entered in the record of hearing and an order revoking or suspending the license or imposing a fine, or both, on all the grounds alleged in the charge. In such case, there shall be no reopening, appeal or review of the proceedings.

**F.** If the licensee admits guilt on all grounds set out in the charge, an order revoking or suspending the license or imposing a fine on licensee, or both. In such a case, there shall be no reopening, appeal or review of the proceedings.

**G.** If the licensee appears at the hearing and does not testify or denies guilt of any or all of the grounds set out in the charge, the hearing shall proceed as follows:

- (1) the director or the hearing officer will administer oaths to all witnesses, the division will cause all testimony and evidence in support of the grounds alleged in the charge to be presented in the presence of the licensee and the licensee, or licensee’s attorney, will be allowed the opportunity to cross-examine all witnesses;
- (2) the licensee will be allowed to present testimony and evidence in denial or in mitigation of the grounds set out in the charge;
- (3) the division will have the opportunity to cross-examine the licensee or any witness testifying in licensee’s favor;
- (4) the division will have the opportunity to present any evidence or testimony in rebuttal of that produced by the licensee;
- (5) the director or the hearing officer will make a finding on each ground alleged and a finding of guilt or innocence of the licensee on each ground;
- (6) if the licensee is found guilty on any ground alleged and proved, the director will make his order of revocation or suspension of the license or fine of the licensee, or both; and
- (7) the rules of evidence shall not be required to be observed, but the order of suspension

or revocation or fine, or both, shall be based upon substantial, competent and relevant evidence and testimony appearing in the record of hearing.  
[15.8.7.10 NMAC – N, 1/1/2021]

**History of 15.8.7 NMAC:**  
[RESERVED]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

**TITLE 15 GAMBLING AND LIQUOR CONTROL  
CHAPTER 8 TOBACCO PRODUCTS  
PART 8 MISCELLANEOUS FEES**

**15.8.8.1 ISSUING**  
**AGENCY:** New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.  
[15.8.8.1 NMAC – N, 1/1/2021]

**15.8.8.2 SCOPE:** These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.  
[15.8.8.2 NMAC – N, 1/1/2021]

**15.8.8.3 STATUTORY AUTHORITY:** Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.  
[15.8.8.3 NMAC – N, 1/1/2021]

**15.8.8.4 DURATION:** Permanent.  
[15.8.8.4 NMAC – N, 1/1/2021]

**15.8.8.5 EFFECTIVE DATE:** January 1, 2021 unless a later date is cited at the end of a section.  
[15.8.8.5 NMAC – N, 1/1/2021]

**15.8.8.6 OBJECTIVE:** This rule is intended to establish a uniform schedule of fees applicable to licenses issued under the act.  
[15.8.8.6 NMAC – N, 1/1/2021]

**15.8.8.7 DEFINITIONS:** Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.  
[15.8.8.7 NMAC – N, 1/1/2021]

**15.8.8.8 INITIAL APPLICATION FEES:**  
**A.** Manufacturer license: \$750, per location;  
**B.** Distributor license: \$750, per location;  
**C.** Retailer license: \$750, per location.  
[15.8.8.8 NMAC – N, 1/1/2021]

**15.8.8.9 RENEWAL APPLICATION FEES:**  
**A.** Manufacturer license: \$400, per location;  
**B.** Distributor license: \$400, per location;  
**C.** Retailer license: \$400, per location.  
[15.8.8.9 NMAC – N, 1/1/2021]

**15.8.8.10 DESIGNATION OF RESIDENT AGENT FEE:**  
**A.** Designation of resident agent during initial application for license: \$0;  
**B.** Designation of resident agent during any time other than initial application: \$50.  
[15.8.8.10 NMAC – N, 1/1/2021]

**15.8.8.11 CHANGE OF OFFICERS:**  
**A.** Change of officers, per location, during renewal: \$10;  
**B.** Change of officers, per location, at any time other than initial application or along with a renewal application: \$50.  
**C.** When a licensee holds a license and multiple locations, the change of officer fee may be reduced by the division.  
[15.8.8.11 NMAC – N, 1/1/2021]

**15.8.8.12 CHANGE IN DBA FEE:**  
**A.** Change in DBA application during renewal: \$10;  
**B.** Change in DBA at any time other than initial application

or along with a renewal application: \$50.  
[15.8.8.12 NMAC – N, 1/1/2021]

**15.8.8.13 CHANGE IN LOCATION FEE:** Any time a change of location application is filed with the division, it shall be accompanied by a \$100 change of location fee.  
[15.8.8.13 NMAC – N, 1/1/2021]

**15.8.8.14 LATE FEES:**  
**A.** The division may impose a late fee of up to \$350 plus ten dollars per day for each additional day an application is late.  
**B.** Late fees may be applied to all applications with timelines or time periods, in which they should be filed.  
[15.8.8.14 NMAC – N, 1/1/2021]

**15.8.8.15 FEES MAY BE WAIVED OR REDUCED:**  
**A.** The division shall have the authority to reduce or waive any of the fees required by the act, upon a showing of good cause by licensee as to why the reduction or waiver is necessary.  
**B.** Upon a showing of good cause, the following fees may be reduced or waived:  
**(1)** Change of officers fee;  
**(2)** Change in DBA fee; and  
**(3)** Late fees.  
[15.8.8.15 NMAC – N, 1/1/2021]

**History of 15.8.8 NMAC:**  
[RESERVED]

**STATE ETHICS COMMISSION**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION  
CHAPTER 8 STATE ETHICS COMMISSION  
PART 4 CODE OF ETHICS**

**1.8.4.1 ISSUING**  
**AGENCY:** State Ethics Commission,

800 Bradbury Dr. SE, Ste. 215,  
Albuquerque, New Mexico 87106.  
[1.8.4.1 NMAC-N, 1/1/2021]

**1.8.4.2 SCOPE:** This part contains a proposed code of ethics for officers and employees of executive and legislative state agencies and other instrumentalities of the state. Elected statewide executive branch officers and other state agencies must consider this proposed code when adopting either a code of conduct under Subsection C of Section 11 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, for employees subject to the adopting agencies' control. If adopted, this code will apply to all officers and employees of the adopting agency, as well as other persons working for the agency, such as contractors.  
[1.8.4.2 NMAC-N, 1/1/2021]

**1.8.4.3 STATUTORY AUTHORITY:** Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978; and Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.  
[1.8.4.3 NMAC-N, 1/1/2021]

**1.8.4.4 DURATION:** Permanent.  
[1.8.4.4 NMAC-N, 1/1/2021]

**1.8.4.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[1.8.4.5 NMAC-N, 1/1/2021]

**1.8.4.6 OBJECTIVE:** The objective of this part is to provide the executive and legislative branch agencies of state government and other instrumentalities of the state with a proposed code of ethics to consider when agencies adopt either a code of ethics

under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, or a code of conduct under Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978. If adopted, this Code will furnish standards of conduct for the adopting agency's officers and employees, the violation of which could form the basis for discipline by the adopting agency, including dismissal, demotion or suspension, in accordance with state law.  
[1.8.4.6 NMAC-N, 1/1/2021]

**1.8.4.7 DEFINITIONS:** The following terms apply to this part unless their context clearly indicates otherwise:

**A. "Agency" or "this Agency"** means the agency that has adopted this proposed code of ethics.

**B. "Business"** means any person, company or other organization that buys, sells or provides goods or services, including non-governmental or not-for-profit organizations.

**C. "Code"** means this proposed code of ethics.

**D. "Commission"** means the State Ethics Commission.

**E. "Confidential information"** has the same meaning as defined by Subsection B of Section 10-16-2 NMSA 1978, namely, information that by law or practice is not available to the public.

**F. "Family member"** means a first-degree, second-degree or third-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.

**G. "Financial interest"** means an ownership interest in a business or property; or employment or prospective employment for which negotiations have already begun.

**H. "Gift"** has the same meaning as defined by Subsection B of Section 10-16B-2 NMSA 1978, namely, any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other

thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including

travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or

(10) a retirement gift.

**I. "Immediate family member"** means a first-degree or second-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.

**J. "Indirectly"** means to perform an act, achieve a result or obtain a benefit through another person, by use of implication, suggestion or passive acceptance.

**K. "Market value"** means the amount for which a good or service can be sold on the relevant market.

**L. "Official act"** means any act or omission to act that would not be possible but for the actor's official position or state employment.

**M. "Public officer or employee"** means any elected or appointed official or employee of a state agency who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators.

**N. "Restricted donor"** has the same meaning as defined by Subsection D of Section 10-16B-2 NMSA 1978, namely, a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance

of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

**O. "Sensitive personal information"** means confidential identifying information such as: social security numbers or individual tax identification numbers, a person's place and date of birth, a person's status as a recipient of public assistance or as a crime victim, and a person's sexual orientation, physical or mental disability, immigration status, religion, or national origin.

**P. "Shall"** means must, and **"must"** means shall.

**Q. Substantial financial interest"** means an ownership interest that is greater than twenty percent.

**R.** Any other terms shall be defined for purposes of this rule as they are defined in Section 10-16-2 NMSA 1978.

[1.8.4.7 NMAC-N, 1/1/2021]

**1.8.4.8 STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY:**

**A.** This Code is organized by subject area rather than by the statutes that concern the various subject matters of this code.

**B.** The Commission publishes and updates extensive commentary and examples corresponding to this Code on the Commission's website. An official or employee of this agency dealing with an ethical issue should identify and consult the relevant sections of this

Code. If this Code does not resolve the issue, further guidance might be found in the Commission's separately published commentary. [1.8.4.8 NMAC-N, 1/1/2021]

**1.8.4.9 PRINCIPLES OF PUBLIC ETHICS:** This Code is based on, and should be interpreted to advance, the following principles of public ethics:

**A. Honest services.**

An officer or employee shall conduct government functions in accordance with the law and free from conflicts of interest. Public office is a public trust; as such, an official or employee must take care to ensure that every official act and decision affecting the rights or interests of individuals is based in law and the public interest.

**B. Proportionality.**

When committing an official act or making a decision, an officer or employee shall ensure that the action taken is proportional to the goal being pursued. The officer or employee shall avoid restricting the rights of New Mexicans or imposing burdens on them when those restrictions or burdens are not justified by a public interest.

**C. Impartiality and fairness.**

The conduct of an officer or employee shall be impartial and fair, and shall never be guided by:

(1) personal, family or financial interests;

(2) a motivation to benefit or empower an elected official, a candidate for office, or a political party or its members; or

(3) a motivation to disadvantage or disempower an elected official, a candidate for office, or a political party or its members.

**D. Consistency.**

Like cases shall be treated alike. An officer or employee shall behave consistently with the agency's normal practices, unless there is a legitimate basis for departing from those practices in an individual case and that basis is documented in writing. An officer or employee shall respect the reasonable expectations of the public that the agency will continue to act as it has

acted in similar circumstances unless there is a rational basis for the change.

**E. Diligence.** An officer or employee shall ensure that every decision on a matter is made with care and adequate understanding of the issue, within a reasonable time, and without unnecessary delay.

**F. Respect.** An officer or employee shall be courteous and accessible to members of the public, co-workers, and their colleagues.

**G. Transparency.** The official acts and decisions of officers and employees shall be made openly and with adequate opportunity for public review and comment.

**H. Fallibility and openness to change.** Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, officers and employees should be open to and invite review, correction and reversal of their actions when they are mistaken, have failed to take relevant information into account, or are otherwise in violation of the principles of this code or the law. [1.8.4.9 NMAC-N, 1/1/2021]

**1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST:**

**A. Outside employment.**

**(1) Duty to avoid conflicts from outside employment.** An officer or employee of this agency engaged in paid employment for a business shall ensure that the employment does not conflict with the duties of state employment.

**(2) Disclosure of outside employment.** An officer or employee having permissible outside employment shall:

**(a)** file with the employee’s supervisor, or other officer or employee that this agency designates, a signed statement explaining the outside employment and why it does not create a conflict;

**(b)** the disclosure statement shall include the name of the officer or employee, the name and general nature of the

business, the hours that the officer or employee will work, and the reasons why the work does not create a conflict of interest with the officer’s or employee’s public duties;

**(c)** in the disclosure statement, the officer or employee shall additionally commit to disclose any potential conflict of interest that may arise during the officer or employee’s work with the business.

**B. Disclosure of potential conflicts of interest and disqualification.**

**(1) Disclosure of financial interests.**

**(a) Mandatory financial disclosure by officers and agency heads.**

An officer or head of this agency must disclose financial interests to the Secretary of State on the form provided by the Secretary of State.

**(b) Disclosure of financial interests: contents; when filed.** The disclosure required by 1.8.4.10.B(1)(a) NMAC shall be filed within 30 days of taking office and each January thereafter and shall disclose the following financial interests of the filing individual and the filing individual’s spouse, for the prior calendar year:

**(i)** current employer and the nature of the business or occupation, including self-employment information;

**(ii)** all sources of gross income over \$5,000, identified by one of the following general category descriptions that disclose the nature of the income: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as a payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category “other,” with a general description of the other income source;

**(iii)** real estate owned in the state other

than the personal residence;

**(iv)** other business interests of \$10,000 or greater value in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

**(v)** memberships on boards of for-profit businesses in New Mexico;

**(vi)** New Mexico professional licenses held;

**(vii)** sales to state agencies exceeding \$5,000 for the prior year; and

**(viii)** state agencies before which clients were represented or assisted during the prior year.

**(c) Officers and employees required to disclose potentially conflicting financial interests; when filed.** An officer or employee of this agency must file a disclosure of financial interests when the officer or employee believes, or has reason to believe, that their financial interest may be affected by their official acts or actions of the state agency that employs them. The disclosure must be filed before entering state employment or within ten days of the date when the officer or employee knows, or should know, that a potential conflict has arisen and thereafter each subsequent January, so long as the conflict or potential conflict continues to exist.

**(d) Financial disclosure statements are public records.** All disclosures required under this subsection are public records.

**(2) Disqualification from acts affecting financial interests.** An officer or employee of this agency may not take official acts for the purpose of enhancing their financial interests. An officer or employee must be disqualified from any matters that could directly enhance or diminish the officer’s or employee’s financial interest. If disqualified, then the officer or employee shall refrain from acting on a matter involving the disqualifying financial interest.



**(3) Disclosure of non-profit board memberships.**

An officer or employee of this agency shall disclose within 30 days of taking office and each January thereafter all memberships on non-profit boards.

C. Business with regulated entities.

**(1) Sales to regulated persons.** An officer or employee of this agency may not directly or indirectly sell goods or services to, or profit from a transaction with, a business or individual over whom this agency has regulatory authority.

**(2) No acceptance of job or contract offers from regulated entities.** An officer or employee of this agency may not accept an offer of employment from, or a contract to provide goods or services to any entity that this agency regulates. An officer or employee shall disqualify themselves from any official act or decision involving a business in which an immediate family member is employed or in which the officer or employee seeks employment.

**(3) Ordinary transactions at market rates allowed.** Nothing in this rule prevents an officer or employee from purchasing or contracting for services or goods from a regulated entity on the same bases that are available to other members of the public.

D. **Accepting or Giving Gifts.**

**(1) Gifts from restricted donors.**

**(a)** An officer or employee of this agency may not, directly or indirectly, solicit a gift from a restricted donor.

**(b)** An officer or employee of this agency may not, directly or indirectly accept, and must decline, an unsolicited gift with a market value in excess of \$250 from a restricted donor or any other person who offers the gift because of the donee's status as an officer or employee of this agency. No more than one such gift or gifts having a total value of \$250 may be accepted by the same officer

or employee within a single calendar year, and any such gift must be disclosed as required by paragraph 5 of this subsection.

**(2) Gifts and business from subordinates.** An officer or employee of this agency may not, directly or indirectly:

**(a)** accept a gift from an employee having a lower grade or receiving less pay, unless the donor and donee are not in a subordinate-superior relationship and there is a personal relationship between the donor and recipient that would justify the gift.

**(b)** solicit business from a supervised employee where the business redounds to the financial interest of the officer or employee or an immediate family member.

**(3) Soliciting gifts for charities.** An officer or employee of this agency may not solicit or require a charitable donation from any business, or an agent of any business, regulated by or contracting with this agency; nor from any employees that the officer or employee supervises.

**(4) Declining permissible gifts.** An officer or employee of this agency shall consider declining an otherwise permissible gift if they believe that a reasonable person with knowledge of the relevant facts would question the officer or employee's integrity or impartiality as a result of accepting the gift. Among other relevant factors, the officer or employee shall take into account whether:

**(a)** the gift has a high market value;

**(b)** the timing of the gift creates the appearance that the donor is seeking to influence an official action;

**(c)** the gift is offered by a person or business entity who has interests that may be substantially affected by the performance or nonperformance of the officer or employee's duties; and

**(d)** acceptance of the gift would provide the donor with significantly

disproportionate access to an officer or employee.

**(5) Disclosure of offers or gifts from restricted donors.** If a restricted donor offers a gift of any value to an officer or employee of this agency, or if an officer or employee of this agency receives a gift of any value from a restricted donor, the officer or employee shall report to their supervisor: the date the offer or gift was made or received, the name of the donor and the donor's relationship to the agency, the nature and value of the gift, and whether the officer or employee accepted or refused the gift.

**(6) Certain donations of private funds prohibited.** No officer or employee of this agency may give:

**(a)** a gift from their own funds to any person with whom their agency is doing business, or considering doing business, under circumstances which may appear to favor the recipient over other similarly situated persons; or

**(b)** a gift to any other state officer or employee when the gift may be, or may appear to be, intended to influence any official decision by the recipient.

**(7) Certain donations of public funds prohibited.** No officer or employee of this agency may give to any person any gift from public funds, unless the gift:

**(a)** is a service appreciation award of de minimis value; or

**(b)** does not violate the Anti-Donation Clause, Section 14 of Article 9 of the New Mexico Constitution.

**E. Honoraria; no solicitation or acceptance of honoraria permitted for speaking or writing.**

**(1)** An officer or employee of this agency may not request or receive honoraria for a speech or service that relates to the performance of public duties; provided that an officer or employee of this agency may accept reasonable

reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service.

(2) An officer or employee of this agency may accept payment for services rendered in the normal course of a private business pursuit.

**F. Timekeeping, reimbursement, and use of state property.**

(1) An officer or employee of this agency must work during the hours required and report time accurately.

(2) An officer or employee of this agency shall not claim reimbursement in excess of what is necessary and incidental to an official duty or action.

(3) An officer or employee of this agency shall limit personal use of state office supplies and assigned equipment, such as computers and telephones, and otherwise shall not use state property or expend state funds for private purposes.

**G. Procurement.**

(1) **Fair and equitable treatment of persons involved in public procurement.** An officer or employee of this agency shall treat persons involved in public procurement fairly and equitably.

(2) **Maximizing the value of public funds.** An officer or employee of this agency involved in procurement shall endeavor to maximize the purchasing value of public funds.

(3) **Conflicts of interest prohibited; Intra-agency waiver.**

(a) An officer or employee of this agency shall not participate directly or indirectly in a procurement when the officer or employee, or their immediate family member, has a financial interest in a business participating in the procurement.

(b) An officer or employee of this agency who is participating directly or indirectly in procuring goods or services for this agency shall not be

concurrently employed by any person or business contracting with this agency.

(c) A conflict of interest under subparagraphs (a) or (b) this Paragraph may be waived by this agency, if the contemporaneous employment or financial interest has been publicly disclosed, the officer or employee is able to perform procurement functions without actual or apparent bias or favoritism, and the officer or employee's participation is in the best interests of this agency.

(d) This agency may not contract with a business in which any officer or employee of the agency, or a family member, has a substantial financial interest; however, the agency may enter such a contract if the officer or employee publicly discloses the substantial financial interest and the contract is awarded through a competitive process.

(e) The requirement to make public disclosure pursuant to subparagraphs (c) and (d) of paragraph (3) of this subsection shall be satisfied by correspondence to the state purchasing agent and by posting the required disclosure in a prominent place on the webpage of the state agency.

(4) **Due diligence by agency.**

(a) **Participation by person submitting bid or proposal.** An officer or employee of this agency, having responsibilities for evaluating or overseeing a bid or proposal shall exercise due diligence in ensuring that any person or parties submitting bids or proposals do not participate or contribute any knowledge, guidance or explanation in the preparation or receive any advance notice of specifications, qualifications or evaluation criteria on which the specific bid or proposal will be based.

(b) **Campaign contribution disclosure and prohibition.** An officer or employee of this agency who participates, directly or indirectly, in

procuring goods or services for this agency shall exercise due diligence to ensure that the prospective contractor:

(i) does not give a campaign contribution or other thing of value to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter; and

(ii) discloses all campaign contributions, where such contributions in the aggregate exceed \$250 in the two years before the beginning of the procurement process, given by the prospective contractor or a family member or representative of the prospective contractor to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter.

**H. Former officers and employees.**

(1) **Contracting.** This agency may not contract with or take any other favorable action toward a person or business that is:

(a) represented by a person who was an officer or employee of this agency within two years of the date of the officer's or employee's separation from this agency, or

(b) assisted by a former officer or employee of this agency whose official act while in state employment directly resulted in the contract or action. This subparagraph applies regardless of the length of time since the officer or employee left the agency.

(c) Nothing in this paragraph shall prevent an agency from contracting with a former employee on terms that otherwise comply with state law and the provisions of this code.

(2) **Restrictions on former officers or employees representing a person**

**in the person's dealings with this agency.**

(a)

A former officer or employee of this agency is prohibited from representing anyone in dealings with this agency on any matter in which the officer or employee participated personally and substantially during their employment with this agency.

(b)

A former officer or employee of this agency may not, for two years after the termination of their employment with this agency, represent for pay a person on any matter before this agency, regardless of whether they were involved in that matter personally.

[1.8.4.10 NMAC-N, 1/1/2021]

**1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION:**

**A.** An officer or employee of this agency should welcome and encourage the public to attend and participate in public meetings.

**B.** An officer or employee of this agency must permit members of the public to inspect this agency's records, unless the records are confidential under the law.  
[1.8.4.11 NMAC-N, 1/1/2021]

**1.8.4.12 POLITICAL ACTIVITY:**

**A.** An officer or employee of this agency may not use their official position to pressure others to participate in political activities.

**B.** An officer or employee of this agency may not use their official position to influence an election or nomination, or otherwise engage in any partisan political activity while on duty.

**C.** An officer or employee of this agency may not serve as an officer of a political organization.

**D.** An officer or employee of this agency may not use or allow others to use state money or property to promote a political campaign, candidate for elected

office, political party, or other partisan political organization.

**E.** An officer or employee of this agency who becomes a candidate in a partisan election must take a leave of absence upon filing for or accepting the candidacy.

**F.** An employee whose salary is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency is covered by the provisions of the Hatch Act, 5 U.S.C. Sections 1501 to 1508, and, therefore, may not be a candidate for a partisan political elective office.

**G.** An officer or employee of this agency may participate in political activities while off duty, including:

(1) donating to political candidates;

(2) volunteering or working for a political campaign or political organization, so long as the officer's or employee's work does not violate any applicable conflict-of-interest provision of this rule or statute; and

(3) being a candidate in an election for or holding non-partisan political office, such as non-partisan county or municipal office or a seat on a local school board.

[1.8.4.12 NMAC-N, 1/1/2021]

**1.8.4.13 NON-DISCLOSURE OF CONFIDENTIAL OR SENSITIVE PERSONAL INFORMATION**

**A.** An officer or employee of this agency shall not use or disclose confidential information acquired by virtue of the officer's or employee's position with the agency for the officer's or employee's or another person's private gain.

**B.** An officer or employee of this agency shall not disclose to anyone outside the agency sensitive personal information acquired by virtue of the officer's or employee's position with the agency unless disclosure is required by law, necessary to carry out the functions of the agency or expressly authorized by

the person whose information would be disclosed.

[1.8.4.13 NMAC-N, 1/1/2021]

**1.8.4.14 NEPOTISM**

**A.** This agency shall not permit the hiring, promotion, or direct supervision of an employee by an individual who is related by blood, adoption or marriage within the first, second or third degree to the employee.

**B.** For the purposes of Subsection A of this Section:

(1)

First-degree relatives include an individual's parents, siblings, and children.

(2)

Second-degree relatives include an individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings.

(3)

Third-degree relatives include an individual's great-grandparents, great grandchildren, great uncles, great aunts, and first cousins.

[1.8.4.14 NMAC-N, 1/1/2021]

**1.8.4.15 SEXUAL HARASSMENT**

**A.** Officers and employees of this agency shall refrain from sexual harassment of any other employee or any other person having business with this agency.

**B.** Examples of sexual harassment include, but are not limited to:

(1) sexual

innuendo or sexually oriented verbal abuse;

(2) sexual

jokes, sexist jokes, vulgar jokes or abusive sexual teasing;

(3) unwanted

physical contact such as hugging, patting, stroking or grabbing body parts;

(4) statements

or acts of a sexual nature about a person's physical attributes or sexual activity;

(5) displaying

sexually suggestive pictures, objects or materials;

(6) using disparaging, demeaning or sexist terms to refer to any person; making obscene gestures or suggestive/insulting sounds;

(7) indecent exposure; and

(8) suggesting or demanding sexual favors or activity in relation to any condition of employment.

C. Officers and employees of this agency shall investigate all instances of alleged sexual harassment and sexual assault and take prompt and appropriate action, and make every effort to remove sexual harassment and sexual assault from the workplace.  
[1.8.4.15 NMAC-N, 1/1/2021]

**1.8.4.16 SUBSTANCE ABUSE:**

A. This agency shall appoint a substance abuse coordinator as required by Subsection A of 1.7.8.10 NMAC, who shall be responsible for the agency’s drug and alcohol abuse program under 1.7.8 NMAC.

B. The substance abuse coordinator shall provide drug and alcohol abuse awareness information to employees including but not limited to the:

- (1) dangers of drug and alcohol abuse;
- (2) availability of counseling, rehabilitation, and employee assistance programs; and
- (3) sanctions that may be imposed upon employees as provided in 1.7.8.19 NMAC.

C. The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the drug and alcohol testing duties required by 1.7.8 NMAC.

[1.8.4.16 NMAC-N, 1/1/2021]

**1.8.4.17 ENFORCEMENT AND INTERPRETATION:**

A. Violations of the provisions of this code of conduct shall constitute cause for dismissal, demotion or suspension as provided

by Subsection C of Section 10-16-11 NMSA 1978.

B. This agency shall circulate this code of conduct to all agency officers and employees, require signed acknowledgements that all the agency officers and employees have read this code, and establish a written internal complaint procedure by which employees can seek to remedy violations of the provisions of this agency’s code of conduct.

C. Agency complaint procedures shall:

- (1) provide the respondent to a complaint notice of the complaint and an opportunity to be heard;
- (2) be made available to all officers and employees of the agency;
- (3) ensure that officers and employees have the right to present or make known their complaints, free from interference, restraint, discrimination, coercion, or reprisal;
- (4) ensure that adjudication of internal agency complaints accord with due process; and
- (5) utilize alternative methods of dispute resolution, including mediation, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships among officers and employees.

D. If an agency adopts a code of conduct that mirrors provisions set forth in 1.8.4 NMAC, then any officer or employee of the adopting agency may request an advisory opinion from the state ethics commission regarding the interpretation or application of any adopted code provision pursuant to Subsection A of Section 10-16G-8 NMSA 1978.

E. Any remedy or discipline available through internal agency complaint procedures established under this provision does not preclude other remedies or sanctions available at law.

[1.8.4.17 NMAC-N, 1/1/2021]

**History of 1.8.4 NMAC: [RESERVED]**

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

The Office of Superintendent of Insurance has repealed its rule 13.14.1 NMAC – General Provisions, filed 5/15/2000, and replaced with 13.14.1 NMAC – Definitions and General Provisions, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.2 NMAC – Licensing and Reporting Requirements filed 5/15/2000, and replaced with 13.14.2 NMAC – Licensing and Reporting Requirements, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.3 NMAC – Agency Agreements, filed 5/15/2000, and replaced with 13.14.3 NMAC – Agreements Between Title Insurers and Title Insurance Agents, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.4 NMAC – Escrow Services filed 5/15/2000, and replaced with 13.14.4 NMAC – Escrow Services, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.5 NMAC – Commitments and Binders, filed 5/15/2000, and replaced with 13.14.5 NMAC – Commitments, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.6 NMAC – Owner’s, Leaseholder Owner’s, and Contract Purchaser’s Policies filed 5/15/2000, and replaced with 13.14.6 NMAC – Owner’s, Leaseholder Owner’s, and Contract Purchaser’s Policies, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.7 NMAC – Loan, Leasehold Loan, and Construction Loan Policies filed 5/15/2000, and replaced with 13.14.7 NMAC – Loan Policies, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.8 NMAC – Endorsements filed 5/15/2000, and replaced with 13.14.8 NMAC – Endorsements, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.9 NMAC – General Rate Provisions, filed 6/16/1986, and replaced with 13.14.9 NMAC – General Rate Provisions, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.16 NMAC – Agent’s Statistical Report filed 5/15/2000, and replaced with 13.14.16 NMAC – Agency’s Statistical Report, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.17 NMAC – Underwriter’s Statistical Report filed 7/1/2006, and replaced with 13.14.17 NMAC – Insurer’s Statistical Report, adopted 12/17/2020, effective 1/1/2021.

The Office of Superintendent of Insurance has repealed its rule 13.14.18 NMAC – Forms filed 3/1/2016, and replaced with 13.14.18 NMAC – Forms, adopted 12/17/2020, effective 1/1/2021.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**  
**TITLE 13 INSURANCE**  
**CHAPTER 14 TITLE**  
**INSURANCE**  
**PART 1**  
**DEFINITIONS AND GENERAL PROVISIONS**

**13.14.1.1 ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”). [13.14.1.1 NMAC – Rp, 13.14.1.1 NMAC, 1/1/2021]

**13.14.1.2 SCOPE:** This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting the business of title insurance in New Mexico. [13.14.1.2 NMAC – Rp, 13.14.1.2 NMAC, 1/1/2021]

**13.14.1.3 STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978. [13.14.1.3 NMAC – Rp, 13.14.1.3 NMAC, 1/1/2021]

**13.14.1.4 DURATION:** Permanent. [13.14.1.4 NMAC – Rp, 13.14.1.4 NMAC, 1/1/2021]

**13.14.1.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section. [13.14.1.5 NMAC – Rp, 13.14.1.5 NMAC, 1/1/2021]

**13.14.1.6 OBJECTIVE:** The purpose of this rule is to define terms applicable throughout Title 13, Chapter 14 of the New Mexico Administrative Code. [13.14.1.6 NMAC – Rp, 13.14.1.6 NMAC, 1/1/2021]

**13.14.1.7 DEFINITIONS:** For definitions of terms contained in this rule, refer to Section 59A-30-3 NMSA 1978, unless otherwise noted below.

- A. “Abstract plant”** means title plant.
- B. “Agency”** means a business entity as defined in Subsection B of Section 59A-12-2 NMSA 1978, including a sole proprietorship that transacts title insurance business.
- C. “ALTA”** means the American Land Title Association.

**D. “Basic premium rate”** means the premiums set from time to time by the superintendent for an original owner’s policy.

**E. “Commitment”** means an NM form 6 issued to a customer.

**F. “Day or Days”** means, unless otherwise specified:

**(1)** one to five days excludes weekends and state holidays; and

**(2)** six days or more, includes weekends and holidays.

**G. “Down date”** means the date that a subsequent search and examination of the public records affecting title to property is completed and effective.

**H. “Escrow”** means a transaction in which funds are delivered or given to a person not otherwise having any right, title, or interest in them, to be held by that person for delivery or disbursement to another person upon the happening of a specified event or the performance of a specified condition.

**I. “Escrow account”** means an account established pursuant to Sections 58-28-4 or 59A-12-22 NMSA 1978.

**J. “Escrow funds”** means all monies the issuing title insurance agency or title insurer receives when conducting escrows, settlements, closings or tax deferred exchanges in connection with the issuance of a title insurance policy.

**K. “Escrow instructions”** means a dated, written, and signed agreement of the parties to an escrow, including a duly appointed agent or attorney-in-fact, specifying the event or condition upon which the escrowed funds shall be delivered or disbursed. This term shall include a purchase agreement, or lender’s instructions, and modifications of escrow instructions.

**L. “Escrow officer”** means an individual affiliated with a title insurance agency or title insurer who is directly responsible for the settlement of a real estate transaction,

as evidenced by their signature on a settlement statement.

**M. “Extra chain of title”** means a parcel having a separate chain of title from the original chain being searched.

**N. “Funds subject to immediate withdrawal”** as used in Subsection F of Section 59A-30-3 means money collected and deposited in an escrow account with a financial institution held in the name of and subject to the control of a title insurance agency, a title insurer, or third party fiduciary for a real estate closing, that can be totally disbursed immediately by cash withdrawal or cashier’s checks without relying on the balance created by other deposit in the account not made as part of the real estate closing for which disbursement is being made.

**(1)** The following funds are subject to immediate withdrawal collected on the day of deposit:

- (a)** cash;
- (b)** received wired funds managed by the federal reserve system;
- (c)** a cashier’s check or certified check which is issued payable to the title insurance agency, title insurer, or third party fiduciary and has been deposited to its account at the financial institution which issued it; and guaranteed by the financial institution as collected funds for immediate disbursement;
- (d)** a cashier’s check which is payable to and was purchased by the title insurance agency, title insurer, or third party fiduciary, and has been deposited to its account at a financial institution and guaranteed by the financial institution for immediate disbursement.

**(2)** The following funds are considered available funds on the next business day after day of deposit:

- (a)** treasury checks, postal money orders, federal reserve bank checks and federal home loan bank checks;

**(b)** state of New Mexico and local government checks which have been deposited at a financial institution located in New Mexico using a special deposit slip if required by the depository institution for next day availability;

**(c)** cashier’s checks, certified check and teller’s checks which have been deposited at a financial institution located in New Mexico using a special deposit slip if required by the depository institution for next day availability.

**(d)** All other modes used for the transfer of monies will be available funds on the earliest date they are considered collected funds in accordance with Regulation CC, “Availability of Funds and Collection of Checks” established by the board of governors of the federal reserve system as amended.

**(e)** Any funds received under the automated clearing house (ACH) network shall not be considered “available funds” until collected.

**O. “Loan policy”** means an NM form 2 issued to a customer.

**P. “Mortgage”** means either a mortgage or deed of trust.

**Q. “One to four family residential property”** means any real property primarily designed and used for residential occupancy of from one to four families, including a residential unit in a condominium if such unit is designed and used primarily for occupancy by one to four families, regardless of the total number of units in the condominium complex.

**R. “Owner’s policy”** means an NM form 1 or NM form 34, as applicable, issued to a customer.

**S. “Pro forma policy”** means a sample of an owner’s or loan policy prepared prior to issuance of the policy, with completed schedules A and B and endorsements, identifying the proposed insured, the exceptions that are proposed to be placed in the final policy to be issued, and the name of the title insurer and

title insurance agency, including samples of endorsements.

**T. “Referrer”** means any person in a position to refer business to a title insurer or title insurance agency.

**U. “Simultaneous Issue”** means issuing two or more policies bearing the same effective date and insuring part or all of the same land.

**V. “Title plant”** is a collection of real estate records meeting the requirements of Section 59A-12-13 NMSA 1978.

**W. “Title rate case”** means a proceeding that results in the establishment of rates, or charges pertaining to the business of title insurance and includes, without limitation, the title rate case required by Section 59A-30-8 NMSA 1978.

**X. “Unusual complexity”** means when circumstances cause an unusually long search or complicated examination as determined by a reasonable title insurance agent or title insurer.

**Y. “Vestee”** means the person or persons in whom title to the land is vested.

[13.14.1.7 NMAC – Rp, Sections 7 through 33 of 13.14.1 NMAC, 1/1/2021]

**13.14.1.8 GENERAL PROVISIONS:**

**A.** Every title insurer shall establish written instructions and underwriting standards consistent with these rules, including, without limitation, underwriter approval requirements and underwriting approval record retention requirements. Unless otherwise specifically required or limited by these rules, a title insurer in its discretion may determine what risks the insurer is willing to insure.

**B.** Unless otherwise specified, whenever these rules allow modification or deletion of provisions of a form of policy or endorsement or permit the modification of language required by these rules to be included in policies (including pro forma policies), commitments or

endorsements, that change may be made by:

- (1) striking through the language of the form;
- (2) deleting the language of the form; or
- (3) attaching an endorsement to the policy that makes the change.

**C.** The premiums and charges authorized by these rules shall be established by order of the superintendent in a title rate case conducted pursuant to Subsection A of Section 59A-30-8 NMSA 1978, or as amended or supplemented by order issued after a hearing conducted pursuant to Subsection B of Section 59A-30-8 NMSA 1978. All references to premiums and charges shall mean the premiums and charges established by the superintendent's order in the most recent title rate case and in effect at the time the premium or charge is incurred.

**D.** When a statute or rule requires a title insurer or title insurance agency to deliver a document, or otherwise provide notice, to a person, delivery or notice to an authorized agent of that person satisfies that requirement.

**E.** Except as expressly authorized in these rules, it shall not be permissible to insure around any adverse matter or document by intentionally omitting it from any commitment or policy.  
[13.14.1.8 NMAC – N, 1/1/2021]

**13.14.1.9 RULE**

**NONCOMPLIANCE:** Failure to comply with any provision of these rules is punishable under the applicable provisions of the Insurance Code.

[13.14.1.9 NMAC – N, 1/1/2021]

**HISTORY OF 13.14.1 NMAC: Pre-NMAC History.**

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.  
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.  
SCC-86-1, Insurance Department

Regulation 30 - Title Insurance, filed 5/9/1986.

**History of Repealed Material.**

13.14.1 NMAC, General Provisions, (filed 5/15/2000), was repealed and replaced by 13.14.1 NMAC, Definitions and General Provisions effective 1/1/2021.

**Other History.**

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986) and renumbered, reformatted and replaced as 13 NMAC 14.1, General Provisions, effective 11/01/1996.

13 NMAC 14.1, General Provisions (filed 10/2/1996) was renumbered, reformatted, amended and replaced by as 13.14.1 NMAC, General Provisions, effective 5/15/2000.

13.14.1 NMAC, General Provisions (filed 4/28/2000), amended effective 7/31/2014.

13.14.1 NMAC, General Provisions (filed 7/31/2014), amended effective 3/1/2016.

13.14.1 NMAC, General Provisions, (filed 5/15/2000), was repealed and replaced by 13.14.1 NMAC, Definitions and General Provisions effective 1/1/2021.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 14 TITLE INSURANCE  
PART 2 LICENSING AND REPORTING REQUIREMENTS**

**13.14.2.1**

**ISSUING AGENCY:** Office of Superintendent of Insurance ("OSI").  
[13.14.2.1 NMAC – Rp, 13.14.2.1 NMAC, 1/1/2021]

**13.14.2.2**

**SCOPE:** This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting title insurance business in New Mexico.  
[13.14.2.2 NMAC – Rp, 13.14.2.2 NMAC, 1/1/2021]

**13.14.2.3 STATUTORY**

**AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.  
[13.14.2.3 NMAC – Rp, 13.14.2.3 NMAC, 1/1/2021]

**13.14.2.4**

**DURATION:** Permanent.  
[13.14.2.4 NMAC – Rp, 13.14.2.4 NMAC, 1/1/2021]

**13.14.2.5**

**EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
[13.14.2.5 NMAC – Rp, 13.14.2.5 NMAC, 1/1/2021]

**13.14.2.6**

**OBJECTIVE:** The purpose of this rule is to establish title insurance agency and agent licensing and reporting requirements.  
[13.14.2.6 NMAC – Rp, 13.14.2.6 NMAC, 1/1/2021]

**13.14.2.7**

**DEFINITIONS:** See 13.14.1 NMAC.  
[13.14.2.7 NMAC – Rp, 13.14.2.7 NMAC, 1/1/2021]

**13.14.2.8**

**LICENSING:**  
**A.** OSI shall inspect or cause to be inspected any title plant owned, operated, or controlled within this state.

(1) An agency shall maintain its title plant for a period of at least 20 years immediately prior to the date of application for license.

(2) An agency shall keep its title plant not more than 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 OSI deems as being undue hardships in obtaining the public records or facsimiles thereof, in which event the title plant must at least be current with the public records as then indexed.

**B.** If a title plant is not in compliance with the provisions of Section 59A-12-13 NMSA 1978 or of this rule at the time of such

inspection, OSI will require that such plant be brought into compliance within a specified period of time. If the plant is not compliant within such period of time, OSI may suspend the license of the title insurance agency using the plant until the title plant is compliant, and any title insurer that has appointed the title insurance agency will be notified.

**C.** A title insurer shall notify OSI in writing of the cancellation of the appointment of any title insurance agent or agency within 30 days of the cancellation's effective date.

**D.** An agency shall notify title insurers in writing of the termination of any employee appointed as an agent by said title insurer within 30 days of the termination's effective date.

**E.** An escrow officer shall be licensed as a title insurance agent.  
[13.14.2.8 NMAC – Rp, 13.14.2.8 NMAC, 1/1/2021]

**13.14.2.9 OWNS, OPERATES OR CONTROLS:** For purposes of Section 59A-12-13 NMSA 1978 "owns, operates, or controls" include the following activities:

**A. "Owns"** - holding legal or equitable title or controlling interest in a title 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 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 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 plant.

**C. "Controls"** - ultimate regulating authority or any intermediate supervisory authority over any person directly responsible

for the operation of a title plant, who promulgates or administers the general policies providing for the direction and management of a title plant, including general policies of maintenance, updating, and retrieval of information from a title plant or the purchase, sale, or leasing of a title plant. A lease of a title plant shall qualify as "control" if the following conditions are met:

**(1)** All initial leases for a title plant must contain the terms of a minimum of five years and renewals for a minimum term of three years. No early termination of leases shall be allowed without the express written consent of OSI.

**(2)** A lease agreement shall be invalid unless approved by OSI.

**(3)** Access to a title plant under a lease agreement has not been terminated, suspended or denied.

**(a)** If the lessee is denied access to a leased title plant, the lessee shall notify OSI of the date of denial of access and the reason.

**(b)** Upon notification of a lessee's denial of access to a leased title plant, OSI shall notify each title insurer who has appointed the lessee of such denial of access.

[13.14.2.9 NMAC – N, 1/1/2021]

**13.14.2.10 MAINTENANCE ASSESSMENTS:** The superintendent shall annually issue a directive establishing the maintenance assessment authorized by Section 59A-30-12 NMSA 1978 on policies written during the preceding calendar year insuring property or interests in property in New Mexico for each fiscal year commencing on July 1 and ending on June 30. The directive shall be issued at least 30 days before it is to become effective and shall include a brief statement describing how the maintenance assessment was determined. A title insurer shall correctly calculate its assessment based upon its New Mexico gross premium for the most recent preceding full calendar year and shall

remit the same to OSI as specified in the superintendent's directive. A title insurer's assessment shall be rounded to the nearest dollar after computation has been performed. Fifty cents or more shall be rounded up; 49 cents or less shall be rounded down.  
[13.14.2.10 NMAC – Rp, 13.14.2.12 NMAC, 1/1/2021]

**13.14.2.11 AUDITS:** OSI may at any time audit any title insurance agent, agency, or title insurer. If the audit provides cause for additional examination, such examination shall be conducted pursuant to Article 4 of Section 59A NMSA 1978, as applicable.  
[13.14.2.11 NMAC – N, 1/1/2021]

**13.14.2.12 TITLE INSURANCE AGENCIES CEASING OPERATION:** Prior to ceasing the business of title insurance, an agency shall comply with the following requirements:

**A.** Forty-five days prior to its ceasing of operations, the agency shall notify each of the following of the cessation date:

**(1)** OSI title insurance bureau;

**(2)** all appointing title insurers; and

**(3)** the public by prominently displaying on the front of the business and on the landing page of the agency website, a notice reading, "Notice: this title insurance agency will cease operations on "[date]."

**B.** The agency and its appointing insurers shall conduct a final audit of the agency's trust fund accounts, the records pertaining thereto and the unused forms in the agency's possession.

**(1)** The final audit and final accounting required by this section shall be delivered to OSI and to each appointing insurer within 90 days after the agency ceases operations.

**(2)** If an appointing title insurer does not receive a final audit report within 90 days, the title insurer shall:



(a) report the non-receipt to OSI not later than the 100th day after the cessation date; and

(b) use its best efforts to complete and submit a final audit to OSI within 150 days of the cessation date. The title insurer shall provide written explanation and justification to OSI documenting those portions of the final audit that the title insurer was not able to complete, and describing the records and personnel available to the title insurer and the efforts used in the attempt to complete the final audit.

C. No later than 10 days after providing notice to OSI, the agency shall confer with OSI to develop a wind down plan. If the agency does not fulfill this requirement, OSI will contact each appointing insurer of that agency, who shall make arrangements satisfactory to OSI for the collection and preservation of the agency records.

D. The affiliation of any licensed title insurance agent employed by an agency who ceases business shall automatically terminate upon cessation of the business. [13.14.2.12 NMAC – N, 1/1/2021]

**13.14.2.13 [RESERVED]**  
13.14.2.13 NMAC - Rn, 13 NMAC 14.3.13.1, 5/15/2000, Repealed 1/1/2021]

**13.14.2.14 [RESERVED]**  
13.14.2.14 NMAC - Rn, 13 NMAC 14.3.13.3 & A, 5/15/2000; A, 1/1/2001; A, 3/1/2002; A, 7/1/2005, Repealed 1/1/2021]

**13.14.2.15 [RESERVED]**  
[13.14.2.15 NMAC - Rn, 13 NMAC 14.3.14, 5/15/2000, Repealed 1/1/2021]

**HISTORY OF 13.14.2 NMAC:**  
**Pre-NMAC History:**  
ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, 3/7/1974  
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, 9/6/1985  
SCC-86-1, Insurance Department

Regulation 30 - Title Insurance, 5/9/1986

**NMAC History:**  
Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance, as 13 NMAC 14.3, Licensing and Reporting Requirements, filed 10/2/1996  
Recompiled 13 NMAC 14.3, Licensing and Reporting Requirements, as 13.14.2 NMAC, Licensing and Reporting Requirements, filed 4/28/2000  
13.14.2 NMAC, Licensing and Reporting Requirements, filed 5/15/2000, amended 3/1/2016  
13.14.2 NMAC, Licensing and Reporting Requirements, filed 5/15/2000, was repealed and replaced by 13.14.2 NMAC, Licensing and Reporting Requirements, effective 1/1/2021.

**History of Repealed Material:**  
ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates - Superseded 9/6/1985  
SCC-85-6, Insurance Department Regulation 30 - Title Insurance - Superseded 5/9/1986  
13 NMAC 14.3.13.2 - Repealed 7/1/1997  
13.14.2.16 NMAC - Repealed 1/1/2001  
13.14.2.11 NMAC - Repealed 3/1/2016  
13.14.2 NMAC, Licensing and Reporting Requirements, filed 5/15/2000, was repealed and replaced by 13.14.2 NMAC, Licensing and Reporting Requirements, effective 1/1/2021.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE**  
**CHAPTER 14 TITLE**  
**INSURANCE**  
**PART 3 AGREEMENTS**  
**BETWEEN TITLE INSURERS**  
**AND TITLE INSURANCE**  
**AGENTS**

**13.14.3.1**  
**ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”). [13.14.3.1 NMAC – Rp, 13.14.3.1 NMAC, 1/1/2021]

**13.14.3.2 SCOPE:** This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting the business of title insurance in New Mexico. [13.14.3.2 NMAC – Rp, 13.14.3.2 NMAC, 1/1/2021]

**13.14.3.3 STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978. [13.14.3.3 NMAC – Rp, 13.14.3.3 NMAC, 1/1/2021]

**13.14.3.4 DURATION:** Permanent. [13.14.3.4 NMAC – Rp, 13.14.3.4 NMAC, 1/1/2021]

**13.14.3.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section. [13.14.3.5 NMAC – Rp, 13.14.3.5 NMAC, 1/1/2021]

**13.14.3.6 OBJECTIVE:** The purpose of this rule is to establish requirements for agreements between title insurers and title insurance agency and agents. [13.14.3.6 NMAC – Rp, 13.14.3.6 NMAC, 1/1/2021]

**13.14.3.7 DEFINITIONS:** See 13.14.1 NMAC. [13.14.3.7 NMAC – Rp, 13.14.3.7 NMAC, 1/1/2021]

**13.14.3.8 AGENCY AGREEMENTS:**  
**A.** All agreements and amendments between title insurers and title insurance agencies or agents shall comply with these rules, and shall be filed with OSI within 30 days of execution. All existing agency agreements shall be amended within 60 days of the effective date of any

applicable change to these rules. An amendment may be in the form of an addendum to an existing agreement.

**B.** An agreement between a title insurance agency or agent and a title insurer shall specify that the title insurance agency or agent has no authority to negotiate or settle policy claims.

[13.14.3.8 NMAC – Rp, 13.14.3.12 NMAC, 1/1/2021]

### 13.14.3.9

#### **PAYMENTS OF PREMIUM AND MAINTENANCE TAXES OR ASSESSMENTS BY**

**TITLE INSURERS:** An agreement between a title insurance agency or agent and a title insurer shall require that the title insurer pay all premium taxes or assessments and all maintenance taxes or assessments as the same may come due and payable, and shall require that the title insurer report all premiums received by it directly or by any of its title insurance agencies or agents on a one hundred percent gross basis for the purposes of reporting said taxes and assessments. [13.14.3.9 NMAC – Rp, 13.14.3.10 NMAC, 1/1/2021]

#### **13.14.3.10 PREMIUM DIVISION WITH TITLE INSURANCE AGENTS – OTHER CHARGES:**

**A.** A title insurance agency or agent or title insurer shall not pay or receive any compensation for title insurance business or for referral of business, other than the division of premiums established in a title rate case. A title insurer shall not reward or otherwise compensate a title insurance agency or agent (or vice versa) directly or indirectly for business other than as established in a title rate case.

**B.** A title insurance agency or agent shall not be required to contribute or pay any amount to an insurer for reinsurance or otherwise, and any contractual provision to the contrary shall be void and unenforceable.

**C.** A title insurer may pay on behalf of, or reimburse, a title insurance agency or agent for

expenses associated with instruction, lectures or seminars conducted by that title insurer for title insurance agencies or agents, if such instruction, lectures or seminars have been approved in advance by OSI for continuing education credit. A title insurer conducting such instruction, lectures or seminars shall submit to the superintendent for approval, in advance, an agenda and detailed budget for such instruction, lectures or seminars. Such courses of instruction, lectures or seminars shall be offered by a title insurer to all of its appointed title insurance agents on a non-discriminatory basis.

[13.14.3.10 NMAC – Rp, 13.14.3.11 NMAC, 1/1/2021]

### 13.14.3.11

#### **ASSUMPTION OF RISK BY A TITLE INSURANCE AGENCY**

**OR AGENT:** No agreement between a title insurance agency or agent and a title insurer shall directly or indirectly require a title insurance agency or agent to assume either partial or total liability for an insured risk, except as follows:

**A.** if a title insurance agency or agent, or any person employed by a title insurance agency, commits gross negligence, fraud, deceit, or theft in connection with a title transaction, and if such act causes loss to the title insurer;

**B.** if a title insurance agency or agent, or any person employed by a title insurance agency, disregards lawful written instructions of a title insurer or other party to a title transaction, and if such act causes loss to the title insurer; or

**C.** if the title insurance agency or agent, or any person employed by the agency, shall do or fail to do any act which results in the insurer paying a claim to any person pursuant to a New Mexico closing protection letter issued by the title insurer.

[13.14.3.11 NMAC – Rp, 13.14.3.8 NMAC, 1/1/2021]

### 13.14.3.12 PROHIBITED

**CONDUCT:** A title insurance agency or agent or title insurer

shall not provide, either directly or indirectly, any goods or services to a referrer without receiving fair market value therefor. This includes, but is not limited to, the following activities:

**A.** making any monetary payment to any producer, unless the payment is for the actual cost of bona fide supplies or services received by the title insurer or title insurance agency or agent;

**B.** making any in kind payment to any producer or provide any free products or services, including but not limited to postage, postage machines, facsimile machines, computer hardware or software, copy machines, telephones, or office space to any producer;

**C.** engaging in joint advertising by any means of communication or media that names a specific producer unless the producer pays its share of the advertising cost in direct proportion to its prominence in the advertisement;

**D.** providing video equipment or any other type of electronic or cyber equipment or services, such as “virtual tours” unless the producer pays at least the actual cost for the equipment or services;

**E.** providing advertising by any means of communication or media for a producer unless the producer pays at least the actual cost for the advertisement to the title insurer or title insurance agency or agent;

**F.** sponsoring, co-sponsoring, or providing free door prizes, refreshments or meals at any producer’s open house, tour of open houses, awards banquet, or company party unless a representative of the title insurer or agency is present and educational or marketing materials and signage are on-site for the function; at no time shall the cost of any sponsorship exceed the commensurate advertising benefit of the educational or marketing materials and signage provided;

**G.** providing free meals to any producer unless a representative of the title insurer or title insurance agency is present, title insurance business is discussed

and the meals are not a regular occurrence; a title insurer or title insurance agency or agent shall not provide free recreational activities or entertainment to any producer under any circumstance;

**H.** entering into any lease or rental agreement for office space with a producer unless:

(1) the lease or rental agreement is for commercially reasonable terms and at least the fair market rental rate of the property; and

(2) the property is physically occupied by at least one bona fide full time employee of the title insurer or title insurance agency if the producer is the lessor or by one bona fide full time employee of the producer if the title insurer or title insurance agency or agent is the lessor; or

**I.** providing a career continuing education course for producers, unless each producer in attendance pays at least the actual per person cost for the course to the title insurer or title insurance agency or agent.  
[13.14.3.12 NMAC – N, 1/1/2021]

**13.14.3.13 DUTIES OF TITLE INSURERS WITH RESPECT TO AGENCIES:**

**A.** A title insurer shall not accept title insurance business from an agency unless there is in force a written agreement between the title insurer and the agency.

**B.** For each agency, the title insurer shall have on file a statement of financial condition. The statement shall include an income statement of title insurance business done during the preceding year and a balance sheet showing the condition of affairs as of the prior December 31. The agency shall certify the statement is true and correct.

**C.** A title insurer shall, at least annually, conduct a review of the underwriting, claims, and escrow practices of the agency which shall include a review of the title insurance policy form inventory and processing operations. If the agency does not maintain separate financial institution or trust accounts for each title insurer

it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the agency.

**D.** Within 30 days after executing or terminating an agreement with an agency, a title insurer shall provide written notification of the appointment or termination and the reason for the termination to OSI. The notice of appointment of an agency shall be made on a form prescribed or approved by OSI.

**E.** A title insurer shall maintain an inventory of all title insurance policy forms or title insurance policy numbers allocated to each agency.

**F.** Before entering into an agreement with an agency, a title insurer shall confirm that the agency has a current and appropriate license to transact title insurance business.  
[13.14.3.13 NMAC – N, 1/1/2021]

**13.14.3.14 [RESERVED]**  
[13.14.3.14 NMAC - Rn, 13 NMAC 14.4.14, 5/15/2000; Repealed 1/1/2021]

**13.14.3.15 [RESERVED]**  
[13.14.3.15 NMAC - N, 7/1/2006; Repealed 1/1/2021]

**HISTORY OF 13.14.3 NMAC:** Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, 3/7/1974  
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, 9/6/1985  
SCC-86-1, Insurance Department Regulation 30 - Title Insurance, 5/9/1986

**NMAC History.**

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance, as 13 NMAC 14.4, Agency Agreements, filed 10/2/1996  
Recompiled 13 NMAC 14.4, Agency Agreements, as 13.14.3 NMAC, Agency Agreements, filed 4/28/2000, amended effective 7/31/2014.  
13.14.3 NMAC, Agency Agreements,

filed 7/31/2014, amended effective 3/1/2016.  
13.14.3 NMAC, Agency Agreements, filed 3/1/2016, amended effective 7/1/2018.  
13.14.3 NMAC, Agency Agreements, filed 5/15/2000, was repealed and replaced by 13.14.3 NMAC, Agreements Between Title Insurers And Title Insurance Agents, effective 1/1/2021.

**History of Repealed Material.**

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates - Superseded 9/6/1985  
SCC-85-6, Insurance Department Regulation 30 - Title Insurance- Superseded 5/9/1986.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 14 TITLE  
INSURANCE  
PART 4 ESCROW  
SERVICES**

**13.14.4.1 ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”).  
[13.14.4.1 NMAC – Rp, 13.14.4.1 NMAC, 1/1/2021]

**13.14.4.2 SCOPE:** This rule applies to title insurers, title insurance agencies, title insurance agents, and their owners, officers, directors, partners or employees whose duties include or relate to the provision of escrow services.  
[13.14.4.2 NMAC – Rp, 13.14.4.2 NMAC, 1/1/2021]

**13.14.4.3 STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.  
[13.14.4.3 NMAC – Rp, 13.14.4.3 NMAC, 1/1/2021]

**13.14.4.4 DURATION:** Permanent.

[13.14.4.4 NMAC – Rp, 13.14.4.4 NMAC, 1/1/2021]

**13.14.4.5**

**EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.

[13.14.4.5 NMAC – Rp, 13.14.4.5 NMAC, 1/1/2021]

**13.14.4.6 OBJECTIVE:** The purpose of this rule is to establish requirements for title insurers and title insurance agencies and agents who provide escrow services and to protect parties to transactions who deposit funds with title insurers or agents.

[13.14.4.6 NMAC – Rp, 13.14.4.6 NMAC, 1/1/2021]

**13.14.4.7 DEFINITIONS:** See 13.14.1 NMAC.

[13.14.4.7 NMAC – Rp, 13.14.4.7 NMAC, 1/1/2021]

**13.14.4.8 REQUIREMENTS FOR PROVIDING ESCROW SERVICES:**

A title insurer or title insurance agency providing escrow services shall:

- A. only accept funds pursuant to escrow instructions;
- B. not make changes to escrow instructions without the consent of all parties in the manner specified by the escrow instructions;
- C. receive and handle all funds pursuant to the requirements of Sections 58-28-1 et seq. and 59A-12-22 NMSA 1978;
  - (1) an escrow account shall be separate from all operating accounts, and shall be designated as an escrow, trust or custodial account by the financial institution and in the books and records of the title insurer or title insurance agency; and
  - (2) title insurers and title insurance agencies are prohibited from receiving for their own use any interest from escrow accounts or money accepted for escrow, except that nothing herein shall preclude participation in the Land Title Trust Fund Act pursuant to the Mortgage Loan Company Act, Section 58-28-1 NMSA 1978 et seq.;

D. disburse or deliver escrow funds only in accordance with escrow instructions;

E. disburse funds only out of an escrow account deposited for that transaction;

F. interplead or hold any funds that are the subject of conflicting demands by the parties to an escrow until the title insurer or title insurance agency receives written instructions signed by all parties to the escrow transaction which resolve the conflict or until a final court order;

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

H. act with impartiality toward all parties to an escrow in the disbursement of funds; and

I. comply with all escrow audits ordered by OSI and make available to OSI all information requested by the superintendent.

[13.14.4.8 NMAC – Rp, 13.14.4.8 NMAC, 1/1/2021]

**13.14.4.9 BOOKS AND RECORDS:**

A title insurer or agency shall, on a current basis:

- A. establish and maintain a separate subsidiary ledger for each escrow transaction;
- B. post all receipts and disbursements from each subsidiary ledger to a control ledger daily and at least monthly, prepare a trial balance of all subsidiary ledgers. The monthly trial balance reconciliation shall be performed by a person who did not perform the receipt and disbursement function; and
- C. on a daily basis, reconcile the book balance and escrow account balance.
- D. At least once each calendar month, prepare a three-way reconciliation for each escrow account. Each three-way reconciliation is required to be prepared within 10 business days of the closing date of the bank statement

and to be approved by a title insurance agent who did not perform the reconciliation. The reconciliation shall include at a minimum as of the reconcile date:

- (1) the bank statement;
- (2) reconciliation sheet or summary page with book balance;
- (3) outstanding deposits list and list of deposits in transit;
- (4) open escrow file listing or trial balance; and
- (5) outstanding disbursements list, all as of the reconciliation date.

E. Reconciliations and underlying statements, listings and reports shall be preserved in a logical sequence to trace an individual escrow transaction and shall be available electronically.

[13.14.4.9 NMAC – Rp, 13.14.4.9 NMAC, 1/1/2021]

**13.14.4.10 ACCOUNTING PROCEDURES AND INTERNAL CONTROLS:**

A title insurer or agency shall:

- A. require two signatures on all escrow checks; one signature of which shall be a title insurance agent;
- B. assign each escrow file a unique number; name identification is not acceptable;
- C. on a monthly basis, an owner, officer or director shall review and approve the reconciliation for escrow accounts open for longer than six months;
- D. remove the signature blocks from voided checks or otherwise render them ineffective;
- E. require management approval for any transfers of funds between escrow accounts;
- F. notify the seller within one day after receiving notice an earnest money check deposited in the account is returned by the financial institution to the title insurer or agency due to insufficient funds, unless the check is replaced by available funds within the one day time period; the insurer or agency shall retain a copy of written notices;

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

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

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

**J.** require reimbursement of all shortages from the title insurer’s or agency’s operating account within three days that reflects the transaction creating the escrow receivable or shortage, unless the shortage is the result of fraud or suspected fraud, in which case the shortage shall be cured within 45 days, unless otherwise ordered by the superintendent;

**K.** if a settlement statement requires changes, prepare a new statement or have all parties affected by the changes initial pen and ink changes;

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

**M.** if a bank does not return actual cancelled checks with bank statements, the agency shall either acquire and retain clearly legible copies of the front and back of each check, or have on file in the office an agreement with the depositor bank that ensures readily available access to such copies for at least four years;

**N.** an escrow account shall have the designation of “escrow” or “trust” on the bank account, checks and deposit slips; and

**O.** preserve for at least 15 years all escrow transaction records. This 15 year requirement for escrow records shall apply with

respect to title policies issued on or after June 1, 2010.  
[13.14.4.10 NMAC – Rp, 13.14.4.10 NMAC, 1/1/2021]

**13.14.4.11 ANNUAL ESCROW COMPLIANCE PROCEDURES:**

**A.** Title insurers and agencies shall, at their own expense, engage an independent certified public accountant to certify the procedures required by OSI. Title insurers and agencies shall require the certified public accountant to follow and comply with all requirements of any order of OSI relating to the performances of escrow duties as set out in these rules.

**B.** The certified public accountant shall be licensed and in good standing.  
[13.14.4.11 NMAC – Rp, 13.14.4.11 NMAC, 1/1/2021]

**13.14.4.12 NOTICE TO OSI:**

**A.** A title insurer, agency or title insurance agent, who discovers any of the following, shall provide notice to OSI within five days of:

(1) notice of suit in any civil or criminal action against the title insurer, title insurance agency, or title insurance agent involving any alleged misconduct or liability of the title insurer, title insurance agency, or title insurance agent concerning a New Mexico escrow; or

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

**B.** A title insurer, agency or title insurance agent, who discovers theft or fraud of an escrow account, shall notify OSI within two days of discovery.  
[13.14.4.12 NMAC – Rp, 13.14.4.12 NMAC, 1/1/2021]

**13.14.4.13 [RESERVED]**  
[13.14.4.13 NMAC - N, 7/1/2005; A, 3/1/2016, Repealed 1/1/2021]

**13.14.4.14 [RESERVED]**  
[13.14.4.14 NMAC - N, 7/1/2005; Repealed 1/1/2021]

**13.14.4.15 [RESERVED]**  
[13.14.4.15 NMAC - N, 7/1/2005; Repealed 1/1/2021]

**13.14.4.16 [RESERVED]**  
[13.14.4.16 NMAC - N, 7/1/2005; Repealed 1/1/2021]

**HISTORY OF 13.14.4 NMAC: History of Repealed Material.**  
13.14.4 NMAC, Escrow Services (filed 10/06/2000), repealed 7/15/2005.  
13.14.4 NMAC, Sections 13 through 16 filed 7/15/2005, repealed 1/1/2021.

**NMAC History.**  
13.14.4 NMAC, Escrow Services (filed 10/06/2000), replaced by 13.14.4 NMAC, Escrow Services, effective 7/01/2005.  
13.14.4 NMAC, Escrow Services (filed 7/01/2005) amended, 3/1/2016.  
13.14.4 NMAC, Escrow Services (filed 7/01/2005) was repealed and replaced by 13.14.4 NMAC, Escrow Services, effective 1/1/2021.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 14 TITLE INSURANCE  
PART 5 COMMITMENTS**

**13.14.5.1 ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”).  
[13.14.5.1 NMAC – Rp, 13.14.5.1 NMAC, 1/1/2021]

**13.14.5.2 SCOPE:** This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting title insurance business in New Mexico.  
[13.14.5.2 NMAC – Rp, 13.14.5.2 NMAC, 1/1/2021]

**13.14.5.3 STATUTORY AUTHORITY:** Sections 59A-2-8,

59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.

[13.14.5.3 NMAC – Rp, 13.14.5.3 NMAC, 1/1/2021]

#### 13.14.5.4

**DURATION:** Permanent.

[13.14.5.4 NMAC – Rp, 13.14.5.4 NMAC, 1/1/2021]

#### 13.14.5.5 EFFECTIVE

**DATE:** January 1, 2021, unless a later date is cited at the end of a section.

[13.14.5.5 NMAC – Rp, 13.14.5.5 NMAC, 1/1/2021]

**13.14.5.6 OBJECTIVE:** The purpose of this rule is to establish requirements for commitments issued for title insurance.

[13.14.5.6 NMAC – Rp, 13.14.5.6 NMAC, 1/1/2021]

#### 13.14.5.7 DEFINITIONS:

See 13.14.1 NMAC.

[13.14.5.7 NMAC – Rp, 13.14.5.7 NMAC, 1/1/2021]

#### 13.14.8 ISSUANCE OF A COMMITMENT:

**A.** Upon acceptance of an order for any type of title insurance, a title insurer or title insurance agency shall deliver to the proposed insured, a commitment showing the exceptions which will appear in the proposed policy as of the date of the commitment and requirements to insure the title in accordance with the order. Such commitment shall be delivered as soon as practical, using the title insurer's or title insurance agency's best efforts, allowing reasonably sufficient time to review prior to the completion of the transaction.

**B.** When a commitment is for a one to four family residential property, it shall be delivered with NM form 35, as the cover page. The NM form 35, when required, shall be signed by purchaser(s) at or before the time of settlement and retained in the agency's file. The NM form 35 is not required if, prior to the delivery of the

commitment, the proposed insured(s) signs a contract for sale of the insured land that includes substantially identical language to that included in NM form 35 and that is completed by checking all appropriate blanks.

**C.** When requested by a proposed insured lender the following language may be added to a title commitment "note for information only: according to the public records, there have been no deeds conveying the property in this commitment within a period of (six to 24) months prior to the date of this commitment, except as follows:" The inclusion of such language in the commitment does not increase or otherwise modify coverage under the commitment or policy.

**D.** When a to-be-determined title commitment is issued, the following language shall be included: "This title commitment is not effective until schedule A is completed and the company reserves the right to amend and supplement this commitment with additional information, requirements and exceptions based upon the provision of additional information."

[13.14.5.8 NMAC – N, 1/1/2021]

#### 13.14.5.9 DURATION OF COMMITMENT:

A commitment shall be valid for a period of six months. A commitment may be extended or renewed by endorsement for up to three additional six month periods when the pending order for title insurance remains active and the required additional premiums are paid. Whenever an insured under a loan policy on property taken by foreclosure or deed in lieu of foreclosure, or by a state or federal agency, requests a commitment, the commitment may be initially endorsed to be valid for no more than two years upon payment of the required premiums for both issuance and extensions.

[13.14.5.9 NMAC – Rp, 13.14.5.11 NMAC, 1/1/2021]

#### 13.14.5.10

**STANDARD EXCEPTIONS IN SCHEDULE B:**

**A.** All commitments shall contain each of the following exceptions in the 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).

**(6)** Water rights, claims or title to water.

**(7)** Taxes for the year \_\_\_\_\_, and thereafter. (See 13.14.5.12 NMAC)

**(8)** Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

**B.** Additionally, each commitment may contain the following statement when said commitment is issued to commit for both an owner's policy and a loan policy or a loan policy only: "Exceptions \_\_\_\_\_ will not appear in the loan policy but will appear in the owner's policy, if any."

**C.** If the commitment is for a loan policy containing a two-year claims made limitation, the following statement must be added: "The loan policy containing a two-year claims made limitation will contain an exception limiting its coverage to two years duration."

**D.** Each commitment shall contain the following statement: “Standard exceptions 1, 2, 3, and or 4, may be deleted from a 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.

**E.** 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.”

**F.** Except for the issuance of a U.S. policy form (NM form 34), a 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 G of 13.14.18.9 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.”

[13.14.5.10 NMAC – Rp, 13.14.5.9 NMAC, 1/1/2021]

**13.14.5.11 ADDITIONAL TAX EXCEPTION:**

In those areas of New Mexico where there are taxes or assessments which may be a lien by law but are not filed for record with the county clerk’s office by local custom or practice, and upon approval of the insurer, the following additional tax exception may be added to policies or commitments: “Any possible taxes or assessments which may be a lien by law but have not been filed for record in the office of the county clerk of

\_\_\_\_\_ county.”  
[13.14.5.11 NMAC – N 1/1/2021]

**13.14.5.12 STANDARD EXCEPTIONS:** A policy shall contain in schedule B the standard exceptions 1 through 7, except as otherwise provided by these rules. Said standard exceptions may be preprinted in schedule B and, when specifically authorized, may be deleted by stating, “exceptions \_\_\_\_\_ are hereby deleted in their entirety”. Standard exception 5 shall refer to “spouse of the vestee” in all owner’s policies and in all situations where the vestee and insured are not the same.

**A.** Parties in possession - Standard exception 1: Standard exception 1 may be deleted upon 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.

**B.** Unrecorded easements - Standard exception 2: Standard exception 2 may be deleted if a survey of the property being insured satisfactorily shows that there are no easements or claims of easements affecting the insured property other than those shown by the public records.

**C.** Survey coverage – Standard exception 3:

**(1)** Standard exception 3 may be deleted in only one of two circumstances:

**(a)** If the insurer considers the additional risk acceptable, the entire language of this standard exception may be deleted from the policy; or

**(b)** If the insurer does not consider the shortage-in-area risk acceptable but considers the remaining additional hazard insurable, the exception may be modified to read “shortages in area.”

**(2)** In either circumstance, any additional premium required by these rules must be paid and the title insurer or its title insurance agency must be furnished

with a survey of the insured property meeting the insurer’s underwriting standards prior to the deletion.

**D.** Mechanics’ and Materialmen’s Lien Coverage – Standard Exception 4:

**(1)** In an owner’s policy, standard exception 4 may be deleted in only one of two circumstances:

**(a)** the statutory period for filing mechanics’ or materialmen’s liens expires prior to the date of the policy;

**(b)** some or all of the improvements will be “new construction” (or recently completed), and the statutory period for the filing of said liens will not have expired; or

**(c)** in either circumstance the construction of all improvements on the insured property must have been fully completed and accepted by the insured owner and the appropriate additional premiums required by these rules must be paid.

**(2)** In a loan policy, standard exception 4 may be deleted in only one of two circumstances:

**(a)** if the insurer’s underwriting requirements for evidence of priority have been met; or

**(b)** 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.

**(c)** In either circumstance, the appropriate additional premiums as established in a title rate case shall be paid.

**E.** Spousal rights – Standard exception 5: Standard exception 5 may be deleted from a policy if the vestee named in such policy is not an individual.

**F.** Water rights – Standard exception 6: Standard exception 6 shall not be modified or deleted.

**G. Taxes – Standard exception 7:** Standard exception 7 may be modified as follows:

(1) To read: “Taxes for the second half of the year \_\_\_\_\_, and thereafter.” Such modification shall not be made unless all taxes assessed or assessable through and including the first half of the ad valorem tax year have been paid or are being paid out of funds which are under the control of the title insurance agency or title insurer in an escrow account.

(2) To read: “Taxes for the year \_\_\_\_\_, and thereafter, not yet due or payable.”

(3) If the ad valorem taxes for the first half of a year have been paid, and taxes for the second half are not yet delinquent, standard exception 7 may be modified, by adding the phrase: “not yet delinquent.”

**H. Gap period – Standard exception 8:** Standard exception 8 shall not be included in a policy.  
[13.14.5.12 NMAC – N, 1/1/2021]

**13.14.5.13 PRO FORMA POLICIES:** A pro forma policy may be issued only if the land is not one to four family residential property. In such case, schedule A shall conspicuously state: “This is a pro forma policy furnished to or on behalf of the party proposed to be insured for discussion only. It does not reflect the present status of title and is not a commitment to insure the estate or interest as shown herein, nor does it evidence the willingness of the company to provide any coverage shown herein. Any such commitment must be an express written undertaking issued on the appropriate forms of the company.”  
[13.14.5.13 NMAC – Rp, 13.14.5.13 NMAC, 1/1/2021]

**HISTORY OF 13.14.5 NMAC: Pre-NMAC History.** ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974. SCC-85-6, Insurance Department

Regulation 30 - Title Insurance, filed 9/6/1985. SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

**History of Repealed Material:** 13.14.5 NMAC, Commitments or Binders, filed 5/15/2000, was repealed and replaced by 13.14.5 NMAC, Commitments, effective 1/1/2021.

**Other History:** Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance and renumbered, reformatted and replaced as 13 NMAC 14.5, Commitments or Binders, effective 11/1/1996. 13 NMAC 14.5, Commitments or Binders, (filed 10/2/1996) was renumbered, reformatted, amended and replaced as 13.14.5 NMAC, Commitments or Binders, effective 5/15/2000, amended effective 7/31/2014. 13.14.5 NMAC, Commitments or Binders, effective 7/31/2014, amended effective 3/1/2016. 13.14.5 NMAC, Commitments or Binders, effective 3/1/2016, amended effective 7/1/2018. 13.14.5 NMAC, Commitments or Binders, filed 5/15/2000, was repealed and replaced by 13.14.5 NMAC, Commitments, effective 1/1/2021.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 14 TITLE INSURANCE  
PART 6 OWNER’S, LEASEHOLD OWNER’S, AND CONTRACT PURCHASER’S POLICIES**

**13.14.6.1 ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”). [13.14.6.1 NMAC – Rp, 13.14.6.1 NMAC 1/1/2021]

**13.14.6.2 SCOPE:** This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting title insurance

business in New Mexico.  
[13.14.6.2 NMAC – Rp, 13.14.6.2 NMAC 1/1/2021]

**13.14.6.3 STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.  
[13.14.6.3 NMAC – Rp, 13.14.6.3 NMAC 1/1/2021]

**13.14.6.4 DURATION:** Permanent.  
[13.14.6.4 NMAC – Rp, 13.14.6.4 NMAC 1/1/2021]

**13.14.6.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
[13.14.6.5 NMAC – Rp, 13.14.6.5 NMAC 1/1/2021]

**13.14.6.6 OBJECTIVE:** The purpose of this rule is to establish requirements for title insurance policy provisions.  
[13.14.6.6 NMAC – Rp, 13.14.6.6 NMAC 1/1/2021]

**13.14.6.7 DEFINITIONS:** See 13.14.1 NMAC.  
[13.14.6.7 NMAC – Rp, 13.14.6.7 NMAC 1/1/2021]

**13.14.6.8 OWNER’S POLICIES:**  
**A.** An owner’s policy shall be written to protect the estate or interest in land held by the insured (e.g., fee simple, easement, etc.). Except as otherwise provided herein, an owner’s policy shall be issued for the amount of the sales price of the land and any existing appurtenant improvements, or at the option of the insured, the cost of improvements immediately contemplated to be erected thereupon.

**B.** If no sale is being made at time of a policy issuance, an owner’s policy shall be issued for an amount equal to the value of the land and any existing appurtenant improvements. If an owner’s policy is issued at the time of payoff of a real estate contract and recording of



a warranty deed, the owner's policy shall be issued for the amount of the contract price, except if the purchaser requests and provides evidence of value, then the owner's policy may be issued for the amount equal to the value of the land and any existing improvements, with the same option concerning immediately contemplated improvements.

**C.** An owner's policy may be endorsed to reflect the current value of the estate insured (upon payment of the current basic premium according to the current schedule less the insured current basic premium previously paid for the policy) if the insurer's underwriting standards are met; provided, however, that the effective date of the policy shall remain unchanged and no affirmative coverages or down dates shall be added.

**D.** NM form 55 shall be provided to any insured requesting the endorsement on an owner's policy issued prior to August 1, 2008 without the endorsement.

**E.** Owner's policy insuring a leasehold estate: An owner's policy shall be issued to insure the leasehold estate in the amount, at the option of the insured, of:

(1) the total amount of the rentals payable under the lease contract; or

(2) the value of the land and any existing improvements.

(3) Unless otherwise specifically stated, an owner's policy insuring a leasehold estate shall contain the same standard exceptions, be subject to the same premium and be subject to deletion of the same standard exceptions in the same manner as a standard owner's policy.

(4) An NM form 20 shall be attached to an owner's policy to create a leasehold owner's policy. An owner's policy insuring a leasehold estate may be endorsed to insure a fee simple estate by attaching an NM form 31.

**F.** Owner's policy insuring contract purchaser's interest:

(1) An owner's policy to insure a contract purchaser's interest shall be written to insure the estate or interest in land upon which the insured holds a contractual interest because of a recorded real estate contract or agreement, or a sufficient recorded memorandum thereof. Unless otherwise specifically provided, an owner's policy to insure a contract purchaser's interest shall be subject to all rules and regulations that apply to an owner's policy, and in the same manner.

(2) The estate or interest in the land insured in schedule A under an owner's policy insuring contract purchaser's interest shall be automatically converted to fee simple without the requirement for a policy endorsement, if the contract purchaser acquires the fee title interest by the filing of the deed from the contract seller for the transaction that was previously insured. The effective date of the policy shall not change. No additional premium shall be charged.

(3) Upon request of an insured, an owner's policy to insure a contract purchaser's interest may be converted and down dated to a standard owner's policy by the issuance of NM form 91.

[13.14.6.8 NMAC – Rp, 13.14.6.8 NMAC, 1/1/2021]

**13.14.6.9 U.S. POLICIES:**

**A.** NM form 34 shall contain standard exceptions subject to deletion as provided in these rules.

**B.** Whenever the United States postal service acquires title to property being insured, it is permissible to:

(1) amend the NM form 34 by striking therefrom in all places the name "United States of America" and substituting in lieu thereof the name "United States Postal Service;" and

(2) to insert the following paragraph to the conditions and stipulations: "In the event that the interests of the United States postal service with respect to the land referred to in this policy

are not represented by the attorney general of the United States at the time any election, notice, request, permission, cooperation, assistance, or statement is required or permitted by these conditions and stipulations, then such election, notice, request, permission, cooperation, assistance, or statement, as so required or permitted, and otherwise conforming hereto, should be given or furnished by or to the United States postal service."

[13.14.6.9 NMAC – N, 1/1/2021]

**13.14.6.10 STANDARD**

**EXCEPTIONS:** An owner's policy shall contain standard exceptions 1 through 7, except as otherwise provided by these rules.

13.14.6.10 NMAC – Rp, 13.14.6.11 NMAC, 1/1/2021]

**13.14.6.11 REISSUE OWNER'S POLICIES:**

**A.** An owner's policy shall qualify for reissue rates only when insuring one of the following:

(1) a purchaser or lessee of the same real estate from one whose title thereto as owner's has been insured by any company in a previous policy issued prior to the application for a new policy; or

(2) a purchaser or lessee of the same real estate from an insured under a loan policy of any company which has acquired title to the same property described in said loan policy by foreclosure or by voluntary conveyance in extinguishment of the debt.

**B.** The proof of a prior title insurance policy requires a complete copy of all schedules of the prior policy.

**C.** The title insurer or agency which issues the reissue rate policy shall maintain proof of the prior policy for at least two years. The reissue rate shall apply, only if proof of the prior policy is in the possession of the title insurance insurer or agency issuing the reissue rate policy before the commencement of the title search for that policy.

**D.** The title insurer or agency may request the prior owner's

policy from the prior title insurance agency or title insurer. Within five days, the prior title insurance agency or title insurer shall provide a copy of that policy in response to the request. The prior title insurance agency or title insurer may charge a reasonable retrieval fee for providing the copy of the prior title policy as authorized by these rules.

[13.14.6.11NMAC – N, 1/1/2021]

**13.14.6.12 SUBDIVIDERS OR CONSTRUCTION BULK RATE QUALIFICATIONS:**

An insured owner qualifies for a subdivider or construction bulk rate only if the owner acquires title directly from a person who meets at least one of the following conditions:

**A.** owns of record at the same time two or more lots in the same approved subdivision holding the same for immediate sale upon completion of building improvements thereon;

**B.** owns two or more unsold vacant lots or acreage tracts at the same time in the same approved subdivision and has contracted with the insurer to purchase an owner's policy on each and every lot or tract as the same is sold; or

**C.** is the owner of record of two or more lots or tracts in the same approved subdivision, and:

**(1)** is a subdivider or builder who subdivides property for one to four family residential property use; or

**(2)** builds one to four family residential property for immediate resale upon completion of improvements and said lots or tracts are restricted to or zoned for one to four family residential property use or actually improved by one to four family residential property use at the time the policy is issued.

[13.14.6.12 NMAC – N, 1/1/2021]

**13.14.6.13 REPLACING OWNER'S POLICY UPON RECEIVERSHIP:**

**A.** A title insurer or agency may sell a replacement policy to the insured of a title insurer under receivership.

**B.** A title insurer shall require the insured to surrender the existing policy before providing a replacement policy. A copy of the existing policy may be received in lieu of the original policy. The date of policy for the replacement policy shall be the same date as for the replaced policy. If a copy of an existing policy is requested from the prior title insurance agency or title insurer, a reasonable retrieval fee may be charged by the prior title insurance agency or title insurer.

**C.** A title insurer shall not issue a replacement policy without exceptions to coverage for defects, liens, encumbrances, adverse claims or for other matters known to exist by the insured on the date of issuance of the replacement policy, including but not limited to claims known by any owner's or other insured and claims reported under existing policies or claims that have been made against the receiver. A replacement policy shall contain the following exception on schedule B: "defects, liens, encumbrances, adverse claims or other matters not known to the issuing title insurance agency or title insurer at the issue date of this replacement policy, but known to any owner's or other insured claimant and not disclosed in writing to the title insurance agency or title insurer by the insured claimant prior to the date the insured claimant became insured under this policy."

**D.** A replacement owner's policy shall be issued in the amount of insurance shown on the replaced owner's policy. No search or examination of title or evidence thereof is required of a title insurance agency or insurer issuing a replacement policy pursuant to this rule. However, a title insurance agency or title insurer may conduct a search and examination at no additional expense to the insured, unless otherwise provided in these rules.

**E.** A replacement policy shall be marked as such by the words "REPLACEMENT POLICY; NO SEARCH REQUIRED," prior to the policy number on the cover page

of the policy and on the top center of all other pages not considered a policy cover or jacket. After the words "REPLACEMENT POLICY; NO SEARCH REQUIRED," the date the replacement policy was issued shall be indicated after the word "issued" is typed.

**F.** A title insurer or agent shall accept as evidence either a replacement owner's policy or an owner's policy of an insurer under receivership, or a copy of the same, for purposes of the reissue rate.

[13.14.6.13 NMAC – N, 1/1/2021]

**13.14.6.14 – 13.14.6.24**

**[RESERVED]**

[13.14.6.14 – 13.14.6.24 NMAC – Rn, 13 NMAC 14.6.14-24, 5/15/2000; Repealed 1/1/2021]

**HISTORY OF 13.14.6 NMAC:**

**Pre-NMAC History.**

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, 3/7/1974. SCC-85-6, Insurance Department Regulation 30 - Title Insurance, 9/6/1985. SCC-86-1, Insurance Department Regulation 30 - Title Insurance, 5/9/1986.

**NMAC History.**

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance, as 13 NMAC 14.6, Owner's, Leasehold Owner's, and Contract Purchaser's Policies, filed 10/2/1996.

Recompiled 13 NMAC 14.6, Owner's, Leasehold Owner's, and Contract Purchaser's Policies, as 13.14.6 NMAC, Owner's, Leasehold Owner's, and Contract Purchaser's Policies, filed 4/28/2000, amended effective 7/31/2014.

Owner's Leasehold Owner's and Contract Purchaser's Policies, filed 7/31/2014, amended effective 3/1/2016.

Owner's Leasehold Owner's and Contract Purchaser's Policies, filed 3/1/2016, amended effective 7/1/2018.

13.14.6 NMAC, Owner's, Leasehold Owner's, And Contract Purchaser's

Policies, filed 5/15/2000 was repealed and replaced by 13.14.6 NMAC, Owner’s, Leasehold Owner’s, And Contract Purchaser’s Policies, effective 1/1/2021.

**History of Repealed Material.**  
 ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates - Superseded 9/6/1985.  
 SCC-85-6, Insurance Department Regulation 30 - Title Insurance- Superseded 5/9/1986.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE**  
**CHAPTER 14 TITLE**  
**INSURANCE**  
**PART 7 LOAN POLICIES**

**13.14.7.1 ISSUING**  
**AGENCY:** Office of Superintendent of Insurance (“OSI”).  
 [13.14.7.1 NMAC – Rp, 13.14.7.1 NMAC, 1/1/2021]

**13.14.7.2 SCOPE:** This rule applies to all title insurers, all title insurance agencies, and all title insurance agents conducting title insurance business in New Mexico.  
 [13.14.7.2 NMAC – Rp, 13.14.7.2 NMAC, 1/1/2021]

**13.14.7.3 STATUTORY**  
**AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.  
 [13.14.7.3 NMAC – Rp, 13.14.7.3 NMAC, 1/1/2021]

**13.14.7.4 DURATION:**  
 Permanent.  
 [13.14.7.4 NMAC – Rp, 13.14.7.4 NMAC, 1/1/2021]

**13.14.7.5 EFFECTIVE**  
**DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
 [13.14.7.5 NMAC – Rp, 13.14.7.5 NMAC, 1/1/2021]

**13.14.7.6 OBJECTIVE:** The purpose of this rule is to establish requirements for loan policies.  
 [13.14.7.6 NMAC – Rp, 13.14.7.6 NMAC, 1/1/2021]

**13.14.7.7 DEFINITIONS:**  
 See 13.14.1 NMAC.  
 [13.14.7.7 NMAC – Rp, 13.14.7.7 NMAC, 1/1/2021]

**13.14.7.8 LOAN POLICIES:**

**A.** A loan policy 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(s), the policy shall be written in the amount of the value of such land or the amount of the loan(s) insured, whichever is less. When requested by an insured, a loan policy may be issued in an amount equal to the original principal amount of the indebtedness plus interest (capitalized or otherwise) not to exceed twenty percent of the principal amount.

**B.** A loan policy may insure liens on multiple tracts in the same manner as an owner’s policy.

**C.** A title insurer or title insurance agency issuing a loan policy shall deliver the new owner’s(s) NM form 9, containing all of the required information available at that time and shall ask the owner’s(s) to indicate whether an owner’s policy is declined. The title insurer or title insurance agency shall retain a copy of the completed NM form 9 with a copy of the loan policy for at least two years whenever an owner’s policy is declined.

**D.** Except as otherwise provided in these rules, NM form 63 is subject to the rules, premiums and charges applicable to loan policies. An insurer or agency may issue NM form 63:

**(1)** if the real property encumbered by the lien of the insured mortgage is one to four family residential property;

**(2)** if the loan secured by the lien of the insured mortgage is not a construction loan or a leasehold interest; and

**(3)** if all applicable premiums are charged for omitting the standard exceptions.

**E.** When an NM form 63 is issued, if required by these rules, or if the insurer does not consider the risk acceptable, schedule B affirmative insurance provisions may be removed or modified by including an exception in the schedule B addendum, and standard exceptions may be added.

**F.** Unless otherwise provided in these rules, a loan policy with a leasehold loan endorsement shall contain the same standard exceptions, be subject to the same premium and be subject to deletion of the same standard exceptions as a standard loan policy. A leasehold loan endorsement shall be attached to a loan policy to create a loan policy insuring a leasehold estate.

[13.14.7.8 NMAC – Rp, 13.14.7.8 NMAC, 1/1/2021]

**13.14.7.9 [RESERVED]**  
 [13.14.7.9 NMAC – Rn, 13 NMAC 14.7.9, 5/15/2000; A, 3/1/2002, Repealed, 1/1/2021]

**13.14.7.10 STANDARD EXCEPTIONS:** A loan policy shall contain standard exceptions 1 through 7 except as otherwise provided by these rules.

[13.14.7.10 NMAC – Rp, 13.14.7.10 NMAC, 1/1/2021]

**13.14.7.11 [RESERVED]**  
 [13.14.7.11 NMAC – Rn, 13 NMAC 14.7.9, 5/15/2000; A, 10/1/2012, Repealed, 1/1/2021]

**13.14.7.12 [RESERVED]**  
 [13.14.7.12 NMAC – Rn, 13 NMAC 14.7.12, 5/15/2000; A, 10/1/2012, Repealed, 1/1/2021]

**13.14.7.13 [RESERVED]**  
 [13.14.7.13 NMAC – Rn, 13 NMAC 14.7.13, 5/15/2000; A, 10/1/2012, Repealed, 1/1/2021]

**13.14.7.14 [RESERVED]**  
 [13.14.7.14 NMAC – Rn, 13 NMAC 14.7.14, 5/15/2000; A, 10/1/2012, A,

7/31/2014, A, 3/1/2016, Repealed, 1/1/2021]

**13.14.7.15 [RESERVED]**  
[13.14.7.15 NMAC – Rn, 13 NMAC 14.7.15, 5/15/2000; A, 10/1/2012, Repealed, 1/1/2021]

**13.14.7.16 POLICY INSURING A CONSTRUCTION LOAN - PENDING DISBURSEMENT CLAUSE:**

**A.** When a title insurer or agency issues a loan policy insuring a construction loan mortgage, the title insurer may require a specific pending disbursement clause. Such clause may be in the form directed by the title insurer, or it may be in the following form: “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 loan proceeds, the title shall be down dated for possible liens or objections intervening between the date hereof and the date of such disbursement.

**B.** At the time of each disbursement, NM form 22 may be issued showing any changes in title to the insured property and stating the total amount of the proceeds of the construction loan advanced by the lender at the date the endorsement is issued.

[13.14.7.16 NMAC – N, 1/1/2021]

**13.14.7.17 REPLACING LOAN POLICY UPON RECEIVERSHIP:** Issuance of a replacement loan policy shall be governed by the rules applicable to a replacement owner’s policy, except that a title insurer or agency shall accept as evidence either a replacement loan policy or a loan policy of an insurer under receivership, or a copy of the same, for purposes of providing any

applicable discount.  
13.14.7.17 NMAC – N, 1/1/2021]

**13.14.7.18 LIMITED PRE-FORECLOSURE TITLE INSURANCE POLICY:** NM form 41 and, if desired, NM form 42 may be issued upon receipt of an order in anticipation of the filing of an action to judicially foreclose a mortgage, or other lien or security instrument encumbering title, or to non-judicially foreclose a deed of trust. No commitment shall be issued in connection with the policy. The amount of coverage shall be equal to the unpaid principal indebtedness due under the lien or note secured by the security instrument to be foreclosed. The policy shall be furnished solely for the purpose of facilitating the foreclosure.

[13.14.7.18 NMAC – Rp, 13.14.7.22 NMAC, 1/1/2021]

**13.14.7.19 RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY:** A title insurer or title insurance agency may, issue NM form 45 if all of the following conditions exist:

- A.** the real property to be insured is one to four family residential property;
- B.** the real property is located within an approved and recorded subdivision;
- C.** the title insurance agency or title insurer has a complete copy of the loan policy issued to an insured senior lender before the commencement of the title search; and
- D.** the loan is less than or equal to \$125,000.

[13.14.7.19 NMAC – N, 1/1/2021]

**13.14.7.20 [RESERVED]**  
[13.14.7.20 NMAC - Rn, 13 NMAC 14.7.20, 5/15/2000; A, 3/1/2016, Repealed 1/1/2021]

**13.14.7.21 RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY:** A title insurer or title insurance agency may issue NM form 90 if all of the following conditions exist:

**A.** the amount of the policy shall not exceed the outstanding principal balance of the loan on the date of the policy;

**B.** the policy shall not increase the amount of coverage under the prior policy;

**C.** the real property to be insured is one to four family residential property; and

**D.** the title insurer or title insurance agent has a complete copy of the prior loan policy before the commencement of the title search.  
[13.14.7.21 NMAC – Rp, 13.14.7.27 NMAC, 1/1/2021]

**13.14.7.22 [RESERVED]**  
[13.14.7.22 NMAC - Rn, 13 NMAC 14.7.22, 5/15/2000; A, 7/1/2004; A, 9/15/2010; A, 3/1/2016; A, 7/1/2018, Repealed 1/1/2021]

**13.14.7.23 [RESERVED]**  
[13.14.7.23 NMAC - Rn, 13 NMAC 14.7.23, 5/15/2000, Repealed 1/1/2021]

**13.14.7.24 [RESERVED]**  
[13.14.7.24 NMAC - N, 7/1/2004; Repealed, 9/15/2009]

**13.14.7.25 [RESERVED]**  
[13.14.7.25 NMAC - N, 7/1/2004; A, 7/1/2005; Repealed, 9/15/2009]

**13.14.7.26 [RESERVED]**  
[13.14.7.26 NMAC - N, 9/15/2010; A, 10/1/2012; A, 3/1/2016, Repealed 1/1/2021]

**HISTORY OF 13.14.7 NMAC: Pre-NMAC History.**  
ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.  
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.  
SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

**History of Repealed Material.**  
13.14.7 NMAC, Loan, Leasehold Loan, and Construction Loan Policies, (filed 5/15/2000), was repealed and

replaced by 13.14.1 NMAC, Loan Policies effective 1/1/2021.

**Other History.**

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986) and renumbered, reformatted and replaced as 13 NMAC 14.7, Loan, Leasehold Loan, and Construction Loan Policies, effective 11/01/1996. 13 NMAC 14.7, Loan, Leasehold Loan, and Construction Loan Policies (filed 10/2/1996), was renumbered reformatted, amended and replaced by 13.14.7 NMAC, Loan, Leasehold Loan, and Construction Loan Policies, effective 5/15/2000, amended effective 7/31/2014. 13 NMAC 14.7, Loan, Leasehold Loan, and Construction Loan Policies effective 7/31/2014, amended effective 3/1/2016. 13.14.7 NMAC, Loan, Leasehold Loan, and Construction Loan Policies effective 3/1/2016, amended effective 7/1/2018. Justification: The purpose of the change is to make the rule consistent with the promulgated NM Form 2, Loan 13.14.7 NMAC, Loan, Leasehold Loan, and Construction Loan Policies, filed 5/15/2000, was repealed and replaced by 13.14.7 NMAC, Loan Policies, effective 1/1/2021.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 14 TITLE INSURANCE  
PART 8  
ENDORSEMENTS**

**13.14.8.1 ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”).  
[13.14.8.1 NMAC – Rp, 13.14.8.1 NMAC, 1/1/2021]

**13.14.8.2 SCOPE:** This rule applies to all title insurers, all title insurance agencies, and all title insurance agents conducting title insurance business in New Mexico.

[13.14.8.2 NMAC – Rp, 13.14.8.2 NMAC, 1/1/2021]

**13.14.8.3 STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.

[13.14.8.3 NMAC – Rp, 13.14.8.3 NMAC, 1/1/2021]

**13.14.8.4 DURATION:** Permanent.  
[13.14.8.4 NMAC – Rp, 13.14.8.4 NMAC, 1/1/2021]

**13.14.8.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
[13.14.8.5 NMAC – Rp, 13.14.8.5 NMAC, 1/1/2021]

**13.14.8.6 OBJECTIVE:** The purpose of this rule is to establish requirements for endorsements to title insurance policies.  
[13.14.8.6 NMAC – Rp, 13.14.8.6 NMAC, 1/1/2021]

**13.14.8.7 DEFINITIONS:** See 13.14.1 NMAC.  
[13.14.8.7 NMAC – Rp, 13.14.8.7 NMAC, 1/1/2021]

**13.14.8.8 USE OF CORRECTION/MULTIPURPOSE ENDORSEMENT:** NM form 11 may be used only as follows:  
**A.** to modify any promulgated form if the modification is authorized by these rules;  
**B.** to insert, delete or add to a commitment, policy or endorsement, language required or authorized by any of these rules when appropriate to do so; or  
**C.** to correct errors in the information inserted in the appropriate spaces of any preprinted commitment, policy or endorsement (but not to change, alter or waive the promulgated terms) in the following manner: “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.”] No other amendments are made by this endorsement.”  
[13.14.8.8 NMAC – Rp, 13.14.8.8 NMAC, 1/1/2021]

**13.14.8.9 [RESERVED]**  
[13.14.8.9 NMAC - Rn, 13 NMAC 14.8.9, 5/15/2000; A, 3/1/2002; Repealed 1/1/2021]

**13.14.8.10 [RESERVED]**  
[13.14.8.10 NMAC - Rn, 13 NMAC 14.8.11, 5/15/2000; A, 7/1/2006; A, 8/17/2009; Repealed 1/1/2021]

**13.14.8.11 IDENTIFIED RISK COVERAGE ENDORSEMENT:** NM form 85 may be attached to a policy only when authorized by order of the superintendent and subject to such terms, conditions and rate(s) specified by the superintendent.  
[13.14.8.11 NMAC – Rp, 13.14.8.12 NMAC, 1/1/2021]

**13.14.8.12 INSURING AROUND ENDORSEMENT:**  
**A.** NM form 43 may be attached to a policy to insure around a lien or other adverse matter excepted to in Schedule B if the title insurer has determined that the lien or other adverse matter does not pose a material risk under the policy.  
**B.** In lieu of attaching NM form 43, the exception to the lien or other adverse matter may be omitted from the policy provided the insured requests the omission, and the request and approval are documented or otherwise memorialized in writing.  
[13.14.8.12 NMAC – Rp, 13.14.8.13 NMAC, 1/1/2021]

**13.14.8.13 CO-INSURANCE ENDORSEMENTS:** NM form 77 or 77.1 shall be attached to a policy or policies to provide coordinated and proportionate coverage by two or more title insurers. Such coverage may be provided, either by endorsement attached to a single policy and executed by or on behalf of the co-insuring title insurers, or by the issuance of separate policies by or on

behalf of each of the co-insuring title insurers.

**A.** If only one policy is being issued, NM form 77 shall be attached.

**B.** If multiple policies are issued, NM form 77.1 shall be attached.

**C.** In either case, the aggregate premium charged for the policy shall be the same as would be charged for the single policy, with the split of the premium between the issuing title insurers to be in accord with the percentage or proportion of loss or cost for which each title insurer is liable under the policy or policies.

[13.14.8.13 NMAC – Rp, 13.14.8.14 NMAC, 1/1/2021]

**13.14.8.14 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:**

**A.** Upon being furnished with a satisfactory survey:

(1) NM form 50 and NM form 50.1 may be attached to a loan policy;

(2) NM form 56 and NM form 56.1 may be attached to an owner's policy covering unimproved land;

(3) NM form 57 and NM form 57.1 may be attached to an owner's policy covering improved land; and

(4) NM Forms 50, 50.1, 56, 56.1, 57, and 57.1 shall not be attached to policies issued on one to four family residential property.

**B.** Each endorsement is to be issued only in conjunction with the issuance of survey coverage pursuant to Subsection C of 13.14.5.12 NMAC.

**C.** Paragraph (3)(b) of NM form 50, Paragraph 4 of NM form 50.1, Paragraph (2) of NM form 56 and NM form 56.1, Paragraph (2) (b) of NM form 57, or Paragraph 3 of NM form 57.1, as appropriate, may be deleted if minerals rights have been severed and the insurer, in its discretion, deems the risk of such coverage to be acceptable.

[13.14.8.14 NMAC – Rp, 13.14.8.16 NMAC, 1/1/2021]

**13.14.8.15 LAND ABUTS STREET ENDORSEMENT:**

NM form 51 may be attached to a policy, upon being furnished with a satisfactory survey. This endorsement may not be attached to a policy that insures one to four family residential property.

[13.14.8.15 NMAC - Rp, 13.14.8.17 NMAC, 1/1/2021]

**13.14.8.16 LOCATION**

**ENDORSEMENT:** NM form 52 may be attached to a policy upon being furnished with a satisfactory survey. This endorsement may not be attached to a policy that insures one to four family residential property.

[13.14.8.16 NMAC - Rp, 13.14.8.18 NMAC, 1/1/2021]

**13.14.8.17 SAME AS SURVEY AND SAME AS PORTION OF SURVEY**

**ENDORSEMENTS:** NM form 78 or 79 may be attached to a policy upon being furnished with a satisfactory survey if the policy provides survey coverage. These endorsements may not be attached to a policy that insures one to four family residential property.

[13.14.8.17 NMAC - Rp, 13.14.8.19 NMAC, 1/1/2021]

**13.14.8.18 CONTIGUITY OF PARCELS ENDORSEMENTS:**

NM form 54 or 66 may be attached to a policy upon being furnished with a satisfactory survey. These endorsements may not be attached to a policy that insures one to four family residential property.

**A.** For an owner's policy, the insured shall, 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 a loan policy the insured lender shall, have a lien upon an interest (in fee, leasehold, or easement) on both parcels referred to in NM form 54, or on all parcels referred to in NM form 66.

[13.14.8.18 NMAC - Rp, 13.14.8.20 NMAC, 1/1/2021]

**13.14.8.19 FIRST LOSS**

**ENDORSEMENT:** NM form 58 may be attached to a loan policy. This endorsement may not be attached to a policy that insures one to four family residential property.

[13.14.8.19 NMAC - Rp, 13.14.8.21 NMAC, 1/1/2021]

**13.14.8.20 AGGREGATION**

**ENDORSEMENTS:** NM form 60 or NM form 60.1 may be attached to a loan policy. These endorsements may not be attached to a policy that insures one to four family residential property.

[13.14.8.20 NMAC – N, 1/1/2021]

**13.14.8.21 FOUNDATION**

**ENDORSEMENT:** NM form 61 may be attached to a loan policy upon being provided a satisfactory survey.

[13.14.8.21 NMAC - Rp, 13.14.8.24 NMAC, 1/1/2021]

**13.14.8.22 ASSIGNMENT OF RENTS OR LEASES**

**ENDORSEMENT:** NM form 62 may be attached to a loan policy. This endorsement may not be attached to a policy that insures one to four family residential property.

[13.14.8.22 NMAC - Rp, 13.14.8.25 NMAC, 1/1/2021]

**13.14.8.23 ZONING UNIMPROVED LAND**

**ENDORSEMENTS:** NM form 64 or NM form 64.1 may be attached to a policy. These endorsements shall not be attached to a policy that insures one to four family residential property.

[13.14.8.23 NMAC - Rp, 13.14.8.26 NMAC, 1/1/2021]

**13.14.8.24 ZONING - COMPLETED STRUCTURE ENDORSEMENT, ZONING - LAND UNDER DEVELOPMENT ENDORSEMENT, AND ZONING - COMPLETED STRUCTURE - NO APPLICABLE ZONING ORDINANCES ENDORSEMENT:** NM form 65, 65.1 or 65.2 may be

attached to a policy upon being furnished with a satisfactory survey.

**A.** These endorsements shall not be attached to a policy that insures one to four family residential property.

**B.** The coverage provided by any part of each endorsement may not be increased, but may be deleted.  
[13.14.8.24 NMAC - Rp, 13.14.8.27 NMAC, 1/1/2021]

**13.14.8.25 ACCESS AND ENTRY ENDORSEMENT:** NM form 67 may be attached to a policy upon being furnished a satisfactory survey. A separate endorsement shall be issued for each public street, road or highway for which the insured wants access and entry coverage, and a separate premium shall be paid for each endorsement issued.  
[13.14.8.25 NMAC - Rp, 13.14.8.28 NMAC, 1/1/2021]

**13.14.8.26 INDIRECT ACCESS AND ENTRY ENDORSEMENT:** NM form 68 may be attached to a policy upon being furnished a satisfactory survey. A separate endorsement shall be issued for each public street, road or highway for which the insured wants access and entry coverage, and a separate premium shall be paid for each endorsement issued.  
[13.14.8.26 NMAC - Rp, 13.14.8.29 NMAC, 1/1/2021]

**13.14.8.27 UTILITY ACCESS ENDORSEMENT:** NM form 69 may be attached to a policy upon satisfactory proof that the insured property has access to specified public utilities.  
[13.14.8.27 NMAC - Rp, 13.14.8.30 NMAC, 1/1/2021]

**13.14.8.28 COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT:** NM form 70 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.  
[13.14.8.28 NMAC - Rp, 13.14.8.31 NMAC, 1/1/2021]

**13.14.8.29 REVERSE MORTGAGE ENDORSEMENT:** NM form 71 may be attached to a loan policy that insures one to four family residential property.

**A.** The loan policy issued on a reverse mortgage may be issued in either the total amount of advances or one hundred-fifty percent of the total amount of advances as requested by the lender. Schedule B of the loan policy issued on a reverse mortgage shall contain the following special exception: "pending disbursement of the full proceeds of the loan secured by the mortgage or deed of trust set forth under schedule A hereof, this policy insures only to the extent of the amount actually disbursed but increases as each disbursement is made, in good faith, and without knowledge of any defect in or objections to, the title, up to the full amount of the policy."

**B.** The two mortgages filed on a HUD HECM reverse mortgage loan may be insured on one loan policy if the priority of the mortgages is disclosed when describing the mortgages being insured in schedule A. The bracketed language in Subsection F of Paragraph 4 of NM form 71 may be deleted from the endorsement with the approval of the title insurer if:

- (1) the risk is deemed acceptable; and
- (2) standard exception No. 4 from schedule B of the underlying loan policy has been deleted, at no additional premium. Otherwise, the brackets themselves shall be removed and the language of Subsection F of Paragraph 4 of NM form 71 shall be included in the endorsement.

[13.14.8.29 NMAC - Rp, 13.14.8.32 NMAC, 1/1/2021]

**13.14.8.30 SINGLE TAX PARCEL ENDORSEMENT:** NM form 72 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.  
[13.14.8.30 NMAC - Rp, 13.14.8.33 NMAC, 1/1/2021]

**13.14.8.31 MULTIPLE TAX PARCEL ENDORSEMENT:** NM form 73 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.  
[13.14.8.31 NMAC - Rp, 13.14.8.35 NMAC, 1/1/2021]

**13.14.8.32 DOING BUSINESS ENDORSEMENT:** NM form 74 may be attached to a loan policy. This endorsement shall not be attached to a policy that insures one to four family residential property.  
[13.14.8.32 NMAC - Rp, 13.14.8.35 NMAC, 1/1/2021]

**13.14.8.33 SUBDIVISION ENDORSEMENT:** NM form 75 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.  
[13.14.8.33 NMAC - Rp, 13.14.8.36 NMAC, 1/1/2021]

**13.14.8.34 EASEMENT - DAMAGE OR ENFORCED REMOVAL ENDORSEMENT:** NM form 76 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.  
[13.14.8.34 NMAC - Rp, 13.14.8.37 NMAC, 1/1/2021]

**13.14.8.35 [RESERVED]**  
[13.14.8.35 NMAC - N, 9/15/2010; Repealed, 1/1/2021]

**13.14.8.36 ENERGY PROJECT ENDORSEMENTS:** NM form 88, 88.1, 88.2, 88.3, 88.4, 88.5, 88.6, 88.7, or 88.8 may be attached to a policy, as applicable. These endorsements shall not be attached to a policy that insures one to four family residential property.  
[13.14.8.36 NMAC - Rp, 13.14.8.39 NMAC, 1/1/2021]

**13.14.8.37 MEZZANINE FINANCING ENDORSEMENT:** NM form 89 may be attached to an owner's policy. This endorsement shall not be attached to a policy that insures one to four family residential property.

[13.14.8.37 NMAC - Rp, 13.14.8.40 NMAC, 1/1/2021]

**13.14.8.38 [RESERVED]**

[13.14.8.38 NMAC - N, 9/15/2010; Repealed, 1/1/2021]

**13.14.8.39 [RESERVED]**

[13.14.8.39 NMAC - N, 3/1/2016; Repealed, 1/1/2021]

**13.14.8.40 [RESERVED]**

[13.14.8.40 NMAC - N, 3/1/2016; Repealed, 1/1/2021]

**13.14.8.41 [RESERVED]**

[13.14.8.41 NMAC - N, 7/1/2018; Repealed, 1/1/2021]

**13.14.8.42 CONDOMINIUM**

**ENDORSEMENTS:** NM form 12 and NM form 30 may be attached to a policy, as applicable. Paragraph 3 of NM form 30 may be deleted at the option of the title insurer.

[13.14.8.42 NMAC - N, 1/1/2021]

**13.14.8.43 PLANNED UNIT DEVELOPMENT**

**ENDORSEMENTS:** NM form 13 and NM form 13.1 may be attached to a policy, as applicable. Paragraph 1 of NM form 13 may be deleted at the option of the title insurer.

[13.14.8.43 NMAC - N, 1/1/2021]

**13.14.8.44 [RESERVED]**

[13.14.8.44 NMAC - N, 1/1/2021]

**13.14.8.45 DOWN DATE ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY JR 1:**

**A.** NM form 46 may be issued one or more times after issuance of NM form 45.

**B.** NM form 46 may not be issued more than one year after the date of policy stated in NM form 45.

**C.** Upon request of the named insured and the proper recording of all necessary documents meeting the title insurer's underwriting standards, the amount of the loan secured by the insured's

mortgage insurance previously stated in NM form 45 may be increased by adding a Paragraph D, which shall read as follows: "D. The amount of insurance of the policy is hereby amended to be \$\_\_\_\_," subject to the payment of the applicable premium, for the additional insurance.

[13.14.8.45 NMAC - N, 1/1/2021]

**13.14.8.46 [RESERVED]**

[13.14.8.46 NMAC - N, 1/1/2021]

**HISTORY OF 13.14.8 NMAC: Pre-NMAC History.**

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.

SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.

SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

**History of Repealed Material.**

13.14.8 NMAC, Endorsements, (filed 5/15/2000), was repealed and replaced by 13.14.1 NMAC, Endorsements effective 1/1/2021.

**Other History.**

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986) and renumbered, reformatted and replaced as 13 NMAC 14.8, Endorsements, effective 11/01/1996.

13 NMAC 14.8, Endorsements (filed 10/2/1996), was renumbered reformatted, amended and replaced by 13.14.8 NMAC, Endorsements, effective 5/15/2000, amended effective 7/31/2014.

NMAC Endorsements, effective 7/31/2014, amended effective 3/1/2016.

NMAC Endorsements, effective 3/1/2016, amended effective 7/1/2018.

**SUPERTINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 14 TITLE  
INSURANCE TITLE  
PART 9 GENERAL RATE  
PROVISIONS**

**13.14.9.1 ISSUING**

**AGENCY:** Office of Superintendent of Insurance ("OSI").

[13.14.9.1 NMAC - Rp, 13.14.9.1 NMAC, 1/1/2021]

**13.14.9.2 SCOPE:** This

rule applies to all title insurers, title insurance agencies, and title insurance agents conducting the business of title insurance in New Mexico.

[13.14.9.2 NMAC - Rp, 13.14.9.2 NMAC, 1/1/2021]

**13.14.9.3 STATUTORY**

**AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.

[13.14.9.3 NMAC - Rp, 13.14.9.3 NMAC, 1/1/2021]

**13.14.9.4 DURATION:**

Permanent.

[13.14.4 NMAC - Rp, 13.14.9.4 NMAC, 1/1/2021]

**13.14.9.5 EFFECTIVE**

**DATE:** January 1, 2021, unless a later date is cited at the end of a section.

[13.14.9.5 NMAC - Rp, 13.14.9.5 NMAC, 1/1/2021]

**13.14.9.6 OBJECTIVE:** To

establish matters related to the promulgation of title insurance rates and charges.

[13.14.9.6 NMAC - Rp, 13.14.9.6 NMAC, 1/1/2021]

**13.14.9.7 DEFINITIONS:**

See 13.14.1 NMAC.

[13.14.9.7 NMAC - Rp, 13.14.9.7 NMAC, 1/1/2021]

**13.14.9.8 SCHEDULE OF PREMIUM RATES:** The rates and



charges authorized by these rules shall be established by order of the superintendent in a title rate case conducted pursuant to Subsection A of Section 59A-30-8 NMSA 1978, or as amended or supplemented by order issued after a hearing conducted pursuant to Subsection B of Section 59A-30-8 NMSA 1978. All references to rates and charges shall mean the rates and charges established by the superintendent's order in the most recent rate hearing case, including any amending or supplementing order, in effect at the time the premium or charge is incurred. On his own motion, or at the request of an interested person, the superintendent may, at any time, conduct a formal or informal hearing to consider whether to promulgate a new or amended rate or charge.

[13.14.9.8 NMAC – Rp, 13.14.9.8 NMAC, 1/1/2021]

**13.14.9.9 COMBINATIONS OF CREDITS OR DISCOUNTS:**

No title insurer or title insurance agency shall grant more than one premium credit, reduction or discount for a single transaction, unless one original owner policy premium in the largest amount is charged; provided, however, that a simultaneous issue rate regulation may be combined with any appropriate single issue rate regulation.

[13.14.9.9 NMAC – Rp, 13.14.9.9 NMAC, 1/1/2021]

**13.14.9.10 PREMIUM RATES INCLUSIVE:**

The premium rates and charges established by the superintendent include all premiums for title insurance, examination of the title or titles to be insured, determining that each insured estate has been created, conveyed or modified as shown in the policy, and determining what exceptions, if any, to insert in or delete from the policies to be issued as provided in these rules. No other rates or charges may be charged for title insurance or title services.

[13.14.9.10 NMAC – Rp, 13.14.9.10 NMAC, 1/1/2021]

**13.14.9.11 PAYMENTS OF PREMIUM TO OTHERS:**

No portion, split or percentage of any premium shall be paid either directly or indirectly to any person, firm or organization for title insurance, title examination, or determining status of title as set forth above, except a division of premium between an insurer admitted to transact title insurance business in New Mexico and its New Mexico title insurance agency pursuant to their agency agreement, or between New Mexico title insurance agencies (or title insurance agencies who do not have agency agreements in a county where some of the property is located) who are cooperating to close a transaction involving New Mexico property situated in more than one county to be insured in a single policy when each title insurance agency or title insurer is rendering part of the services included in the premiums established in a title rate case. Any title insurance agency who has cancelled its agency agreement or had its agency agreement cancelled by an underwriter may prepare endorsements to existing policies then in force at the time of cancellation upon request by the insured and approval by the underwriter. Any such endorsement shall be signed by an officer of the underwriter. The premium for any such endorsement shall be collected by the cancelled title insurance agent and divided according to the controlling promulgated rates at the time of issuance of the endorsement(s). The payment or receipt of referral fees by or between title insurers or agencies and any person is prohibited.

[13.14.9.11 NMAC – Rp, 13.14.9.11 NMAC, 1/1/2021]

**13.14.9.12 REBATES AND UNAUTHORIZED DISCOUNTS:**

A title insurance agency or title insurer shall charge the applicable rates and charges for each transaction and shall not offer or grant a credit, discount or rebate that is not authorized.

[13.14.9.12 NMAC – Rp, 13.14.9.12 NMAC, 1/1/2021]

**13.14.9.13 ROUNDING TO THE NEAREST DOLLAR:**

All premiums charged for title insurance policies, endorsements, or commitments shall be rounded to the nearest dollar after all necessary computations have been performed. Fifty cents or more shall be rounded up; 49 cents or less shall be rounded down.

[13.14.9.13 NMAC – Rp, 13.14.9.13 NMAC, 1/1/2021]

**13.14.9.14 FRACTIONAL THOUSAND DOLLARS OF LIABILITY:**

To compute any premium, a \$1,000 fraction of coverage shall be calculated as a full \$1,000.

[13.14.9.14 NMAC – Rp, 13.14.9.14 NMAC, 1/1/2021]

**13.14.9.15 NON-DISCRIMINATION IN AUTHORIZED DISCOUNTS:**

A title insurance agency or title insurer shall charge premiums rates, charges and fees on a non-discriminatory basis for like risks and like insureds.

[13.14.9.15 NMAC – Rp, 13.14.9.15 NMAC, 1/1/2021]

**13.14.9.16 ADDITIONAL CHARGES:**

Whenever the search or examination conducted for the issuance of a policy involves either an extra chain of title or other unusual complexity, fees shall be charged for each additional chain of title pertaining to platted tracts and for each tract of unusual complexity of search and examination. If the separate values for each tract are not apportioned in the policy, their values for the purposes of this section shall be in the same proportions as their areas bear to the entire area insured.

[13.14.9.16 NMAC – Rp, 13.14.9.16 NMAC, 1/1/2021]

**13.14.9.17 CANCELLATION FOR NON-PAYMENT OF PREMIUM:**

In the event that all premium due is not paid in full within 15 days of the issuance of any policy or endorsement, the title insurer shall cancel the policy or endorsement. The title insurer shall mail the insured(s)

and lender notice of the cancellation by certified mail, return receipt requested, to the last known address, and by first class mail. Cancellation shall be effective 10 days after mailing notice to the insured. A title insurance agency shall promptly notify the title insurer of the non-receipt of premiums within the period specified herein.

[13.14.9.17 NMAC – Rp, 13.14.9.17 NMAC, 1/1/2021]

**13.14.9.18 [RESERVED]**

[13.14.9.18 NMAC – 13.14.9.18 NMAC - Rn, 13 NMAC 14.9.8.11 & A, 5/15/2000; A, 5/31/2000; A, 8/1/2000; A, 3/1/2002; A, 7/1/2003; A, 7/1/2004; A, 7/1/2005; A, 7/1/2006; A, 9/1/2007; A, 7/1/2008; A, 8/1/2009; A, 10/1/2012; A, 8/15/2014; A/E, 7/1/2018; A, 12/27/2018; Repealed 1/1/2021]

**13.14.9.19 NON-POLICY CHARGES:**

**A.** A charge shall be collected for the initial six months and for each additional six-month renewal or extension (or portion thereof) of a commitment. If a new version of a commitment is issued to correct an error by the title insurer or agency, the new version shall be issued at no charge.

**B.** If the transaction fails to close and no policy is issued, the title insurer or agency shall charge a cancellation fee.

**C.** The charge for a pro forma policy shall be established in a title rate case. If a pro forma is issued to correct an error by the issuing title insurer or agency, the corrected version shall be issued at no charge. [13.14.9.19 NMAC – Rp, 13.14.9.19 NMAC, 1/1/2021]

**3.14.9.20 ORIGINAL OWNER'S POLICY SINGLE**

**ISSUE RATES:** Original owner's policies not issued simultaneously with another policy or policies and not as a reissue of an owner's policy shall be issued at the basic premium rate according to the schedule in effect as of the date of the policy.

[13.14.9.20 NMAC – Rp, 13.14.9.20 NMAC, 1/1/2021]

**13.14.9.21 ORIGINAL POLICY INSURING LEASEHOLD ESTATE SINGLE**

**ISSUE RATES:** Original policies insuring a leasehold estate, not issued simultaneously with another policy and not as a reissue of a policy insuring a leasehold estate, shall be charged at the basic premium rate according to the schedule in effect as of the date of the policy. Original policies insuring a leasehold estate which are reissues of original owner's policies, including a policy pertaining to a sale and leaseback transaction, shall qualify for the reissue rate.

[13.14.9.21 NMAC – Rp, 13.14.9.21 NMAC, 1/1/2021]

**13.14.9.22 ORIGINAL**

**LOAN POLICY RATES:** Premiums for an original loan policy shall be determined in a title rate case.

[13.14.9.22 NMAC – Rp, 13.14.9.22 NMAC, 1/1/2021]

**13.14.9.23 [RESERVED]**

[13.14.9.23 NMAC – 13.14.9.23 NMAC - Rn, 13 NMAC 14.9.10.4, 5/15/2000; Repealed 1/1/2021]

**13.14.9.24 ABSTRACT**

**RETIREMENT CREDIT:** When the applicant for an owner's policy transfers, at the time of application for the policy, to the title insurance agency or title insurer ownership of the abstract of title covering all or part of the premises to be insured, a credit shall be determined based on a percentage of the appropriate premium for the owner's policy.

[13.14.9.24 NMAC – Rp, 13.14.9.24 NMAC, 1/1/2021]

**13.14.9.25 [RESERVED]**

[13.14.9.25 NMAC – 13.14.9.25 NMAC - Rn, 13 NMAC 14.9.10.6, 5/15/2000; Repealed 1/1/2021]

**13.14.9.26 REPLACEMENT**

**POLICY RATE:** When a title insurer is placed in receivership, and a replacement title insurance policy is issued by a title insurance agency,

the title insurance agency's division of premium shall be computed in accordance with the current division ordered by the superintendent. If a title insurer issues the policy directly, the title insurer shall retain the full premium.

[13.14.9.26 NMAC – Rp, 13.14.9.26 NMAC, 1/1/2021]

**13.14.9.27 [RESERVED]**

[13.14.9.27 NMAC – Rp, 13.14.9.27 NMAC, 1/1/2021]

**13.14.9.28 LIMITED PRE-FORECLOSURE TITLE INSURANCE POLICY AND DOWNDATE ENDORSEMENT:**

The premium for NM form 41 and 42 shall be established in a title rate case. If an NM 41 form is issued and an owner's policy is issued following completion of the foreclosure, the owner's policy shall qualify for a reissue rate ordered by the superintendent in a title rate case. All liability insured above the amount of the foreclosure title insurance policy for a new owner's policy must be computed at the basic premium rates in the applicable bracket. If an NM form 41 is issued and if the foreclosure is not completed or is terminated by reinstatement of the pertinent security instrument, and a new owner's policy is issued to a new purchaser within one year of the date of the NM form 41, a percentage of the premium paid for the NM form 41 shall be credited toward the new owner's policy premium as established by the superintendent in a title rate case.

[13.14.9.28 NMAC – Rp, 13.14.9.28 NMAC, 1/1/2021]

**13.14.9.29 [RESERVED]**

[13.14.9.29 NMAC – 13.14.9.29 NMAC - Rn, 13 NMAC 14.9.10.10, 5/15/2000; Repealed 1/1/2021]

**13.14.9.30 [RESERVED]**

[13.14.9.30 NMAC – 13.14.9.30 NMAC - Rn, 13 NMAC 14.9.11.1, 5/15/2000; Repealed 1/1/2021]

**13.14.9.31 [RESERVED]**

[13.14.9.31 NMAC – 13.14.9.31

NMAC - Rn, 13 NMAC 14.9.11.2, 5/15/2000; Repealed 1/1/2021]

**13.14.9.32 SIMULTANEOUS ISSUE MULTIPLE OWNER'S POLICIES ON SAME LAND:**

When two or more owner's policies, including leasehold owner's policies, covering the same land are:

**A.** issued simultaneously to different insureds, the applicable owner's rate shall apply to the policy in the largest amount; or

**B.** issued to different insureds where a policy is issued in one transaction and one or more policies are issued within 30 days in a subsequent transaction or transactions, provided,

- (1) each transaction covers identical land;
- (2) all conveyances relating to the land to be insured in the subsequent transaction(s) are recorded no more than 30 days after the conveyances of the first transaction are recorded and all policies are issued by the same title insurer or title insurance agency no later than 30 days after the first transaction; and

(3) an owner's policy is issued insuring the interest of each and every owner created by the subsequent transaction(s), the premium for the first policy shall be the applicable owner's rate in effect as of the date of the first policy. If any subsequently issued policy exceeds the amount of insurance written in the first policy, the premium for the difference must be computed at the basic premium rates by brackets. [13.14.9.32 NMAC – Rp, 13.14.9.32 NMAC, 1/1/2021]

**13.14.9.33 [RESERVED]**  
[13.14.9.33 NMAC – 13.14.9.33 NMAC - Rn, 13 NMAC 14.9.11.4, 5/15/2000; Repealed 1/1/2021]

**13.14.9.34 [RESERVED]**  
[13.14.9.34 NMAC – Rp, 13.14.9.34 NMAC, 1/1/2021]

**13.14.9.35 [RESERVED]**  
[13.14.9.35 NMAC – 13.14.9.35 NMAC - Rn, 13 NMAC 14.9.12.1,

5/15/2000; A, 3/1/2002; Repealed 1/1/2021]

**13.14.9.36 SECOND MORTGAGES OR SUBSEQUENT ISSUES:**

The premium for a loan policy insuring any mortgage granted by the owner of property subsequent to the original date of his owner's policy shall be determined by the superintendent in a title rate case. In no event shall the premium collected be less than the regular minimum promulgated rate for an owner's policy.

[13.14.9.36 NMAC – Rp, 13.14.9.36 NMAC, 1/1/2021]

**13.14.9.37 COMPUTATION OF RATES WHEN INSURED PROPERTY IS NOT IDENTICAL:**

When only a portion of the land previously insured is being insured by a reissue owner's policy or by a subsequent issue loan policy, or when the land previously insured is only a portion of the land being insured by a reissue owner's policy or by a subsequent issue loan policy, the rates shall be adjusted in proportion to the areas insured in the original policy and the current policy. For example, if the original policy insured one acre and the current policy insures three acres, the reissue rates will apply to one-third of the current value up to the face amount of the original policy; but, if the situation is reversed, the reissue rates will only apply up to one-third of the face amount of the original policy. In no event shall the reissue rates be applied to allow more than 100% of the face amount of the original policy to be used cumulatively in the computation of reissue rates.

[13.14.9.37 NMAC – Rp, 13.14.9.37 NMAC, 1/1/2021]

**13.14.9.38 COMPUTATION OF RATES UPON CONVERSION OF LEASEHOLD OWNER'S POLICY TO STANDARD OWNER'S POLICY:**

When a leasehold owner's policy is converted to a standard owner's policy and more insurance is desired or required under the standard owner's policy

than was written in the leasehold owner's policy, the difference must be computed at the basic premium rates in the applicable bracket or brackets in the same manner as excess liability is computed.

[13.14.9.38 NMAC – Rp, 13.14.9.38 NMAC, 1/1/2021]

**13.14.9.39 SUBSTITUTION RATE ON LOANS TO TAKE UP, RENEW, EXTEND OR SATISFY AN EXISTING INSURED LOAN:**

**A.** For purpose of the premium discount on refinanced property pursuant to Section 59A-30-6.1 NMSA 1978, the term "same borrower" in Section 59A-30-6.1 NMSA 1978 shall have the same meaning as "insured" as defined in Paragraph 1 (D) of the conditions set forth in NM form 1.

**B.** The term "same property" in Section 59A-30-6.1 NMSA 1978 shall mean the identical property or any portion thereof. The reduction in rate pursuant to Section 59A-30-6.1 NMSA 1978 shall not apply in any case where any additional property not covered by the original policy or policies is included in the policy to be issued.

**C.** If two or more previous loan policies insuring different properties are presented to the title insurance agency or title insurer for a refinance discount pursuant to Section 59A-30-6.1 NMSA 1978, and provided that the new policy will contain the same properties as shown in said previous policies, the discount will be computed as follows: title insurance agency or title insurer shall base the discount on the date of issue of the oldest previous policy and upon a liability amount equal to the sum of the liability amounts of the previous policies. In no event shall the premium collected be less than the regular minimum promulgated rate for an owner's policy.

**D.** This rule, may be applied in connection with the issuance of a series of mortgage policies issued by reason of noted being apportioned to individual units in connection with a master policy

covering the aggregate indebtedness, including improvements. Individual loan policies must be issued at the original first loan single issue rate. [13.14.9.39 NMAC – Rp, 13.14.9.39 NMAC, 1/1/2021]

**13.14.9.40 INSURING CONSTRUCTION LOANS AND DELETING STANDARD EXCEPTION 4 IN LOAN POLICIES:**

**A.** A loan policy may be issued to insure a construction loan mortgage if the loan policy contains the following two-year claims made limitation: “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).”

**B.** A construction loan policy or a loan policy containing the two-year claims made limitations pursuant to Subsection A of this section may be extended beyond its initial two-year term for additional premium.

**C.** The issuance of a construction loan policy, or a standard loan policy with a two-year claims made limitation, may not be used as the basis for claiming a credit or discount on a refinanced property premium pursuant to Section 59A-30-6.1, NMSA 1978; a subsequent issue, or a substitution issue loan. [13.14.9.40 NMAC – Rp, 13.14.9.40 NMAC, 1/1/2021]

**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 title insurance agency or title insurer that maintains a title insurance 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 title insurance agency or direct operation in such county for such policy to be remitted to the title 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 title insurance agency or direct operation and provided to the issuing company. The issuing company shall provide each title insurance agency or direct operation with a complete copy of the final policy which shall be maintained in accordance with underwriter and regulatory requirements. Each title insurance 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 a title insurer to issue what is commonly referred to as home office issued policies.

[13.14.9.41 NMAC – Rp, 13.14.9.41 NMAC, 1/1/2021]

**13.14.9.42 [RESERVED]**

[13.14.9.42 NMAC – N, 3/1/2016; A, 7/1/2018; Repealed 1/1/2021]

**HISTORY OF 13.14.9 NMAC:**

**Pre-NMAC History.**

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.

SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.

SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

**History of Repealed Material.**

13.14.9 NMAC- General Rate Provisions, filed 6/16/1986 was repealed and replaced by 13.14.9 NMAC – General Rate Provisions, effective 1/1/2021.

**Other History.**

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986) and renumbered, reformatted and replaced as 13 NMAC 14.9, General Rate Provisions, effective 11/01/1996. 13 NMAC 14.9, General Rate Provisions (filed 10/2/1996), was renumbered, reformatted, amended and replaced by 13.14.9 NMAC, General Rate Provisions, effective 5/15/2000, amended effective 8/15/2014.

13.14.9 NMAC, General Rate Provisions, effective 8/15/2014, amended effective, 3/1/2016.

13.14.9 NMAC, General Rate Provisions, effective 3/1/2016, amended effective, 7/1/2018.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

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

**13.14.16.1**

**ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”). [13.14.16.1 NMAC – Rp, 13.14.16.1 NMAC, 1/1/2021]

**13.14.16.2**

**SCOPE:** This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting title insurance business in New Mexico. [13.14.16.2 NMAC – Rp, 13.14.16.2 NMAC, 1/1/2021]

**13.14.16.3 STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.  
 [13.14.16.3 NMAC – Rp, 13.14.16.3 NMAC, 1/1/2021]

**13.14.16.4 DURATION:** Permanent.  
 [13.14.16.4 NMAC – Rp, 13.14.16.4 NMAC, 1/1/2021]

**13.14.16.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
 [13.14.16.5 NMAC – Rp, 13.14.16.5 NMAC, 1/1/2021]

**13.14.16.6 OBJECTIVE:** The purpose of this rule is to provide forms and rules for preparing the required agency statistical report.  
 [13.14.16.6 NMAC – Rp, 13.14.16.6 NMAC, 1/1/2021]

**13.14.16.7 DEFINITIONS:** See 13.14.1 NMAC.  
 [13.14.16.7 NMAC – Rp, 13.14.16.7 NMAC, 1/1/2021]

**13.14.16.8 AGENCY STATISTICAL REPORT:** Every agency shall report income and expenses annually on both county-by-county and summary-of-all counties bases. The agency shall use the agency statistical report form set forth in this rule, Agency Statistical Report, and instructions published by OSI. The superintendent shall annually issue an order to fix the date and location for the filing of each agency statistical report for the calendar year and shall notify each agency of the date at least sixty days prior to the filing deadline; provided, however, that in no event shall an agency be required to file its statistical report prior to May 15th of the year following the end of the calendar year being reported. Each agency shall maintain such minimum basic records on each New Mexico transaction as shall be necessary to accurately report such transactions.  
 [13.14.16.8 NMAC – Rp, 13.14.16.8 NMAC, 1/1/2021]

**13.14.16.9 SCHEDULE A - STATEMENT OF INCOME AND EXPENSES:**

NEW MEXICO TITLE INSURANCE AGENCY STATISTICAL REPORT SCHEDULE A - STATEMENT OF INCOME AND EXPENSES For the Calendar Year Ending December 31, 20__.		
<b>AGENCY NAME</b>		
<b>LICENSE NUMBER</b>		
<b>ADDRESS</b>		
<b>CONTACT NAME</b>		
<b>Check one:</b>		
<input type="checkbox"/>	INDEPENDENT (NON-AFFILIATED)	Title insurance agencies that are independently owned and write title insurance business for one or more title insurers.
<input type="checkbox"/>	AFFILIATED	Title insurance agencies with 10% or greater ownership by a title insurer, including wholly-owned agencies.
<input type="checkbox"/>	DIRECT	Agency-type operations performed by the home or branch office of a title insurer. This does NOT include wholly-owned agencies.
<b>Part A: Revenue</b>		
1.	Title insurance written premiums (from Schedule B)	
2.	Less: Remitted title insurance premiums (from Schedule B)	
3.	Retained title insurance premiums (from Schedule B)	
4.	Other income (from Schedule C)	
5.	Total Revenue	
<b>Part B: Expenses</b>		
1.	Employees' salaries and wages	
2.	Owners' and partners' salaries and wages	
3.	Employee benefits	

4.	Rent	
5.	Insurance	
6.	Legal expense	
7.	Licenses, taxes and fees	
8.	Title plant expense and maintenance	
9.	Office supplies	
10.	Depreciation	
11.	Automobile expense	
12.	Communication expense	
13.	Education expense	
14.	Bad debts	
15.	Interest expense	
16.	Employee travel and lodging	
17.	Loss and loss adjustment expense (from Schedule D)	
18.	Accounting and auditing expense	
19.	Public relations expense	
20.	Other expenses (from Schedule E)	
21.	Total Expenses	
<b>Part C: Net Income for Ratemaking Purposes</b>		
1.	Income (Loss) from Operations	
<b>Part D: Excluded Expenses</b>		
1.	NMLTA lobbying expense	
2.	Direct lobbying expense	
3.	Political contributions	
4.	State and federal income tax expense	
5.	½ of meals and entertainment expense	
6.	Penalties	
7.	Country club dues	
8.	Salaries in excess of salary cap	
9.	Other excluded expenses (from Schedule E)	
10.	Total Excluded Expenses	
<b>Part E: Net Income</b>		
1.	Net income as reported on the books of the agency	
<b>Part F: Equity</b>		
1.	Total equity as reported on balance sheet of the agency	
<b>Part G: Number of Employees</b>		
1.	Total number of employees	

[13.14.16.9 NMAC – Rp, 13.14.16.9 NMAC, 1/1/2021]

**13.14.16.10 SCHEDULE B - PREMIUMS BY INSURER:**

<p><b>NEW MEXICO TITLE INSURANCE AGENCY STATISTICAL REPORT</b>  <b>SCHEDULE B - PREMIUMS BY INSURER</b>                  For the Calendar Year Ending December 31, 20__.</p>			
Name of each insurer for which this agency charged premiums	Title premiums written by this agency	Title premiums remitted or owed by this agency to insurers	Title premiums retained by this agency



**13.14.16.12 SCHEDULE D - LOSSES AND LOSS ADJUSTMENT EXPENSES:**

<p><b>NEW MEXICO TITLE INSURANCE AGENCY STATISTICAL REPORT</b>  <b>SCHEDULE D - LOSSES AND LOSS ADJUSTMENT EXPENSES</b>                  For the Calendar Year Ending December 31, 20__.</p>	
<b>Description of Expense Item</b>	
1.	Closing Losses
2.	Agency Errors
3.	Unfair Trade Practices
4.	Loss Adjustment Expenses
5.	Insurance Premiums (Itemize)
Total (Carry forward to Schedule A, line B-17)	

[13.14.16.12 NMAC – Rp, 13.14.16.12 NMAC, 1/1/2021]

**13.14.16.13 SCHEDULE E - IDENTIFICATION OF OTHER EXPENSES:**

<p><b>NEW MEXICO TITLE INSURANCE AGENCY STATISTICAL REPORT</b>  <b>SCHEDULE E - IDENTIFICATION OF OTHER EXPENSES</b>                  For the Calendar Year Ending December 31, 20__.</p>		
<b>Part A - Deductible Expenses</b>		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
Total (Carry forward to Schedule A, line B-20)		0
<b>Part B - Excluded Expenses</b>		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		



13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
<b>Total</b> (Carry forward to Schedule A, line D-9)		0

[13.14.16.13 NMAC – Rp, 13.14.16.13 NMAC, 1/1/2021]

**13.14.16.14 [RESERVED]**

[13.14.16.14 NMAC - Rp, 13.14.16.14 NMAC, 7/1/2006; Repealed, 09/15/2010]

**13.14.16.15 SCHEDULE F - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATES:**

<b>NEW MEXICO TITLE INSURANCE AGENCY STATISTICAL REPORT</b>				
<b>SCHEDULE F - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATES</b>				
For the Calendar Year Ending December 31, 20__.				
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Name and Address of Affiliate</b>	<b>Relation to Your Agency</b>	<b>Amount</b>	<b>Description Code</b>	<b>Reported Elsewhere in this Report?</b>
<b>Total</b>		0		

Description	Code
Income	I
Expense Allocation	E

[13.14.16.15 NMAC – Rp, 13.14.16.15 NMAC, 1/1/2021]

**13.14.16.16 SCHEDULE G - PREMIUMS BY COUNTY:**

<b>NEW MEXICO TITLE INSURANCE AGENCY STATISTICAL REPORT</b>	
<b>SCHEDULE G - PREMIUMS BY COUNTY</b>	
For the Calendar Year Ending December 31, 20__.	
<b>COUNTY</b>	<b>TITLE PREMIUMS WRITTEN</b>
Bernalillo	
Catron	
Chaves	
Cibola	
Colfax	
Curry	
De Baca	



<b>TOTAL</b>		

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

[13.14.16.17 NMAC – Rp, 13.14.16.17 NMAC, 1/1/2021]

**HISTORY OF 13.14.16 NMAC:**

**Pre-NMAC History.**

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.  
 SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.  
 SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

**History of Repealed Material.**

13.14.16 NMAC, Agent’s Experience Report (filed 4/28/2000) repealed 7/1/2005.  
 13.14.16 NMAC, Agent’s Experience Report (filed 6/01/2005) repealed 7/1/2006.  
 13.14.16 NMAC- Agent’s Statistical Report, filed 7/1/2006 was repealed and replaced by 13.14.16 NMAC – Agency’s Statistical Report, effective 1/1/2021.

**Other History.**

That applicable portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986) was replaced by 13 NMAC 14.3 Subpart C, Agent’s Experience Report, effective 11/01/1996.  
 13 NMAC 14.3 Subpart C, Agent’s Experience Report (filed 10/2/1996) was renumbered and replaced by 13.14.16 NMAC, Agent’s Experience Report, effective 5/15/2000.  
 13.14.16 NMAC, Agent’s Experience Report (filed 4/28/2000); replaced by 13.14.16 NMAC, Agent’s Statistical Report, effective 7/1/2005.  
 13.14.16 NMAC, Agent’s Experience Report (filed 6/01/2005); replaced by 13.14.16 NMAC, Agent’s Statistical Report, effective 7/1/2006.  
 13.14.16 NMAC, Agent’s Experience Report, effective 7/1/2006, amended effective, 3/1/2016.

**TITLE 13 INSURANCE**  
**CHAPTER 14 TITLE INSURANCE**  
**PART 17 INSURER’S STATISTICAL REPORT**

**13.14.17.1 ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”).  
 [13.14.17.1 NMAC – Rp, 13.14.17.1 NMAC, 1/1/2021]

**13.14.17.2 SCOPE:** This rule applies to all title insurers, title insurance agents, and title insurance agents conducting title insurance business in New Mexico.  
 [13.14.17.2 NMAC – Rp, 13.14.17.2 NMAC, 1/1/2021]

**13.14.17.3 STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.  
 [13.14.17.3 NMAC – Rp, 13.14.17.3 NMAC, 1/1/2021]

**13.14.17.4 DURATION:** Permanent.  
 [13.14.17.4 NMAC – Rp, 13.14.17.4 NMAC, 1/1/2021]

**13.14.17.5 EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.  
 [13.14.17.5 NMAC – Rp, 13.14.17.5 NMAC, 1/1/2021]

**13.14.17.6 OBJECTIVE:** The purpose of this rule is to provide forms and rules for preparing the required insurer statistical report.  
 [13.14.17.6 NMAC – Rp, 13.14.17.6 NMAC, 1/1/2021]

**13.14.17.7 DEFINITIONS:** See 13.14.1 NMAC.  
 [13.14.17.7 NMAC – Rp, 13.14.17.7 NMAC, 1/1/2021]

**13.14.17.8 ANNUAL STATISTICAL REPORT REQUIRED:** Every title insurer shall report income and expenses annually on both county-by-county and summary-of-all counties bases. The title insurer shall use the statistical report form set forth in this rule, insurer statistical report, and instructions published by OSI. The superintendent shall annually issue an order to fix the date and location for the filing of each insurer statistical report for the calendar year and shall notify each title insurer of the date at least 60 days prior to the filing deadline; provided, however, that in no event shall a title insurer be required to file its statistical report prior to May 15th of the year following the end of the calendar year being reported. Each insurer shall maintain such minimum basic records on each New Mexico transaction as shall be necessary to accurately report such transactions.  
 [13.14.17.8 NMAC – Rp, 13.14.17.8 NMAC, 1/1/2021]

**13.14.17.9 FORM 1 - STATEMENT OF INCOME AND EXPENSES:**

NEW MEXICO TITLE INSURER STATISTICAL REPORT FORM 1 - STATEMENT OF INCOME AND EXPENSES For the Calendar Year Ending December 31, 20____ NEW MEXICO EXPERIENCE ONLY							
<b>Insurer</b>							
<b>NAIC Code</b>							
		Direct Operations	Non-Affiliated Agency Operations	Affiliated Agency Operations	Total	NAIC Annual Statement Schedule T	Difference
<b>Part A - Revenue</b>							
1	Direct written premiums				0		0
2	Direct written premiums retained by agency				0		
3	Direct written premiums remitted to insurer	0	0	0	0		
4	Escrow and settlement service charges				0		
5	Other title fees and service charges				0		
6	Total other income	0	0	0	0		0

7	<b>Total revenue</b>	0	0	0	0		
For an insurer that charges rates below the promulgated rates:						From Form 3	Difference
8	Direct premiums as if they had been written at promulgated rates				0	0	0
<b>Part B - Expenses</b>							
Line 1 as defined per NAIC annual statement, STATEMENT OF INCOME exhibit. Lines 2 through 22 as defined per NAIC annual statement, EXPENSES exhibit. All entries should show NEW MEXICO expenses only and should NOT include direct charges from direct operations.							
1	Losses and loss adjustment expenses incurred				0		
2	Total personnel costs				0		
3	Total production services purchased outside				0		
4	Advertising				0		
5	Boards, bureaus, and associations				0		
6	Title plant rent and maintenance				0		
7	Claim adjustment services				0		
8	Amounts charged off, net of recoveries				0		
9	Marketing and promotional expenses				0		
10	Insurance				0		
11	Directors' fees				0		
12	Travel and travel items				0		
13	Rent and rent items				0		
14	Equipment				0		
15	Cost or depreciation of EDP equipment and software				0		
16	Printing, stationery, books, and periodicals				0		

17	Postage, telephone, messenger, and express delivery				0		
18	Legal and auditing				0		
19	Total taxes, licenses, and fees				0		
20	Real estate expenses				0		
21	Real estate taxes				0		
22	Aggregate write-ins for miscellaneous expenses				0		
23	<b>Total Expenses</b>	0	0	0	0		
<b>Part C - Net Income</b>							
1	Income (Loss)	0	0	0	0		

[13.14.17.9 NMAC – Rp, 13.14.17.9 NMAC, 1/1/2021]

**13.14.17.10 [RESERVED]**

**13.14.17.11 FORM 2 - RESERVES, INVESTMENT GAIN, AND SURPLUS:**

<p><b>NEW MEXICO TITLE INSURER STATISTICAL REPORT</b>  <b>FORM 2 - RESERVES, INVESTMENT GAIN, AND SURPLUS</b>                  For the Calendar Year Ending December 31, 20__  <b>COUNTRYWIDE EXPERIENCE</b></p>		
<b>Insurer</b>		
		<b>Countrywide</b>
1	Known claims reserve	
2	Statutory premium reserve	
3	Aggregate of other reserves required by law	
4	Supplemental reserve	
5	Total reserves	0
6	Net investment income earned	
7	Net realized capital gains (losses)	
8	Total net investment gain	0
9	Federal and foreign income taxes incurred	
10	Surplus as regards policyholders	

[13.14.17.11 NMAC – Rp, 13.14.17.11 NMAC, 1/1/2021]

13.14.17.12 FORM 3 - TRANSACTION REPORT:

NEW MEXICO TITLE INSURER STATISTICAL REPORT FORM 3 - TRANSACTION REPORT For the Calendar Year Ending December 31, 20__ NEW MEXICO EXPERIENCE ONLY							
Insurer							For an Insurer That Charges or Rates Below the Promulgated Rates
NM Form No.	Transaction Code	Transaction Type	No. of Transactions	Direct Premiums Written	Dependent on Basic Premium Rate?	Direct Premiums As If They Had Been Written at Promulgated Rates	
none	0004	Loan Policy - Mechanic's Lien Coverage With Evidence of Priority			No		
none	0005	Loan Policy - Mechanic's Lien Coverage Without Evidence of Priority			Yes		
none	0006	Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired			No		
none	0007	Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired			Yes		
none	0008	Survey Coverage – Owner's Policy			Yes		
none	0009	Survey Coverage - Loan Policy			No		
none	0010	Pro Forma Policy - Owner			No		
none	0011	Pro Forma Policy – Loan			No		
none	0012	Duplicate Original Policy			No		
1	0101	Owner's Policy			Yes		
1	0102	Owner's Policy - With Bulk Rate			Yes		
1	0103	Simultaneous Issue - Multiple Owners on Same Land			Yes		
1	0104	Replacement Owner's Policy			Yes		
1	0105	Owner's Policy After Foreclosure -Completed Foreclosure			Yes		
1	0106	Owner's Policy After Foreclosure -Terminated Foreclosure			Yes		
1	0110	Owner's Policy - Reissue (10% Discount)			Yes		
1	0115	Owner's Policy - Reissue (15% Discount)			Yes		
1	0120	Owner's Policy - Reissue (20% Discount)			Yes		

1	0125	Owner's Policy - Reissue (25% Discount)			Yes	
2	0201	Loan Policy - Single Issue			Yes	
2	0202	Loan Policy - Simultaneous Issue with Owner's Policy			No	
2	0203	Loan Policy - Second Mortgage or Subsequent Issue			Yes	
2	0204	Replacement Loan Policy			Yes	
2	0205	Loan Policy with Two-Year Claims Made Limitation			No	
2	0206	Loan Policy with Two-Year Claims Made Limitation Extension			No	
2	0240	Loan Policy - Substitution and Statutory Rate (within 3 years - 40%)			Yes	
2	0250	Loan Policy - Substitution and Statutory Rate (more than 3 years, less than 5 years - 50%)			Yes	
2	0260	Loan Policy - Substitution and Statutory Rate (more than 5 years, less than 10 years - 60%)			Yes	
2	0280	Loan Policy - Substitution and Statutory Rate (more than 10 years, less than 20 years - 80%)			Yes	
6	0600	Commitment for Title Insurance			No	
11	1104	Correction/Multipurpose Endorsement			No	
11	1105	Renewal, Extension & Partial Release Endorsement			No	
11	1106	Extension of Commitment			No	
11	1108	Increase in Coverage			Yes	
12	1200	Condominium Endorsement - All Assessments (ALTA 4-06)			No	
13	1300	Planned Unit Development Endorsement - All Assessments (ALTA 5-06)			No	
13.1	1301	Planned Unit Development Endorsement - Unpaid Assessments (ALTA 5.1-06)			No	
14	1400	Variable Rate Mortgage Endorsement (ALTA 6-06)			No	
15	1500	Variable Rate Mortgage Endorsement - Negative Amortization (ALTA 6.2-06)			No	
16	1600	Manufactured Housing Unit Endorsement (ALTA 7-06)			No	
16.1	1601	Manufactured Housing Unit (Conversion Loan) Endorsement (ALTA 7.1-06)			No	



16.2	1602	Manufactured Housing Unit (Conversion Owner's) Endorsement (ALTA 7.2-06)			No	
17	1700	Revolving Credit Endorsement			No	
20	2000	Leasehold – Owner's Endorsement (ALTA 13-06)			No	
21	2100	Leasehold Loan Endorsement (ALTA 13.1-06)			No	
22	2200	Pending Disbursement Down Date Endorsement			No	
23	2300	Pending Improvements Endorsement			No	
24	2400	Assignment Endorsement (ALTA 10-06)			No	
24.1	2401	Assignment and Down Date Endorsement (ALTA 10.1-06)			No	
25	2500	Additional Advance Endorsement			No	
26	2600	Partial Coverage Endorsement			No	
28	2800	Non-Imputation - Full Equity Transfer Endorsement (ALTA 15-06)			Yes	
28.1	2801	Non-Imputation – Additional Interest Endorsement (ALTA 15.1-06)			Yes	
28.2	2802	Non-Imputation – Partial Equity Transfer Endorsement (ALTA 15.2-06)			Yes	
29	2900	Environmental Protection Lien Endorsement (ALTA 8.1-06)			No	
30	3000	Condominium Endorsement Unpaid Assessments (ALTA 4.1-06)			No	
31	3100	Owner's Leasehold Conversion Endorsement			Yes	
33	3300	Change of Name Endorsement			No	
34	3400	U.S. Policy (ALTA 12-03-12)			Yes	
41	4100	Limited Pre-Foreclosure Title Insurance Policy (ALTA 12-03-12)			Yes	
42	4200	Limited Pre-Foreclosure Title Insurance Policy Down Date Endorsement (ALTA 12-03-12)			No	
43	4300	Insuring Around Endorsement			No	
44	4400	Revolving Credit -Increased Credit Limit Endorsement			No	
45	4500	Residential Limited Coverage Junior Loan Policy ALTA (Rev. 08-01-12)			No	

46	4600	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy JR1 (ALTA 08-01-12)			No	
47	4700	Endorsement to Residential Limited Coverage Junior Loan Policy JR2 (ALTA 08-01-12)			No	
50	5000	Restrictions, Encroachments and Minerals Endorsement - Loan Policy (ALTA 9-06)			Yes	
50.1	5001	Restrictions Encroachments, Minerals – Loan Policy Endorsement (ALTA 9.3-06)			Yes	
51	5100	Land Abuts Street Endorsement			No	
52	5200	Location Endorsement (ALTA 22-06)			No	
54	5400	Contiguity Single Parcel Endorsement (ALTA 19.1-06)			No	
55	5500	Named Insured Endorsement			No	
56	5600	Restrictions, Encroachments, Minerals– Owner’s Policy (Unimproved Land) Endorsement (ALTA 9.1-06)			Yes	
56.1	5601	Restrictions, Encroachments, Minerals – Owner’s Policy – (Unimproved Land) Endorsement (ALTA 9.4-06)			Yes	
57	5700	Restrictions, Encroachments, Minerals – Owner’s Policy (Improved Land) Endorsement (ALTA 9.2-06)			Yes	
57.1	5701	Restrictions, Encroachments, and Minerals (Owner’s Policy -Improved Land) Endorsement (ALTA 9.5-06)			Yes	
58	5800	First Loss - Multiple Parcel Transactions Endorsement (ALTA 20-06)			No	
60	6000	Aggregation Endorsement (ALTA 12-06)			No	
60.1	6001	Aggregation Endorsement (ALTA 12.1-06)			No	
61	6100	Foundation Endorsement			No	
62	6200	Assignment of Rents or Leases Endorsement (ALTA 37-06)			No	
63	6300	Short Form Residential Loan Policy			Yes	
64	6400	Zoning - Unimproved Land Endorsement (ALTA 3-06)			Yes	

64.1	6401	Zoning – Unimproved Land - No Applicable Zoning Ordinances Endorsement			Yes	
65	6500	Zoning - Completed Structure Endorsement (ALTA 3.1-06)			Yes	
65.1	6501	Zoning – Land Under Development Endorsement (ALTA 3.2-06)			Yes	
65.2	6502	Zoning- Completed Structure - No Applicable Zoning Ordinances Endorsement			Yes	
66	6600	Contiguity - Multiple Parcels Endorsement (ALTA 19-06)			No	
67	6700	Access and Entry Endorsement (ALTA 17 - 06)			No	
68	6800	Indirect Access and Entry Endorsement (ALTA 17.1-06)			No	
69	6900	Utility Access Endorsement (ALTA 17.2-06)			No	
70	7000	Commercial Environmental Protection Lien Endorsement (ALTA 8.2-06)			No	
71	7100	Reverse Mortgage Endorsement (ALTA 14.3-06)			No	
72	7200	Single Tax Parcel Endorsement (ALTA 18-06)			No	
73	7300	Multiple Tax Parcel Endorsement (ALTA 18.1-06)			No	
74	7400	Doing Business Endorsement (ALTA 24-06)			No	
75	7500	Subdivision Endorsement (ALTA 26-06)			No	
76	7600	Easement - Damage or Enforced Removal Endorsement (ALTA 28-06)			No	
77	7700	Co-Insurance - Single Policy Endorsement (ALTA 23-06)			No	
78	7800	Same as Survey Endorsement (ALTA 25-06)			No	
79	7900	Same as Portion of Survey Endorsement (ALTA 25.1-06)			No	
80	8000	Mortgage Modification Endorsement (ALTA 11-06)			No	
80.1	8001	Mortgage Modification With Subordination Endorsement (ALTA 11.1-06)			No	
80.2	8002	Mortgage Modification With Additional Amount of Title Insurance Endorsement (ALTA 11.2-06)			Yes	

83	8300	Construction Loan –Endorsement (ALTA 32.0-06)			No	
83.1	8301	Construction Loan – Direct Payment Endorsement (ALTA 32.1-06)			No	
83.2	8302	Construction Loan – Insured’s Direct Payment Endorsement (ALTA 32.2-06)			No	
84	8400	Disbursement Endorsement (ALTA 33-06)			No	
85	8500	Identified Risk Coverage Endorsement			No	
88	8800	Energy Project Leasehold/ Easement - Owner’s Endorsement (ALTA 36-06)			Yes	
88.1	8801	Energy Project Leasehold/ Easement - Loan Endorsement (ALTA 36.1-06)			Yes	
88.2	8802	Energy Project - Leasehold - Owner’s Endorsement (ALTA 36.2-06)			Yes	
88.3	8803	Energy Project - Leasehold - Loan Endorsement (ALTA 36.3-06)			Yes	
88.4	8804	Energy Project Covenants, Conditions & Restrictions - Land under Development - Owner’s Endorsement (ALTA 36.4-06)			Yes	
88.5	8805	Energy Project Covenants, Conditions & Restrictions - Land Under Development - Loan Endorsement (ALTA 36.5-06)			Yes	
88.6	8806	Energy Project - Encroachments Endorsement (ALTA 36.6-06)			Yes	
88.7	8807	Energy Project - Fee Estate - Owner’s Policy Endorsement (ALTA 36.7-06)			Yes	
88.8	8808	Energy Project - Fee Estate - Loan Policy Endorsement (ALTA 36.8-06)			Yes	
89	8900	Mezzanine Financing Endorsement (ALTA 16-06)			No	
90	9000	Residential Limited Coverage Modification of Mortgage Policy			Yes	
91	9100	Contract Purchaser Conversion Endorsement			Yes	

<b>TOTAL:</b>				
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Crosscheck with Form 1:	
Difference:	

Explanation for Difference (if any):	
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[13.14.17.12 NMAC – Rp, 13.14.17.12 NMAC, 1/1/2021]

**13.14.17.13 FORM 4 - PREMIUM DISTRIBUTION BY LIABILITY RANGE:**

<p><b>NEW MEXICO TITLE INSURER STATISTICAL REPORT</b>  <b>FORM 4 - PREMIUM DISTRIBUTION BY LIABILITY RANGE</b>                  For the Calendar Year Ending December 31, 20__  <b>NEW MEXICO EXPERIENCE ONLY</b>  <b>TRANSACTIONS THAT ARE DEPENDENT ON THE BASIC PREMIUM RATE</b></p> <p>Note: Include all transactions listed as “Yes” in the “Dependent on Basic Premium Rate?” column of Form 3</p>			
--	--	--	--

Insurance Company	Liability Range (\$000)		Number of transactions	Direct written premium
	More than	But no more than		
	0	5		
	5	10		
	10	20		
	20	30		
	30	40		
	40	50		
	50	60		
	60	70		
	70	80		
	80	90		
	90	100		
	100	200		
	200	300		
	300	400		
	400	500		
	500	1,000		
	1,000	2,000		
	2,000	3,000		
	3,000	4,000		
	4,000	5,000		
	5,000	10,000		
	10,000	15,000		
	15,000	25,000		
	25,000	50,000		
	50,000	75,000		
	75,000	100,000		
	Over 100,000			
	ALL		0	0

Crosscheck with Form 3:	
Difference	

Explanation for Difference (if any):	
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[13.14.17.13 NMAC – Rp, 13.14.17.13 NMAC, 1/1/2021]

13.14.17.14 FORM 5 - DIRECT PAID LOSS DEVELOPMENT:

**NEW MEXICO TITLE INSURER STATISTICAL REPORT**  
**FORM 5 - DIRECT PAID LOSS DEVELOPMENT**  
 For the Calendar Year Ending December 31, 20\_\_\_\_  
**NEW MEXICO EXPERIENCE ONLY**

Insurance Company												
Years in which policies were written	CUMULATIVE PAID LOSSES AND ALLOCATED LOSS ADJUSTMENT EXPENSES AT YEAR END (000 OMITTED)										Number of claims closed with loss payment	Number of claims closed without loss payment
	Latest PY-9	Latest PY-8	Latest PY-7	Latest PY-6	Latest PY-5	Latest PY-4	Latest PY-3	Latest PY-2	Latest PY-1	Latest PY		
Prior												
Latest PY-19												
Latest PY-18												
Latest PY-17												
Latest PY-16												
Latest PY-15												
Latest PY-14												
Latest PY-13												
Latest PY-12												
Latest PY-11												
Latest PY-10												
Latest PY-9												
Latest PY-8												
Latest PY-7												
Latest PY-6												
Latest PY-5												
Latest PY-4												
Latest PY-3												



Latest PY-13												
Latest PY-12												
Latest PY-11												
Latest PY-10												
Latest PY-9												
Latest PY-8												
Latest PY-7												
Latest PY-6												
Latest PY-5												
Latest PY-4												
Latest PY-3												
Latest PY-2												
Latest PY-1												
Latest PY												

Note: Use the same reporting instructions as for schedule P, part 2B of the NAIC annual statement, except that loss and ALAE should be **direct of reinsurance** and should be **New Mexico** claims only.

	Latest PY-1	Latest PY
Total	0	0
Increase in reserves during Latest PY		0
Total payments during Latest PY		0
Case incurred loss during Latest PY		0
New Mexico direct losses incurred as shown on NAIC Annual Statement Schedule T		
Difference		0

Explanation for Difference (if any)

[13.14.17.15 NMAC – Rp, 13.14.17.15 NMAC, 1/1/2021]



**HISTORY OF 13.14.17 NMAC:  
Pre-NMAC History. None.**

**History of Repealed Material.**

13.14.17 NMAC, Underwriter’s Experience Report (filed 4/28/2000) repealed 7/1/2005.

13.14.17 NMAC, Underwriter’s Experience Report (filed 6/1/2005) repealed 7/1/2006.

**NMAC History.**

13 NMAC 14.3 Subpart D, Underwriter’s Experience Report, effective 7/1/1997.

13 NMAC 14.3 Subpart D, Underwriter’s Experience Report (filed 5/30/1997) was renumbered, reformatted and replaced by 13.14.17 NMAC, Underwriter’s Experience Report, effective 5/15/2000.

13.14.17 NMAC, Underwriter’s Experience Report (filed 4/28/2000) was replaced by 13.14.17 NMAC, Underwriter’s Statistical Report, effective 7/1/2005.

13.14.17 NMAC, Underwriter’s Experience Report (filed 6/1/2005) was replaced by 13.14.17 NMAC, Underwriter’s Statistical Report, effective 7/1/2006.

13.14.17 NMAC, Underwriter’s Statistical Report amended effective 7/31/2014.

13.14.17 NMAC, Underwriter’s Statistical Report amended effective 3/1/2016.

13.14.17 NMAC, Underwriter’s Statistical Report (filed 7/1/2006) was replaced by 13.14.17 NMAC, Insurer’s Statistical Report, effective 1/1/2021.

**SUPERINTENDENT OF  
INSURANCE, OFFICE OF**

<b>TITLE 13</b>	<b>INSURANCE</b>
<b>CHAPTER 14</b>	<b>TITLE</b>
<b>INSURANCE</b>	
<b>PART 18</b>	<b>FORMS</b>

**13.14.18.1**

**ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”). [13.14.18.1 NMAC – Rp, 13.14.18.1 NMAC, 1/1/2021]

**13.14.18.2 SCOPE:** This rule applies to all title insurers, title agencies, and title insurance agents conducting title insurance business in New Mexico.

[13.14.18.2 NMAC – Rp, 13.14.18.2 NMAC, 1/1/2021]

**13.14.18.3 STATUTORY**

**AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.

[13.14.18.3 NMAC – Rp, 13.14.18.3 NMAC, 1/1/2021]

**13.14.18.4 DURATION:**

Permanent.

[13.14.18.4 NMAC – Rp, 13.14.18.4 NMAC, 1/1/2021]

**13.14.18.5**

**EFFECTIVE DATE:** January 1, 2021, unless a later date is cited at the end of a section.

[13.14.18.5 NMAC – Rp, 13.14.18.5 NMAC, 1/1/2021]

**13.14.18.6 OBJECTIVE:**

The purpose of this rule is provide conditions and restrictions regarding the use of promulgated forms.

[13.14.18.6 NMAC – Rp, 13.14.18.6 NMAC, 1/1/2021]

**13.14.18.7 DEFINITIONS:**

See 13.14.1 NMAC.

[13.14.18.7 NMAC – Rp, 13.14.18.7 NMAC, 1/1/2021]

**13.14.18.8 PROMULGATED**

**FORMS:** For purposes of Section 59A-30-5 NMSA 1978, the superintendent shall promulgate title insurance forms by order after conducting a hearing pursuant to 13.1.5 NMAC or 13.1.6 NMAC, as the circumstances require. On his own motion, or at the request of an interested person, the superintendent may, at any time, conduct a hearing to consider whether to promulgate a new form, to revoke a previously promulgated form, or to modify a previously promulgated form.

**A.** A title insurer or title insurance agency shall not use any new promulgated form unless:

(1) the superintendent promulgates a rate for the form, if the order promulgating the form states that a rate is required to issue the form;

(2) the superintendent has promulgated a rule for the form, if the order promulgating the form states that use of the form is contingent on promulgating a rule; and

(3) the title insurer has provided to its title insurance agencies underwriting guidelines, compliant with these rules, to govern the use of the form.

**B.** A title insurer or title insurance agency shall not use any modified or replacement form unless:

(1) the superintendent determines that the existing rate and rule, if applicable, for the form applies to the modified or replacement form, or the superintendent has promulgated a new rate and rule, if applicable, for the modified or replacement form; and

(2) the title insurer has provided to its title insurance agencies underwriting guidelines, compliant with these rules, to govern the use of the form.

(3) A title insurer shall only issue forms that match in all substantive respects the promulgated forms authorized by these rules.

[13.14.18.8 NMAC – Rp, 13.14.18.8 NMAC, 1/1/2021]

**13.14.18.9 ALTERATION OF FORMS PROHIBITED; EXCEPTIONS; AND LETTERS OF INTERPRETATION OR WAIVER THAT CHANGE THE TERMS, 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, whether by deletion or omission of terms, except:

(1) upon a determination by the superintendent following a hearing pursuant to 13.1.5 or 13.1.6 NMAC, as applicable, that the same be proper; or

(2) in a manner specifically authorized by these regulations.

**B.** Factual information required to identify and describe the risk being undertaken may be inserted in an authorized form. This includes, but is not limited to, 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, any matter constituting a requirement prior to issuance of a policy, may be inserted in the proper places in the various forms, provided that other information necessary to complete each form is inserted in the form prior to its issuance.

**C.** Additions to language in the promulgated form, if required to correctly identify and describe the risk being undertaken may be inserted in an authorized form. Any such modification must be approved by:

(1) Legal counsel for the insured; or

(2) An authorized representative of the insured in a transaction that does not involve one to four family residential property.

**D.** Nothing in this rule shall prevent a title insurer from:

(1) adding blanks, spaces, labels or brief instructions to the promulgated forms; 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 verbatim in each form, 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 rules.

**E.** Nothing in these rules prohibits use of translated 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."

**F.** 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 Section 59A-30-4 NMSA 1978, and title insurance rule 13.14.18.9 NMAC, no part of any title insurance commitment, policy or endorsement form promulgated by the New Mexico superintendent of insurance may be added to, altered, inserted in or typed upon, deleted or otherwise changed from the title insurance 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, except as authorized by law."

**G.** No title insurer or title insurance agency shall 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 shall any such person 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 a title insurer 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: "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."

[13.14.18.9 NMAC – Rp, 13.14.18.9 NMAC, 1/1/2021]

**13.14.18.10 ADDITIONAL AFFIRMATIVE COVERAGES:**

In a commitment issued for a loan policy, but not with respect to any other type of commitment or policy:

**A.** The following language may be added to each covenant, deed, or other recorded restriction exception: "Violations of this restriction (or these restrictions), if any, and any future violation thereof shall not cause a forfeiture or reversion of title and will not affect the validity or priority of the lien of the mortgage herein insured. This assurance does not extend to restriction(s) relating to environmental protection unless a notice of a violation thereof has been recorded or filed in the public records and is not referenced in Schedule B. However, this policy insures that any violation of this restriction (or these restrictions) relating to environmental protection shall not cause a forfeiture or reversion of title and will not affect the validity or priority of the lien of the mortgage insured herein."

**B.** When protrusions, encroachments or overlaps into or upon easements, rights-of-way,

adjacent property, the property to be insured, or building set-back lines (as described in restrictive covenants or plats filed of record) are revealed by a survey, the following paragraph may be added as a separate specific exception: "Encroachment (protrusion or overlap) of the improvements over (on, onto, in, into or upon) the (here describe the easement, right-of-way, adjacent property, the land to be insured, or building set-back line) as shown on a survey prepared by \_\_\_\_\_ dated \_\_\_\_\_. This policy insures against loss or damage as defined in this policy by reason of the entry of any final decree entered in a court of competent jurisdiction and of last resort ordering the removal of said improvements presently situate on the land which constitute the (protrusion, overlap or encroachment)." This affirmative coverage language may also be inserted into the NM form 61.

[13.14.18.10 NMAC – Rp,  
13.14.18.10 NMAC, 1/1/2021]

**13.14.18.11 PRINTING OF FORMS:** Each title insurance form shall contain the headings and form designations included on the promulgated form.

[13.14.18.11 NMAC – Rp,  
13.14.18.12 NMAC, 1/1/2021]

**13.14.18.12 [RESERVED]**

[13.14.18.12 NMAC – Rp,  
13.14.18.12 NMAC, 3/1/2016;  
Repealed 1/1/2021]

**13.14.18.13 [RESERVED]**

[13.14.18.13 NMAC - Rp,  
13.14.18.13 NMAC, 3/1/2016; A,  
7/1/2018; Repealed 1/1/2021]

**HISTORY OF 13.14.18 NMAC:  
Pre-NMAC History.**

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.

SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.

SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

**History of Repealed Material.**

13.14.18 NMAC, Forms, filed 5/9/1986 - Repealed effective 3/1/2016 and replaced with 13.14.18 NMAC, Forms, effective 3/1/2016.

**Other History.**

Re-promulgated portions of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986), was renumbered, reformatted, amended and replaced as 13 NMAC 14.2, Forms Provisions; 13 NMAC 14.2.A, Miscellaneous Forms; 13 NMAC 14.6.A, NM Form 1, Owner's Policy; 13 NMAC 14.6.B, NM Form 4, Leasehold Owner's Policy; 13 NMAC 14.6.C, NM Form 7, US Policy, ALTA 1963; 13 NMAC 14.6.D, NM Form 34, US Policy, ALTA 1991; 13 NMAC 14.7.A, NM Form 2, Loan Policy; 13 NMAC 14.7.B, NM Form 3, Construction Loan Policy; 13 NMAC 14.7.C, NM Form 5, Leasehold Loan Policy; 13 NMAC 14.7.D, NM Form 36, Limited Title Search Policy; 13 NMAC 14.7.E, NM Form 41, Foreclosure Guarantee Policy; 13 NMAC 14.7.F, NM Form 45, Residential Limited Coverage Junior Loan Policy; 13 NMAC 14.8.A, Endorsement Forms; effective 11/01/1996. 13 NMAC 14.2, Forms Provisions (filed 10/2/1996); 13 NMAC 14.2.A, Miscellaneous Forms (filed 10/2/1996); 13 NMAC 14.6.A, NM Form 1, Owner's Policy (filed 10/2/1996); 13 NMAC 14.6.B, NM Form 4, Leasehold Owner's Policy (filed 10/2/1996); 13 NMAC 14.6.C, NM Form 7, US Policy, ALTA 1963 (filed 10/2/1996); 13 NMAC 14.6.D, NM Form 34, US Policy, ALTA 1991 (filed 10/2/1996); 13 NMAC 14.7.A, NM Form 2, Loan Policy (filed 10/2/1996); 13 NMAC 14.7.B, NM Form 3, Construction Loan Policy (filed 10/2/1996); 13 NMAC 14.7.C, NM Form 5, Leasehold Loan Policy (filed 10/2/1996); 13 NMAC 14.7.D, NM Form 36, Limited Title Search Policy (filed 10/2/1996); 13 NMAC 14.7.E, NM Form 41, Foreclosure Guarantee Policy (filed 10/2/1996); 13 NMAC 14.7.F, NM Form 45, Residential Limited Coverage Junior Loan Policy (filed 10/2/1996); and

13 NMAC 14.8.A, Endorsement Forms (filed 10/2/1996) were all renumbered, reformatted, amended and replaced by 13.14.18 NMAC, Forms, effective 5/15/2000, amended effective 7/31/2014.

13.14.18 NMAC, Forms, filed 3/1/2016, was repealed and replaced by 13.14.18 NMAC, Forms, effective 1/1/2021.

**WORKFORCE SOLUTIONS DEPARTMENT**

**This is an amendment to 11.1.2 NMAC Sections 20 and 21 to be effective 1/1/2021.**

**11.1.2.20 PREVAILING WAGE AND FRINGE BENEFIT AND APPRENTICESHIP CONTRIBUTION RATES:**

Pursuant to 11.1.2.13 NMAC, the director of the labor relations division of the department of workforce solutions hereby publishes the proposed 2020 prevailing wage and fringe benefit rates and apprenticeship contributions that will apply to all wage rate decisions issued from January 1, [2020] 2021 through December 31, [2020] 2021.

**Continued Next Page**

<b>A. TYPE A: STREET, HIGHWAY, UTILITY AND LIGHT ENGINEERING</b>			
<b>Trade Classification</b>	<b>Base Rate</b>	<b>Fringe Rate</b>	<b>Apprenticeship</b>
<b>Bricklayer / block layer/ stonemason</b>	24.46	8.81	
<b>Carpenter / lather</b>	[24.63] <u>25.63</u>	[11.24] <u>11.74</u>	
<b>Carpenter – Los Alamos County</b>	[27.80] <u>28.37</u>	[13.19] <u>13.44</u>	
<b>Cement mason</b>	17.42	6.81	
<b>Ironworker</b>	[27.00] <u>27.35</u>	[15.75] <u>17.49</u>	
<b>Painter - Commercial</b>	[17.00] <u>17.25</u>	[6.88] <u>7.75</u>	
<b>Plumber / pipefitter</b>	[30.76] <u>31.52</u>	[11.62] <u>12.90</u>	
<b>Electricians - outside classifications: Zone 1</b>			
Ground man	[23.27] <u>23.74</u>	[12.67] <u>13.16</u>	
Equipment operator	[33.39] <u>34.06</u>	[15.35] <u>15.94</u>	
Lineman / technician	[39.28] <u>40.07</u>	[16.91] <u>17.57</u>	
Cable splicer	[43.21] <u>44.08</u>	[17.95] <u>18.65</u>	
<b>Electricians - outside classifications: Zone 2</b>			
Ground man	[23.27] <u>23.74</u>	[12.67] <u>13.16</u>	
Equipment operator	[33.39] <u>34.06</u>	[15.35] <u>15.94</u>	
Lineman/ technician	[39.28] <u>40.07</u>	[16.91] <u>17.57</u>	
Cable splicer	[43.21] <u>44.08</u>	[17.95] <u>18.65</u>	
<b>Electricians – outside classifications: Los Alamos</b>			
Ground man	[23.94] <u>24.42</u>	[12.85] <u>13.34</u>	
Equipment Operator	[34.35] <u>35.04</u>	[15.60] <u>16.21</u>	
Lineman/Technician	[40.41] <u>41.22</u>	[17.21] <u>17.88</u>	
Cable Splicer	[44.45] <u>45.34</u>	[18.28] <u>18.99</u>	
<b>Laborers</b>			
Group I	12.26	6.22	
Group II	12.56	6.22	
Group III	12.96	6.22	
Group IV	13.21	6.22	
<b>Operators</b>			
Group I	[18.79] <u>19.15</u>	[6.34] <u>6.54</u>	
Group II	[19.72] <u>20.11</u>	[6.34] <u>6.54</u>	
Group III	[19.82] <u>20.21</u>	[6.34] <u>6.54</u>	
Group IV	[19.93] <u>20.33</u>	[6.34] <u>6.54</u>	
Group V	[20.03] <u>20.43</u>	[6.34] <u>6.54</u>	
Group VI	[20.21] <u>20.62</u>	[6.34] <u>6.54</u>	
Group VII	[20.37] <u>20.78</u>	[6.34] <u>6.54</u>	
Group VIII	[20.66] <u>21.08</u>	[6.34] <u>6.54</u>	

Group IX	[28.16] <u>28.80</u>	[6.34] <u>6.54</u>	
Group X	[31.41] <u>32.15</u>	[6.34] <u>6.54</u>	
<b>Truck drivers</b>			
Group I - IX	[16.45] <u>16.67</u>	[7.87] <u>8.27</u>	
<b>B. TYPE B: GENERAL BUILDING</b>			
<b>Trade Classification</b>	<b>Base Rate</b>	<b>Fringe Rate</b>	<b>Apprenticeship</b>
<b>Asbestos workers/heat &amp; frost insulators</b>	[32.26] <u>33.01</u>	12.06	.60
<b>Asbestos workers/heat &amp; frost insulators: Los Alamos County</b>	[34.69] <u>35.44</u>	12.06	.60
<b>Boilermaker / blacksmith</b>	34.97	28.85	.60
<b>Bricklayer / block layer / stonemason</b>	[24.46] <u>24.97</u>	[8.81] <u>9.50</u>	.60
<b>Carpenter / lather</b>	[24.63] <u>25.63</u>	[11.24] <u>11.74</u>	.60
<b>Carpenter – Los Alamos County</b>	[27.80] <u>28.37</u>	[13.19] <u>13.44</u>	.60
<b>Millwright / pile driver</b>	33.16	[25.24] <u>27.24</u>	.60
<b>Cement mason</b>	21.07	10.33	.60
<b>Electricians - outside classifications: Zone 1</b>			
Ground man	[23.27] <u>23.74</u>	[12.67] <u>13.16</u>	.60
Equipment operator	[33.39] <u>34.06</u>	[15.35] <u>15.94</u>	.60
Lineman/ technician	[39.28] <u>40.07</u>	[16.91] <u>17.57</u>	.60
Cable splicer	[43.21] <u>44.08</u>	[17.95] <u>18.65</u>	.60
<b>Electricians - outside classifications : Zone 2</b>			
Ground man	[23.27] <u>23.74</u>	[12.67] <u>13.16</u>	.60
Equipment operator	[33.39] <u>34.06</u>	[15.35] <u>15.94</u>	.60
Lineman / technician	[39.28] <u>40.07</u>	[16.91] <u>17.57</u>	.60
Cable splicer	[43.21] <u>44.08</u>	[17.95] <u>18.65</u>	.60
<b>Electricians – outside classifications: Los Alamos</b>			
Ground man	[23.94] <u>24.42</u>	[12.85] <u>13.34</u>	.60
Equipment operator	[34.35] <u>35.04</u>	[15.60] <u>16.21</u>	.60
Lineman / technician	[40.41] <u>41.22</u>	[17.21] <u>17.88</u>	.60
Cable splicer	[44.45] <u>45.34</u>	[18.28] <u>18.99</u>	.60
<b>Electricians - inside classifications: Zone 1</b>			
Wireman / low voltage technician	[32.70] <u>33.65</u>	[11.18] <u>12.01</u>	.60
Cable splicer	[35.97] <u>37.02</u>	[11.28] <u>12.11</u>	.60
<b>Electricians - inside classifications: Zone 2</b>			
Wireman / low voltage technician	[35.64] <u>36.68</u>	[11.27] <u>12.10</u>	.60
Cable splicer	[38.91] <u>40.04</u>	[11.37] <u>12.20</u>	.60
<b>Electricians - inside classifications: Zone 3</b>			
Wireman / low voltage technician	[37.61] <u>38.70</u>	[11.33] <u>12.16</u>	.60
Cable splicer	[40.88] <u>42.06</u>	[11.43] <u>12.26</u>	.60
<b>Electricians - inside classifications: Zone 4</b>			
Wireman / low voltage technician	[41.20] <u>42.40</u>	[11.44] <u>12.27</u>	.60
Cable splicer	[44.47] <u>45.75</u>	[11.53] <u>12.37</u>	.60
<b>Electricians - inside classifications: Los Alamos</b>			
Wireman / low voltage technician	[37.61] <u>38.70</u>	[13.21] <u>14.09</u>	.60
Cable splicer	[40.88] <u>42.06</u>	[13.47] <u>14.36</u>	.60
<b>Elevator constructor</b>	[43.80] <u>43.25</u>	[35.25] <u>36.37</u>	.60
<b>Elevator constructor helper</b>	[35.04] <u>36.19</u>	[35.25] <u>36.37</u>	.60
<b>Glazier</b>			
Journeyman / Fabricator	[20.25] <u>20.50</u>	[5.35] <u>6.20</u>	.60
Delivery driver	9.00	5.35	.60
<b>Ironworker</b>	[27.00] <u>27.35</u>	[15.75] <u>17.49</u>	.60
<b>Painter (brush/roller/spray)</b>	[17.00] <u>17.25</u>	[6.88] <u>7.75</u>	.60
<b>Paper hanger</b>	[17.00] <u>17.25</u>	[6.88] <u>7.75</u>	.60

<b>Drywall/Finisher/Taper – Light commercial &amp; residential</b>			
Ames tool operator	[25.08] <u>25.63</u>	[7.10] <u>7.60</u>	.60
Hand finisher/machine texture	[24.08] <u>24.63</u>	[7.10] <u>7.60</u>	.60
<b>Plasterer</b>	[23.17] <u>23.56</u>	[8.99] <u>9.39</u>	.60
<b>Plumber / pipefitter</b>	[30.76] <u>31.52</u>	[11.62] <u>12.90</u>	.60
<b>Roofer</b>	[25.23] <u>25.74</u>	7.97	.60
<b>Sheet metal worker</b>			
Zone 1	[31.03] <u>33.38</u>	[17.26] <u>17.64</u>	.60
Zone 2 – Industrial	[32.03] <u>34.38</u>	[17.26] <u>17.64</u>	.60
Zone 3 – Los Alamos	[33.03] <u>35.38</u>	[17.26] <u>17.64</u>	.60
<b>Soft floor layer</b>	[19.94] <u>20.30</u>	[7.70] <u>8.10</u>	.60
<b>Sprinkler fitter</b>	[30.90] <u>31.57</u>	[22.29] <u>23.46</u>	.60
<b>Tile setter</b>	24.46	8.81	.60
<b>Tile setter helper / finisher</b>	16.53	8.81	.60
<b>Laborers</b>			
Group I – Unskilled and Semi-Skilled	[17.50] <u>18.25</u>	[6.27] <u>7.12</u>	.60
Group II – Skilled	[18.50] <u>19.25</u>	[6.27] <u>7.12</u>	.60
Group III - Specialty	[20.75] <u>21.50</u>	[6.27] <u>7.12</u>	.60
<b>Masonry Laborers</b>			
Group I – Unskilled and Semi-Skilled	[18.00] <u>18.75</u>	[6.27] <u>7.34</u>	.60
Group II - Skilled	[19.75] <u>20.50</u>	[6.27] <u>7.34</u>	.60
Group III - Specialty	[20.25] <u>21.00</u>	[6.27] <u>7.34</u>	.60
<b>Reinforcing iron workers and post tension</b>	[24.00] <u>24.75</u>	[6.27] <u>7.12</u>	.60
<b>Operators</b>			
Group I	[20.95] <u>21.96</u>	[7.27] <u>7.47</u>	.60
Group II	[23.11] <u>24.12</u>	[7.27] <u>7.47</u>	.60
Group III	[23.57] <u>24.58</u>	[7.27] <u>7.47</u>	.60
Group IV	[24.01] <u>25.02</u>	[7.27] <u>7.47</u>	.60
Group V	[24.20] <u>25.21</u>	[7.27] <u>7.47</u>	.60
Group VI	[24.41] <u>25.42</u>	[7.27] <u>7.47</u>	.60
Group VII	[24.52] <u>25.53</u>	[7.27] <u>7.47</u>	.60
Group VIII	[27.56] <u>28.58</u>	[7.27] <u>7.47</u>	.60
Group IX	[29.95] <u>30.96</u>	[7.27] <u>7.47</u>	.60
Group X	[33.35] <u>34.36</u>	[7.27] <u>7.47</u>	.60
<b>Truck drivers</b>			
Group I – VII	[16.45] <u>16.65</u>	[7.87] <u>8.27</u>	.60
Group VIII	[16.51] <u>16.71</u>	[7.87] <u>8.27</u>	.60
Group IX	[18.45] <u>18.65</u>	[7.87] <u>8.27</u>	.60
<b>C. TYPE C: RESIDENTIAL</b>			
<b>Trade classification</b>	<b>Base rate</b>	<b>Fringe rate</b>	<b>Apprenticeship</b>
<b>Asbestos workers/heat &amp; frost insulators</b>	[32.26] <u>33.01</u>	12.06	.60
<b>Asbestos workers/heat &amp; frost insulators – Los Alamos County</b>	[34.69] <u>35.44</u>	12.06	.60
<b>Boilermaker</b>	21.77	3.98	.60
<b>Bricklayer / block layer / stonemason</b>	24.46	8.81	.60
<b>Carpenter / lather</b>	[24.63] <u>25.63</u>	[11.24] <u>11.74</u>	.60
<b>Carpenter – Los Alamos County</b>	[27.80] <u>28.37</u>	[13.19] <u>13.44</u>	.60
<b>Cement mason</b>	17.96	9.73	.60
<b>Electricians - outside classifications: Zone 1</b>			
Ground man	[23.27] <u>23.74</u>	[12.67] <u>13.16</u>	.60
Equipment operator	[33.39] <u>34.06</u>	[15.35] <u>15.94</u>	.60
Lineman / technician	[39.28] <u>40.07</u>	[16.91] <u>17.57</u>	.60
Cable splicer	[42.21] <u>44.08</u>	[17.95] <u>18.65</u>	.60

<b>Electricians - outside classifications: Zone 2</b>			
Ground man	[23.27] 23.74	[12.67] 13.16	.60
Equipment operator	[33.39] 34.06	[15.35] 15.94	.60
Lineman / technician	[39.28] 40.07	[16.91] 17.57	.60
Cable splicer	[42.21] 44.08	[17.95] 18.65	.60
<b>Electricians – outside classifications: Los Alamos</b>			
Ground man	[23.94] 24.42	[12.85] 13.34	.60
Equipment operator	[34.35] 35.04	[15.60] 16.21	.60
Lineman / technician	[40.41] 41.22	[17.21] 17.88	.60
Cable splicer	[44.45] 45.34	[18.28] 18.99	.60
<b>Electricians - inside classifications: Zone 1</b>			
Wireman / low voltage technician	[32.70] 33.65	[11.18] 12.01	.60
Cable splicer	[35.97] 37.02	[11.28] 12.11	.60
<b>Electricians - inside classifications: Zone 2</b>			
Wireman / low voltage technician	[35.64] 36.68	[11.27] 12.10	.60
Cable splicer	[38.91] 40.04	[11.37] 12.20	.60
<b>Electricians - inside classifications: Zone 3</b>			
Wireman / low voltage technician	[37.61] 38.70	[11.33] 12.16	.60
Cable splicer	[40.88] 42.06	[11.43] 12.26	.60
<b>Electricians - inside classifications: Zone 4</b>			
Wireman / low voltage technician	[41.20] 42.40	[11.44] 12.27	.60
Cable splicer	[44.47] 45.76	[11.53] 12.37	.60
<b>Electricians - inside classifications: Los Alamos</b>			
Wireman / low voltage technician	[37.61] 38.70	[13.21] 14.09	.60
Cable splicer	[40.88] 42.06	[13.47] 14.36	.60
<b>Elevator constructor</b>	[43.80] 45.23	[35.25] 36.37	.60
<b>Elevator constructor helper</b>	[35.04] 36.19	[35.25] 36.37	.60
<b>Glazier</b>			
Glazier / Fabricator	[20.25] 20.50	[5.35] 6.20	.60
Driver	[9.00] 9.25	[5.35] 6.20	.60
<b>Ironworker</b>	[27.00] 27.35	[15.75] 17.49	.60
<b>Painter - Residential</b>	[12.00] 12.25	[6.88] 7.75	.60
<b>Drywall/Finisher/Taper – Light commercial &amp; residential</b>			
Ames tool operator	[21.87] 22.26	[7.10] 7.60	.60
Hand finisher/machine texture	[20.87] 21.26	[7.10] 7.60	.60
<b>Paper hanger</b>	[13.00] 13.25	[6.88] 7.75	.60
<b>Plasterer</b>	19.75	7.92	.60
<b>Plumber / pipefitter</b>	[30.76] 31.52	[11.62] 12.90	.60
<b>Roofer</b>	[25.23] 25.74	7.97	.60
<b>Sheet metal worker</b>			
Zone 1	[31.03] 33.38	[17.26] 17.64	.60
Zone 2 – Industrial	[32.03] 34.38	[17.26] 17.64	.60
Zone 3 – Los Alamos	[33.03] 35.38	[17.26] 17.64	.60
<b>Soft floor layer</b>	[19.94] 20.30	[7.70] 8.10	.60
<b>Sprinkler fitter</b>	[30.90] 31.57	[22.29] 23.46	.60
<b>Tile setter</b>	24.46	8.81	.60
<b>Tile setter help / finisher</b>	16.53	8.81	.60
<b>Laborers</b>			
Group I – Unskilled and Semi-Skilled	[15.75] 11.25	5.93	.60
Group II – Skilled	[16.75] 12.25	5.93	.60
Group III – Specialty	[17.75] 13.25	5.93	.60
<b>Operators</b>			
Group I	[12.33] 17.29	[6.60] 8.00	.60
Group V	[13.62] 19.03	[6.60] 8.00	.60
Group VII	[16.74] 23.24	[6.60] 8.00	.60

Group VIII	[18.30] <u>25.34</u>	[6.60] <u>8.00</u>	.60
<b>Truck drivers</b>			
Group I - IX	20.75	6.27	.60
<b>D. TYPE H: HEAVY ENGINEERING</b>			
<b>Trade Classification</b>	<b>Base Rate</b>	<b>Fringe Rate</b>	<b>Apprenticeship</b>
<b>Asbestos workers/heat &amp; frost insulators</b>	[32.26] <u>33.01</u>	12.06	.60
<b>Asbestos workers/heat &amp; frost insulators: Los Alamos County</b>	[34.69] <u>35.44</u>	12.06	.60
<b>Boilermaker</b>	34.97	27.35	.60
<b>Bricklayer / block layer / stonemason</b>	25.54	8.81	.60
<b>Carpenter / lather</b>	[24.63] <u>25.63</u>	[11.24] <u>11.74</u>	.60
<b>Carpenter – Los Alamos County</b>	[27.80] <u>28.37</u>	[13.19] <u>13.44</u>	.60
<b>Millwright / pile driver</b>	33.16	[25.24] <u>27.24</u>	.60
<b>Cement mason</b>	21.00	9.38	.60
<b>Electricians - outside classifications: Zone 1</b>			
Ground man	[23.27] <u>23.74</u>	[12.67] <u>13.16</u>	.60
Equipment operator	[33.39] <u>34.06</u>	[15.35] <u>15.94</u>	.60
Lineman/ technician	[39.28] <u>40.07</u>	[16.91] <u>17.57</u>	.60
Cable splicer	[43.21] <u>44.08</u>	[17.95] <u>18.65</u>	.60
<b>Electricians - outside classifications: Zone 2</b>			
Ground man	[23.94] <u>23.74</u>	[12.85] <u>13.16</u>	.60
Equipment operator	[34.35] <u>34.06</u>	[15.60] <u>15.94</u>	.60
Lineman/ technician	[40.41] <u>40.07</u>	[17.21] <u>17.57</u>	.60
Cable splicer	[44.45] <u>44.08</u>	[18.28] <u>18.65</u>	.60
<b>Electricians – outside classifications: Los Alamos</b>			
Ground man	[23.94] <u>24.42</u>	[12.85] <u>13.34</u>	.60
Equipment operator	[34.35] <u>35.04</u>	[15.60] <u>16.21</u>	.60
Lineman / technician	[40.41] <u>41.22</u>	[17.21] <u>17.88</u>	.60
Cable splicer	[44.45] <u>45.34</u>	[18.28] <u>18.99</u>	.60
<b>Electricians – inside classifications: Zone 1</b>			
Wireman / low voltage technician	[32.70] <u>33.65</u>	[11.18] <u>12.01</u>	.60
Cable splicer	[35.97] <u>37.02</u>	[11.28] <u>12.11</u>	.60
<b>Electricians - inside classifications: Zone 2</b>			
Wireman / low voltage technician	[35.64] <u>36.68</u>	[11.27] <u>12.10</u>	.60
Cable splicer	[38.91] <u>40.04</u>	[11.37] <u>12.20</u>	.60
<b>Electricians - inside classifications: Zone 3</b>			
Wireman / low voltage technician	[37.61] <u>38.70</u>	[11.33] <u>12.16</u>	.60
Cable splicer	[40.88] <u>42.06</u>	[11.43] <u>12.26</u>	.60
<b>Electricians - inside classifications: Zone 4</b>			
Wireman / low voltage technician	[41.20] <u>42.40</u>	[11.44] <u>12.27</u>	.60
Cable splicer	[44.47] <u>45.76</u>	[11.53] <u>12.37</u>	.60
<b>Electricians - inside classifications: Los Alamos</b>			
Wireman / low voltage technician	[37.61] <u>38.70</u>	[13.21] <u>14.09</u>	.60
Cable splicer	[40.88] <u>42.06</u>	[13.47] <u>14.36</u>	.60
<b>Glazier</b>			
Glazier / Fabricator	[20.25] <u>20.50</u>	[5.35] <u>6.20</u>	.60
Delivery driver	[9.00] <u>9.25</u>	[5.35] <u>6.20</u>	.60
<b>Ironworker</b>	[27.00] <u>27.35</u>	[15.75] <u>17.49</u>	.60
<b>Painter - Industrial</b>	[ 21.25] <u>21.50</u>	[9.17] <u>9.77</u>	.60
<b>Paperhanger</b>	[18.75] <u>19.00</u>	[9.17] <u>9.77</u>	.60
<b>Drywall/Finisher/Taper - Industrial</b>			
Ames tool operator	[25.93] <u>26.48</u>	[7.10] <u>7.60</u>	.60
Hand finisher/machine texture	[24.93] <u>25.48</u>	[7.10] <u>7.60</u>	.60
<b>Plumber / pipefitter</b>	[30.76] <u>31.52</u>	[11.62] <u>12.90</u>	.60
<b>Roofer</b>	25.23	7.97	.60



<b>Sheet metal worker</b>	[ <del>31.03</del> ] <u>33.38</u>	[ <del>17.26</del> ] <u>17.64</u>	.60
<b>Operators</b>			
Group I	[ <del>20.55</del> ] <u>20.97</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
Group II	[ <del>20.75</del> ] <u>21.17</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
Group III	[ <del>20.94</del> ] <u>21.36</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
Group IV	[ <del>21.08</del> ] <u>21.51</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
Group V	[ <del>21.19</del> ] <u>21.63</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
Group VI	[ <del>21.37</del> ] <u>21.81</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
Group VII	[ <del>21.39</del> ] <u>21.83</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
Group VIII	[ <del>23.29</del> ] <u>23.79</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
Group IX	[ <del>28.96</del> ] <u>29.63</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
Group X	[ <del>32.19</del> ] <u>32.96</u>	[ <del>6.34</del> ] <u>6.54</u>	.60
<b>Laborers</b>			
Group I - Unskilled	17.06	6.22	.60
Group II – Semi-Skilled	17.81	6.22	.60
Group III - Skilled	19.32	6.22	.60
Group IV- Specialty	19.72	6.22	.60
<b>Laborers - Underground</b>			
Group I	18.97	6.22	.60
Group II	19.34	6.22	.60
Group III	19.69	6.22	.60
<b>Truck drivers</b>			
Group I [-VH]	[ <del>16.45</del> ] <u>16.97</u>	[ <del>7.87</del> ] <u>6.25</u>	.60
Group II	<u>17.25</u>	<u>6.25</u>	<u>.60</u>
Group III	<u>17.72</u>	<u>6.25</u>	<u>.60</u>
Group IV	<u>17.74</u>	<u>6.25</u>	<u>.60</u>
Group V	<u>17.80</u>	<u>6.25</u>	<u>.60</u>
Group VI	<u>17.97</u>	<u>6.25</u>	<u>.60</u>
Group VII	<u>18.11</u>	<u>6.25</u>	<u>.60</u>
Group VIII	[ <del>16.51</del> ] <u>18.31</u>	[ <del>7.87</del> ] <u>6.25</u>	.60
Group IX	18.45	[ <del>7.87</del> ] <u>6.25</u>	.60
<b>Maintenance Sub Group IX</b>			
Rate I	<u>20.90</u>	<u>9.00</u>	<u>.60</u>
Rate II	<u>21.77</u>	<u>9.00</u>	<u>.60</u>
Rate III	<u>22.24</u>	<u>9.00</u>	<u>.60</u>

[11.1.2.20 NMAC - N, 02-29-2016; Rp, 1/1/2017; A, 1/1/2018, A, 1/1/2019; A, 1/1/2020; A, 1/1/2021]

**11.1.2.21** Subsistence, zone, and incentive pay rates. All contractors are required to pay subsistence, zone, and incentive pay according to the particular trade.

A. Asbestos workers or heat and frost insulators

~~(1)~~ For travel more than 80 miles from Albuquerque City Hall or El Paso City Hall, \$70 per day if overnight travel is required:

~~(2)~~ For travel more than 80 miles from Albuquerque City Hall or El Paso City Hall, \$40 per day if overnight travel is not required: ]

(1) Zone 1 shall consist of the area lying within the city limits of a circle, whose

radius is 66 miles from the city hall in Albuquerque or the city hall in El Paso - \$0.00 per day.

(2) Zone 2 shall consist of Los Alamos County - \$40 per day, if not furnished a company owned vehicle.

(3) Zone 3 shall consist of the area lying beyond a circle whose radius is over 66 miles from the city hall in Albuquerque or the city hall in El Paso - \$85.00 per day.

B. Boilermakers  
(1) From city hall of the dispatch city or the employee's home address, whichever is closer to the job location, \$55.00 per day for travel between 70 and 120 miles.

(2) For employers based outside of Albuquerque, employees traveling more than 50 miles from the employer's main office, \$30 per day.

C. Bricklayers  
(1) Between 70 and 120 miles, \$55. per day  
(2) 121 or more miles, \$70 per day

D. Cement Masons  
(1) For employees who travel to Santa Fe from Albuquerque or vice versa, \$20 per day.

(2) In all other work performed more than 50 miles from the employer's main office, \$50 per day.

(3) Mutually agreed-upon lodging or transportation paid for by the employer will substitute for subsistence pay.

E. Drywall Finishers and Tapers:

(1) \$40 per day (\$5 per hour for eight hours work) for over sixty miles over the most typically traveled route, or other mutually agreed upon suitable lodging or transportation.

(2) Special provision for Santa Fe and Albuquerque: Employees who travel [~~to Santa Fe from Albuquerque or Albuquerque to Santa Fe~~] between Santa Fe and Albuquerque will be paid \$15 per day or other mutually agreed upon lodging or transportation.

F. Electricians (inside classifications)

(1) For Albuquerque only:

(a) Zone 1 is classified as being within 40 miles from the main post office.

(b) Zone 2 shall extend up to 10 miles beyond zone 1. Work performed within zone 2 shall be compensated nine percent above the journeyman rate for zone 1.

(c) Zone 3 shall extend up to 20 miles beyond zone 1. Work performed within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

(d) Zone 4 shall extend 20 miles or more beyond zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

(2) For Los Alamos County only: work performed within the county shall be compensated fifteen percent above the zone 1 journeyman rate. [~~In addition to base and zone rates of pay, workers shall be compensated for personal or sick time (PTO)~~]

(3) For all other counties:

(a) Zone 1 is:

(i) within six miles from the main post office for Raton, Tucumcari, and Farmington.

(ii) within eight miles from the main post office for Las Vegas.

(iii) within ten miles from the main post office for Santa Fe and Gallup.

(iv) within twelve miles from the main post office for Belen, Carrizozo, Clovis, Los Lunas, Portales, Roswell, Ruidoso, Artesia, Carlsbad, Hobbs, and Lovington.

(v) within fourteen miles from the main post office for Espanola.

(b) Zone 2 shall extend up to 20 miles beyond zone 1. Work performed within zone 2 shall be compensated nine percent above the journeyman rate for zone 1.

(c) Zone 3 shall extend up to 30 miles from zone 1. Work performed within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

(d) Zone 4 shall extend beyond 30 miles from zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

G. Electricians (outside classification): \$50 per diem to be paid for work 30 miles outside of Santa Fe and 60 miles outside of Albuquerque.

H. Glaziers  
(1) When out-of-town travel is required, the employer shall pay the employee for suitable lodging with no more than two people per room and \$20.00 per night for food.

(2) Employees required to use a personal vehicle for travel to a jobsite beyond a 30 mile radius of the main post office in town where the employer's shop is located shall be compensated at the current Internal Revenue Service (IRS) rate for actual mileage incurred beyond the 30 mile radius, plus their regular rate of pay for travel time.

I. Ironworkers:  
(1) Travel more than 50 miles from the interchange of Interstate 40 and Interstate 25 or from the employee's home should be paid at [~~\$6.00~~] \$7.00 per hour.

(2) If travel is within Santa Fe county, travel should be paid at \$3.00 per hour above scale.

J. Laborers:  
(1) Type A  
(a) Work travel between 50 and 85 miles from the employer's primary address should be compensated at \$3.50 per hour.

(b) Work travel 86 miles or greater from the employer's primary address should be compensated at \$5.00 per hour.

(2) Types B and C - work travel over 50 miles from the employer's primary address should be compensated at \$5.00 per hour.

(3) Type H - no zone subsistence pay

(4) If an employer provides the employee transportation and mutually agreeable, suitable lodging in areas where overnight stays are necessary, subsistence rates do not apply.

K. Millwrights  
(1) Work travel between 76 and 150 miles should be compensated at \$50.00 per day.

(2) Work travel [~~15+~~] greater than 150 miles or greater should be compensated at \$75.00 per day.

L. Operating Engineers  
(1) Type A operators should be compensated for zone and subsistence as follows:  
(a)

Work travel between 50 and 85 miles from the interchange of Interstate 25 and Interstate 40 in Albuquerque, or from the Farmington City Hall in Farmington, should be compensated at \$2.50 per hour.

(b) Work travel 86 miles or more from

the interchange of Interstate 25 and Interstate 40 in Albuquerque or from the Farmington City Hall in Farmington, should be compensated at \$4.00 per hour.

(2) Type B and C operators:

(a) Base points for operators are 30 miles and beyond:

(i) Bernalillo county courthouse in Albuquerque;

(ii) State capital building in Santa Fe;

(iii) City hall in Farmington.

(b) Zone and subsistence for Albuquerque and Santa Fe are as follows:

(i) work travel between 30 and 50 miles from the base point compensated at \$20 per day;

(ii) work travel between 51 and 100 miles from the base point compensated at \$45 per day;

(iii) work travel over 100 miles from the base point that involves an overnight stay compensated at \$75 per day.

(c) Zone and subsistence for Los Alamos county, \$50 per day.

(d) If an employer provides the employee transportation and mutually agreeable, suitable lodging in areas where overnight stays are necessary, subsistence rates do not apply.

(3) Type H operators are not eligible for zone and subsistence pay.

**M. Painters**

(1) Zone 1: Base pay for an area within a 30 mile radius from the main post office in the city or town where the employee permanently resides. Albuquerque, Santa Fe, and Belen shall be considered Zone I.

(+)(2) Zone 2: Work travel between 30 and 75 miles from the main post office in the town where an employee permanently resides shall be compensated at \$1.00 per hour above base pay.

(-)(3) Zone 3: Work travel [76] 75 miles or more from the main post office in the town [when] where an employee permanently resides shall be compensated at \$2.50 per hour above base pay.

(-)(4) When the employee is required to stay overnight, the employer should provide and pay for suitable lodging.

(5) Employer will furnish transportation or gasoline for all work performed beyond the 30 mile radius that encompasses the free cities of Albuquerque, Santa Fe or Belen.

**N. Paper hangers**

(1) Zone 1: Base pay for an area within a 30 mile radius from the main post office in the city or town where the employee permanently resides. Albuquerque, Santa Fe, and Belen shall be considered Zone I.

(+)(2) Zone 2: Work travel between 30 and 75 miles from the main post office in the town where an employee permanently resides shall be compensated at \$1.00 per hour above base pay.

(-)(3) Zone 3: Work travel [76] 75 miles or more from the main post office in the town [when] where an employee permanently resides shall be compensated at \$2.50 per hour above base pay.

(-)(4) When the employee is required to stay overnight, the employer should provide and pay for suitable lodging.

(5) Employer will furnish transportation or gasoline for all work performed beyond the 30 mile radius that encompasses the free cities of Albuquerque, Santa Fe or Belen.

**O. Plasterers**

(1) Employees who travel from Albuquerque to Santa Fe should be compensated at \$15.00 per day.

(2) Except for employees who travel from Santa Fe to Albuquerque, work travel 60 miles or more from the employer's office over the most typically traveled route

should be compensated at \$5.00 per hour and capped at \$40.00 per day.

**P. Plumbers and pipefitters**

(1) Work travel for Type H workers only 90 or more miles from an employee's primary residence, and involving an overnight stay, should be compensated at [~~\$50.00~~] \$80.00 per day.

(2) No zone or subsistence pay is required should the employer elect to cover the room cost.

**(3) Los**

Alamos county workers receive an \$0.80 per hour incentive pay plus base and fringe.

**Q. Roofers - work**

travel requiring an overnight stay should be compensated at \$35 per day for food. Employer should provide and pay for a suitable hotel. When employees are assigned to jobs located 60 or more miles from the employer's place of business, transportation to and from the job site must be provided.

**R. Sheet metal workers**

(1) Work travel 90 miles or more from [the main post office in the municipality of the employer's primary place of business, and where an overnight stay is required contractor's home base and employee's home, should be paid at [~~\$45.00~~] \$80.00 per day subsistence pay plus base and fringe, regardless of county.

(-)(2) — No zone or subsistence pay is required where an employer pays for lodging at a suitable location with no more than two employees per room.]

**(2) Los**

Alamos county: \$2.00 per hour incentive pay plus base and fringe.

**(3) Living**

60 or more miles from a San Juan county job site receive \$3.00 per hour subsistence pay plus base and fringe.

**S. Soft floor layer**

(1) Zone 1: Base pay for an area within a 30 mile radius from the main post office in the city or town where the employee permanently resides. Albuquerque,

Santa Fe, and Belen shall be considered Zone I.

**(2)** Zone 2:

Work travel between 30 and 75 miles from the main post office in the town where an employee permanently resides shall be compensated at \$1.00 per hour above base pay.

**(3)** Zone 3:

Work travel 75 miles or more from the main post office in the town where an employee permanently resides shall be compensated at \$3.13 per hour above base pay.

**(4)** Employer

will furnish transportation or gasoline for all work performed beyond the 30 mile radius that encompasses the free cities of Albuquerque, Santa Fe or Belen.

**[S:] T.** Sprinkler fitters

**(1)** Work

travel between 60 and 80 miles from the employee's primary residence should be compensated at \$19.00 per day.

**(2)** Work

travel between 81 and 100 miles from the employee's primary residence should be compensated at \$29.00 per day.

**(3)** Work

travel of 101 miles or more from the employee's primary residence should be compensated at \$105.00 per day, plus \$.54 per mile when driving directly from home to the job site, and directly from job site to home or next job site, as assigned by the employer.

**(4)** No zone

or subsistence pay shall be paid when the employer provides daily transportation and the employee elects to travel back and forth from home.

[11.1.2.21 NMAC - N, 1/1/2019; A, 1/1/2020; A, 1/1/2021]

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## End of Adopted Rules

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**Other Material Related to Administrative Law**


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**HEALTH,  
DEPARTMENT OF**
**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
ACTING SECRETARY BILLY J.  
JIMENEZ**
**DECEMBER 9, 2020**
**Public Health Emergency Order  
Recognizing the Activation of  
Crisis  
Care Standards and Establishing  
the Credentialing and Approval of  
COVID-19  
Credentialed Physicians  
and COVID-19 Credentialed  
Advanced Practice Clinicians**
**ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through December 11, 2020;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 285,000 Americans and over 1,700 New Mexicans;

**WHEREAS**, confirmed cases in the United States have risen to more than 15.2 million and confirmed COVID-19 infections in New Mexico have risen to over 110,000, with significant recent spikes in cases in New Mexico threatening to overwhelm our hospitals;

**WHEREAS**, the State of New Mexico is in the midst of an urgent medical crisis caused by the COVID pandemic which has strained the ability of both institutional and individual providers to deliver the quality of care New Mexicans ordinarily expect;

**WHEREAS**, there is anticipated to be a shortage in the number of physicians, nurses, and other healthcare workers available given the continually increasing number of COVID-19 infections in the State;

**WHEREAS**, clinical resources and supplies are currently taxed and are anticipated to be even more greatly taxed as COVID-19 infections increase, resulting in the postponement and discontinuation of various essential medical services;

**WHEREAS**, a host of modifications of normal medical practice will be necessitated to address the ongoing surge in COVID-19 infections in the New Mexico and the attendant detrimental consequences to medical practice and medical service availability within the State;

**WHEREAS**, on December 4, 2020, Governor Michelle Lujan Grisham issued Executive Order 2020-083 (“EO 2020-083”), stating that “‘Crisis Care’ standards may need to be implemented over the next several weeks and our State should prepare for that possibility”;

**WHEREAS**, EO 2020-083 orders and directs the New Mexico Department of Health to undertake all steps necessary to credential and approve certain physicians and other licensed healthcare providers as “COVID-19 Credentialed Physicians” and certain advance practice clinicians as “COVID-19 Credentialed Advanced Practice

Clinicians” so that such individuals shall be considered public employees for purposes of the Tort Claims Act under the All Hazards Emergency Response Act;

**WHEREAS**, on December 2, 2020, the New Mexico Medical Advisory Team notified the Acting Secretary of Health that “Crisis Care Standards” have been activated within the state and that it is appropriate to apply Crisis Care Standards in hospital settings;

**WHEREAS**, during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to “utilize, secure or evacuate health care facilities for public use.” NMSA 1978, § 12-10A-6(A)(1). The Department of Health also possesses the legal authority under the Public Health Act to “respond to public health emergencies,” “ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable,” “control and abate the causes of disease, especially epidemics,” and “maintain and enforce rules for the control of conditions of public health importance.” NMSA 1978, § 24-1-3; and

**WHEREAS**, the Department of Health finds that it is necessary and appropriate under the current circumstances for certain physicians and other medical clinicians who evidence the meeting of certain qualifications to become approved to perform certain medical duties by the Acting Cabinet Secretary and to become credentialed for the purpose of being deemed public employees for purposes of the New Mexico Tort Claims Act.

**NOW, THEREFORE**,  
I, Billy J. Jimenez, Acting

Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to Executive Order 2020-083 under the full scope of her emergency powers under the All Hazard Emergency Management Act and the Emergency Licensing Act, do hereby DECLARE that it is necessary and appropriate under the current circumstances for certain physicians and other medical clinicians who evidence the meeting of certain qualifications to become approved to perform certain medical duties by the Acting Cabinet Secretary and to become credentialed for the purpose of being deemed public employees for purposes of the New Mexico Tort Claims Act.

**I FURTHER DIRECT**

that the credentialing and approval of providers credentialed and approved under this Order shall be conducted as follows:

**1. DEFINITIONS**

As used in this Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

- (a) "Applicant" means a natural person who is licensed as a medical practitioner and who applies for credentialing and approval as a COVID-19 Credentialed Physician or a COVID-19 Advanced Practice Clinician.
- (b) "Application" means an application for credentialing and approval of a person to be a COVID-19 Credentialed Physician or COVID-19 Advanced Practice Clinician that is completed utilizing the Department-approved application form.
- (c) "Application form" means the form available online at [www.mnhealth.org](http://www.mnhealth.org).
- (d) "COVID-19

Credentialed Advanced Practice Clinician" means a natural person who is licensed as a healthcare provider, who is credentialed and approved by the New Mexico Department of Health for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act. A COVID-19 Advanced Practice Clinician shall hold authority under New Mexico law to provide medical care independently and not under the supervision of a physician, and shall be deemed a public employee to the limited extent that, and in the limited circumstance in which, the clinician provides medical care, in a hospital acute care setting, to a person infected with the COVID-19 virus or to a person that the clinician reasonably believes may be infected with COVID-19 virus. COVID-19 Credentialed Advanced Practice Clinicians are limited to the following:

- (i) certified nurse practitioners (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.2);
- (ii) certified registered nurse anesthetists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.3);
- (iii) clinical nurse specialists (licensed by the Board of Nursing in accordance with NMSA 1978, § 61-3-23.4); and
- (iv) certified nurse-midwives (licensed by the Board of Nursing pursuant to the Nursing Practice Act and licensed by the Department of Health as a certified nurse-midwife pursuant to NMSA 1978, § 24-1-3(R) and NMAC 16.11.2).
- (e) "COVID-19 Credentialed Physician" means a medical doctor or doctor of osteopathic medicine who holds authority under New Mexico law to provide medical care, who is credentialed and approved by the New Mexico Department of Health

for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act. A COVID-19 Credentialed Physician shall be deemed a public employee to the extent that, and in the limited circumstance in which, the physician provides medical care in a hospital acute care setting to a person infected with the COVID-19 virus or to a person that the physician reasonably believes may be infected with COVID-19 virus.

- (f) "Credentialed Practitioner" means a COVID-19 Credentialed Physician or a COVID-19 Advanced Practice Clinician.
- (g) "Facility" means the acute care hospital facility or institution at which an applicant intends to provide medical services, whether for consideration or on a voluntary basis.
- (h) "Licensed" means licensed, certified, or permitted to provide medical care to a person by an authorized governmental licensing authority in the State of New Mexico.

**2. DESIGNATION OF CREDENTIALLED PRACTITIONERS; EFFECT**

The Secretary of Health shall designate a physician as a COVID-19 Credentialed Physician, or a clinician as a COVID-19 Credentialed Advanced Practice Clinician, based upon findings that: (1) the physician/advanced practice clinician services will materially further the State's interest in public health and welfare, and (2) the physician/advanced practice clinician possesses the requisite skills and background necessary to provide care during the pendency of the existing health emergency. The Secretary may weigh and consider any additional factors the Secretary deems appropriate given the operative facts and circumstances. The Secretary shall implement an application process,

as more set forth more fully herein, for the purpose of identifying eligible medical practitioners and assessing their scopes of current practice and COVID-19 clinical services proposed for approval by the Department.

**COVID-19 Credentialed Physicians and COVID-19 Credentialed Advanced Practice Clinicians shall only be considered public employees for purposes of the Tort Claims Act to the limited extent and in the limited circumstance in which such Credentialed Practitioners provide medical care outside of their normal and privileged scope of practice in a hospital acute care setting to a person infected with the COVID-19 virus or to a person reasonably believed to be infected with the COVID-19 virus. NMSA 1978, §§ 41-4-1 to -27; NMSA 1978, §§ 12-10-4, -11, -13.**

(a)

**Application Process**

An applicant or a facility affiliated with an applicant shall submit a completed application to the e-mail address that is identified on the application form.

The Secretary or his or her designee(s) shall review the application and render a determination of whether to grant or deny the application in whole or in part based on operative facts and circumstances, including, but not limited to, the nature of the applicant’s current primary scope of medical practice, the nature of the applicant’s proposed COVID-19 scope of practice, the extent of deviation between the applicant’s primary scope of practice and proposed COVID-19 scope of practice, and other factors as the Secretary may deem appropriate.

(b) **Content**

**of Application**

The information required to be submitted in the application shall include, but need not be limited to, the following:

1. Identity and contact information of the applicant;
2. Professional qualifications of the applicant, including the applicant’s professional degree;
3. Main location of the facility;
4. Main scope of current practice;
5. Proposed practice locations, including name and contact information for associated facilities;
6. Proposed COVID-19 clinical services;
7. Request for designation as a COVID-19 Credentialed Physician or COVID-19 Credentialed Advanced Practice Clinician;
8. Name and signature of applicant; and
9. Proof of: agreement between the applicant and the associated facility, that the facility is willing to permit the performance of the identified proposed COVID-19 clinical services on the facility’s premises, and that the applicant is willing to perform such services.

(c)

**Disclaimer**

The Secretary or his or her designee may rescind approval of an application upon notice to an affected applicant and associated facility for cause, which includes, but is not limited to, falsification of any information included within the application or any other information or material submitted to the Department. A previously issued approval of an application shall be deemed automatically rescinded upon the suspension or revocation of an applicant’s medical license by the applicant’s professional licensing authority.

A Credentialed Practitioner and an associated facility shall at all times adhere to applicable ethical standards.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) This Order shall take effect on December 9, 2020 and remain in effect through January 5, 2021.

**THIS ORDER** supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect for the duration indicated in the Order unless otherwise rescinded.

**DONE AT THE EXECUTIVE OFFICE THIS 9TH DAY OF DECEMBER 2020**

**ATTEST:**

**/S/ MAGGIE TOULOUSE OLIVER SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/ BILLY J. JIMENEZ, ACTING CABINET SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH**

**HEALTH, DEPARTMENT OF,**

**PUBLIC HEALTH ORDER NEW MEXICO DEPARTMENT OF HEALTH ACTING SECRETARY BILLY J. JIMENEZ**

**DECEMBER 9, 2020**

**Public Health Emergency Order**



**Imposing Temporary Restrictions on Non-Essential Surgical Procedures; Providing Guidance on Those Restrictions**

**ORDER**

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through December 11, 2020;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 285,000 Americans and over 1,700 New Mexicans;

WHEREAS, confirmed cases in the United States have risen to more than 15.2 million and confirmed COVID-19 infections in New Mexico have risen to over 110,000, with significant recent spikes in cases in New Mexico threatening to overwhelm our hospitals;

WHEREAS, local, national, and global health experts predict that the expected continued rise in cases of COVID-19 will strain the capacity and resources of health care providers, including available space and equipment in health care facilities

WHEREAS, on December 4, 2020, Governor Michelle Lujan Grisham issued Executive Order 2020-083 (“EO 2020-083”), stating that “‘Crisis Care’ standards may need to be implemented over the next several weeks and our State should prepare for that possibility”;

WHEREAS, on December 2, 2020, the New Mexico Medical Advisory Team notified the Acting Secretary of Health that “Crisis Care Standards” have been activated within the state and that it is appropriate to apply Crisis Care Standards in hospital settings;

WHEREAS, during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to “utilize, secure or evacuate health care facilities for public use.” NMSA 1978, § 12-10A-6(A)(1). The Department of Health also possesses the legal authority under the Public Health Act to “respond to public health emergencies,” “ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable,” “control and abate the causes of disease, especially epidemics,” and “maintain and enforce rules for the control of conditions of public health importance.” NMSA 1978, § 24-1-3; and

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) This Order shall take effect on December 11, 2020 and remain in effect through January 4, 2021.

THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect for the duration indicated

in the Order unless otherwise rescinded.

**DONE AT THE EXECUTIVE OFFICE THIS 9TH DAY OF DECEMBER 2020**

**ATTEST:**  
**/S/ MAGGIE TOULOUSE OLIVER**  
**SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/ BILLY J. JIMENEZ, ACTING CABINET SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH**

**HEALTH, DEPARTMENT OF**

**PUBLIC HEALTH ORDER NEW MEXICO DEPARTMENT OF HEALTH SECRETARY-DESIGNATE TRACIE C. COLLINS, M.D.**

**DECEMBER 15, 2020**

**Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain**

**in Effect; and Amending Prior Public Health Emergency Orders to**

**Impose County-by-County Restrictions Due to COVID-19**

**PREFACE**

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating

effects that could result from a rapid increase in COVID-19 cases in New Mexico. It remains the core purpose of this Order to emphasize that all New Mexicans should be staying in their homes for all but the most essential activities and services. This is especially true now, when this State is experiencing an unprecedented surge in new cases and hospitals are approaching or exceeding their capacity. ‘When New Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and

D. December 15, 2020 Amended Public Health Emergency Order T Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID- 19 Test Results to the New Mexico Epidemiology and Response Division.

3. The December 2, 2020 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities’ Operations and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

#### **ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through December 11, 2020;

**WHEREAS**, confirmed cases in the United States have risen to more than 16.6 million and confirmed COVID-19 infections in New Mexico have risen to over 121,000 with significant recent spikes in New Mexico threatening to overwhelm our hospitals;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 300,000 Americans and over 1,900 New Mexicans;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to

the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE**, **I**, Tracie C. Collins, M.D., Secretary-Designate of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on

an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

**DEFINITIONS**

As used in this Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities;

d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate more than one-third of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable household products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. Infrastructure operations including, but not limited to, public works construction, commercial and

residential construction and maintenance, self-storage facilities, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Crematoriums, funeral homes, and cemeteries;

p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) “Close-contact businesses” include barbershops, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, and guided balloon tours.

(3) “Food and drink establishments” include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, “breweries” are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; “distillers” are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and “wineries” are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(4) “Houses of worship” means any church, synagogue, mosque, or other

gathering space where persons congregate to exercise their religious beliefs.

(5) “Close-contact recreational facilities” include indoor movie theaters, indoor museums with interactive displays or exhibits and other similar venues, miniature golf, arcades, amusement parks, aquariums, bowling alleys, casinos, concert venues, ice-skating rinks, professional sports venues, event venues, bars, dance clubs, performance venues, go-kart courses, automobile racetracks, adult entertainment venues, and other places of recreation or entertainment. For purposes of this section, a “bar” is defined as any business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(6) “Outdoor recreational facilities” include outdoor golf courses, public swimming pools, ski basins, youth programs, youth livestock shows, horseracing tracks, botanical gardens, and outdoor zoos.

(7) “Places of lodging” means all hotels, motels, RV parks, and short-term vacation rentals.

(8) “Retail space” means any business that regularly sells goods or services directly to consumers or end-users at the business location and includes, but is not limited to, the following “essential businesses” identified in the categories above: (1)d, (1)k, (1) m, and (1)n.

(9) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. “Mass gatherings” also includes coordinated events in which individuals gather in vehicles. “Mass gathering” does not include the presence of <my number of individuals where those individuals regularly reside. “Mass gathering” does not include individuals who are

public officials or public employees in the course and scope of their employment.

(10) “COVID-Safe Practices” (“CSPs”) are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled “All Together New Mexico: COVID-Safe Practices for Individuals and Employers.” This document may be obtained at the following link <https://cv.nmhealth.org/covid safe-practices/>.

**THE “RED TO GREEN” FRAMEWORK**

Beginning December 16, 2020, I **DIRECT** that the State shall reopen according to the following county-by-county framework:

**SUMMARY**

This Order sets out the “Red to Green” framework, which includes three levels of operations that are based on a c01mty’s ability to satisfy specified metrics: Green Level, Yellow Level, and Red Level. A cotmty will remain at a given operating level so long as it continues to satisfy the specified metrics for that level. The Department of Health maintains the official map displaying each county’s current level at: <https://cvprovider.nmhealth.org/public-dashboard.html>. The Department of Health updates this map every other Wednesday. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level’s restrictions within 48 hours of the map’s update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level’s restrictions immediately upon the map’s update.

**REOPENING LEVEL METRICS**

Counties shall be categorized according to one of the following levels:

(1) Green Level  
-Counties seeking to operate at this level must satisfy both of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; AND

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(2) Yellow Level  
- Counties seeking to operate at this level must meet either of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; OR

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(3) Red Level -All other counties shall operate at the Red Level.

**REQUIREMENTS FOR EACH LEVEL**

**Green Level** - Green Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than twenty (20) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to one hundred (100) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without occupancy

limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Outdoor recreational facilities” may operate at 50% capacity unless specified otherwise in the pertinent CSP’s, in which case the CSP’s capacity limits are controlling. The indoor portions of “outdoor recreational facilities” must comply with the requirements contained in paragraph (2)h below unless specified otherwise in the pertinent CSP’s. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. “Food and drink establishments” may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All “food and drink establishments” that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 50% of the maximum occupancy of any enclosed space on the premises,

as determined by the relevant fire marshal or fire department. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

f. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 75% of maximum occupancy. All other “places of lodging” shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. “Close-contact recreational facilities” may not operate.

h. Any entity that is not identified as an “essential business,” “house of worship,” “outdoor recreational facility,” “food and drink establishment,” “place of lodging,” or “close-contact recreational facility” may operate but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

i. State museums may operate but may

not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

**Yellow Level** -Yellow Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than ten (10) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to twenty-five (25) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Outdoor recreational facilities” may operate at 25% capacity unless specified otherwise in the pertinent CSP’s, in which case the CSP’s capacity limits are controlling. The indoor portions of “outdoor recreational facilities” must comply with the requirements

contained in paragraph (2)i below unless specified otherwise in the pertinent CSP's. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. "Food and drink establishments" may not provide dine-in service unless they complete the NM Safe Certified training offered at <https://nmsafecertified.org>, as well as comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks. Those "food and drink establishments" that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may provide dine-in services but they may not exceed more than 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. Any "food and drink establishment" that is permitted to serve alcohol must close for in person service by 10:00 p.m. and must remain closed until at least 4:00 a.m. "Food and drink establishments" may provide delivery service after 10:00 p.m. but no customers are permitted on the premises. "Food and drink establishments" may provide

carryout service, or delivery service if otherwise permitted by law.

f. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 60% of maximum occupancy. All other "places of lodging" shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. "Close-contact recreational facilities" may not operate.

h. "Close-contact businesses" may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or twenty (20) customers inside the building at any given time.

i. Any entity that is not identified as an "essential business," "house of worship," "outdoor recreational facility," "food and drink establishment," "place of lodging," "close-contact recreational facility," or "close-contact business" may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or one hundred twenty-five (125) customers inside its building at any given time. Notwithstanding the foregoing, indoor shopping malls may operate, provided that the total number of persons within the mall does not exceed 25% of the maximum occupancy of the premises, as determined by

the relevant fire marshal or fire department.

j. State museums may not operate.

**Red Level** -Red Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than five (5) individuals are prohibited. "Mass gatherings" in which individuals gather in vehicles are permitted so long as the gathering is limited to ten (10) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space," may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate but may not exceed 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. "Houses of worship" may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. "Outdoor recreational facilities" may operate at 25% capacity unless specified otherwise in the pertinent CSP's, in which case the CSP's capacity limits are controlling. The indoor portions of "outdoor recreational facilities" must comply with the requirements contained in paragraph (2)i below

unless specified otherwise in the pertinent CSP’s. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. “Food and drink establishments” may not provide indoor dine-in service but may provide service in outdoor seating areas up to 25% occupancy, where applicable. Tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law. Any “food and drink establishment” that is permitted to serve alcohol must close for in-person service by 9:00 p.m. and must remain closed until at least 4:00 a.m. “Food and drink establishments” may provide delivery service after 9:00 p.m. but no customers are permitted on the premises.

f. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 40% of maximum occupancy. All other “places of lodging” shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. “Close-contact recreational facilities” may not operate.

h. “Close-contact businesses” may operate but may not exceed the lesser of 25%

of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or ten (10) customers inside the building at any given time.

i. Any entity that is not identified as an “essential business,” “house of worship,” “outdoor recreational facility,” “food and drink establishment,” “place of lodging,” “close-contact recreational facility,” or “close-contact business” may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or seventy-five (75) customers inside the building at any given time. Notwithstanding the foregoing, indoor shopping malls may operate, provided that the total number of persons within the mall does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department.

j. State museums may not operate.

**BASELINE DIRECTIVES**

Regardless of a county’s level, **DIRECT** that the following baseline directives apply at all times and in all instances:

(1) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents do not satisfy this requirement. “Retail spaces” may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(2) In order to minimize the shortage of health care supplies and other necessary goods, “retail spaces” shall limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per

individual.

(3) Any “food and drink establishment,” “close-contact business,” “place of lodging,” “retail space,” or other business (including “essential businesses” other than those which meet the definition of a healthcare operation, utility, or indigent care services) in which members of the public regularly visit must immediately close for a period of fourteen (14) days following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, an “essential business” may be permitted to continue operating if the Department of Health, after consultation with the New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, “essential businesses” that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision.

(4) All businesses, houses of worship, and other non-profit entities must adhere to the pertinent CSP’s.

(5) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction described in the document “Reentry Guidance” published by New Mexico’s Public Education Department on June 20, 2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25% of any individual enclosed indoor space, such as any classroom, as determined by the relevant fire marshal or fire department, with

the occupancy restriction herein to govern in the event of any discrepancy with the "Reentry Guidance." Private schools shall report to the New Mexico Public Education Department all cases of COVID-19 positive students, staff, contractors and volunteers associated with the school within four hours of the school being notified of the positive case, and consistent with the COVID-19 Response Toolkit for New Mexico's Public Elementary Schools, as well and any updates or revisions made to the Toolkit document. Private schools, like public schools, are also subject to inclusion on the New Mexico Environment Department's watchlist and closure list, as well as any accompanying restrictions.

(6) State parks shall only be open to New Mexico residents for day-use only. Visitor centers and any other large enclosed indoor spaces at state parks shall remain closed. As a condition of entering a state park, all visitors must demonstrate proof of residency through one of the following means: a New Mexico license plate on their vehicle, a New Mexico driver's license or ID card, a valid New Mexico vehicle registration, a federal document attesting to residency, or a military identification. The State Parks Division is directed to extend the use of annual camping passes that were purchased after March 2019 for a period determined by the State Parks Division related to the original expiration date due to the closure of State parks to camping.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public

Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect on December 16, 2020 and remain in effect through January 13, 2021.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

**I FURTHER ADVISE the public to take the following preventive precautions:**

-- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**

-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

**DONE AT THE EXECUTIVE OFFICE THIS 15TH DAY OF DECEMBER 2020**

**ATTEST:**  
/S/ MAGGIE TOULOUSE  
**OLIVER**  
**SECRETARY OF STATE**

**WITNESS MY HAND AND THE**

**GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/ TRACIE C. COLLINS, M.D.**  
**SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO**  
**DEPARTMENT OF HEALTH**

**HEALTH,**  
**DEPARTMENT OF**

**PUBLIC HEALTH ORDER**  
**NEW MEXICO DEPARTMENT**  
**OF HEALTH**  
**SECRETARY-DESIGNATE**  
**TRACIE C. COLLINS, M.D.**

**DECEMBER 15, 2020**

**Amended Public Health**  
**Emergency Order Implementing**  
**Additional Contact Tracing**  
**Information Requirements for**  
**all Laboratories and Submitters**  
**Submitting Notifiable**  
**Condition COVID-19 Test Results**  
**to the New Mexico Epidemiology**  
**and Response Division**

**WHEREAS**, on January 30, 2020, the World Health Organization announced the emergence of a novel Coronavirus Disease 2019 ("COVID-19") that had not previously circulated in humans, but has been found to have adapted to humans such that it is contagious and easily spread from one person to another and one country to another;

**WHEREAS**, COVID-19 has been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

**WHEREAS**, on March 11, 2020, because of the spread of COVID-19, Michelle Lujan Grisham, the Governor of the State of New Mexico, issued Executive Order 2020-004 declaring that a Public Health Emergency exists



in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through January 8, 2021;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, all physicians, laboratories, health care professionals, and other persons having knowledge of diseases or conditions covered by 7.4.3.1 NMAC, Control of Disease and Conditions of Public Health Significance, are required to provide to the Epidemiology and Response Division all reports including electronic laboratory reports of notifiable conditions which pursuant to 7.4.3.13(A) NMAC must include the disease or condition being reported, the patient's name, date of birth/age, gender, race/ethnicity, address, patient phone numbers and occupation;

**WHEREAS**, in the effort to stop further spread of COVID-19 in the State of New Mexico, the Epidemiology and Response Division conducts contact tracing of positive cases of COVID-19 the effort to halt the spread of this notifiable condition ; and

**WHEREAS**, the New Mexico Department of Health possess legal authority pursuant to the Public Health Act, NMSA, 1978, Sections 24-1-1 to -40 the Public Health Emergency Response

Act, NMSA 1978, 12-IOA-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government to preserve and promote public health and safety.

**NOW, THEREFORE**, I, Tracie C. Collins, M.D., Secretary-Designate of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

**I ORDER AND DIRECT** as follows:

(1) All laboratories and submitters submitting the required reports of the notifiable condition, including COVID-19, to the Department of Health pursuant to 7.4.3.13(A) NMAC must submit all such reports electronically by HL7 messaging or other format specified by the Department of Health, and shall include in such reports all information currently required to be submitted, which includes (1) the disease or condition being reported; (2) patient's name, date of birth/age, gender, race/ethnicity, address, patient telephone numbers, and occupation; (3) physician or licensed healthcare professional name and telephone number; and (4) healthcare facility or laboratory name and telephone number.

(2) In addition to the information required to be

reported by 7.4.3.13(A) NMAC, all laboratories and submitters shall provide the following demographic information to the New Mexico Epidemiology and Response division with each notifiable condition report: (1) patient's email address(es); (2) name of patient's employer; (3) address of patient's employer; (4) phone number of patient's employer; (5) name of patient's school if applicable (Grade K-12 or Higher Educational Institution); and (6) address of patient's school if applicable.

(3) All submitters, entities and individuals who collect COVID-19 specimen samples must report daily to the Department of Health the number of COVID-19 specimen samples collected, along with any additional related information requested by the Department, including the identity and location of the laboratory where the samples will be sent for processing. All information shall be submitted through the Department's website portal at <https://cv.nmhealth.org/providers/list-your-screening-and-testing-location/>.

(4) Any person who willfully violated this Order may be subject to civil administrative penalties, including fines up to \$5000 per violation under NMSA 1978, Section 12-IOA-19, in addition to other civil or criminal penalties that may be available at law.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order shall take effect on December 16, 2020 and remain in effect for the duration of the public health emergency first declared in Executive Order 2020-004 and any subsequent renewals of that public health emergency declaration unless otherwise rescinded. This Order

may be renewed consistent with any direction from the Governor.

**DONE AT THE EXECUTIVE  
OFFICE THIS 15TH DAY OF  
DECEMBER 2020**

**ATTEST:  
/S/ MAGGIE TOULOUSE  
OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
NEW MEXICO**

**/S/ TRACIE C. COLLINS, M.D.  
SECRETARY DESIGNATE OF  
THE STATE OF NEW MEXICO  
DEPARTMENT OF HEALTH**

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**End of Other Material  
Related to Administrative  
Law**

# 2021 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXII, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 4</b>	<b>January 12</b>
<b>Issue 2</b>	<b>January 14</b>	<b>January 26</b>
<b>Issue 3</b>	<b>January 28</b>	<b>February 9</b>
<b>Issue 4</b>	<b>February 11</b>	<b>February 23</b>
<b>Issue 5</b>	<b>February 25</b>	<b>March 9</b>
<b>Issue 6</b>	<b>March 11</b>	<b>March 23</b>
<b>Issue 7</b>	<b>March 25</b>	<b>April 6</b>
<b>Issue 8</b>	<b>April 8</b>	<b>April 20</b>
<b>Issue 9</b>	<b>April 22</b>	<b>May 4</b>
<b>Issue 10</b>	<b>May 6</b>	<b>May 25</b>
<b>Issue 11</b>	<b>May 27</b>	<b>June 8</b>
<b>Issue 12</b>	<b>June 10</b>	<b>June 22</b>
<b>Issue 13</b>	<b>June 24</b>	<b>July 7</b>
<b>Issue 14</b>	<b>July 8</b>	<b>July 20</b>
<b>Issue 15</b>	<b>July 22</b>	<b>August 10</b>
<b>Issue 16</b>	<b>August 12</b>	<b>August 24</b>
<b>Issue 17</b>	<b>August 26</b>	<b>September 14</b>
<b>Issue 18</b>	<b>September 16</b>	<b>September 28</b>
<b>Issue 19</b>	<b>September 30</b>	<b>October 13</b>
<b>Issue 20</b>	<b>October 14</b>	<b>October 26</b>
<b>Issue 21</b>	<b>October 28</b>	<b>November 9</b>
<b>Issue 22</b>	<b>November 15</b>	<b>November 30</b>
<b>Issue 23</b>	<b>December 2</b>	<b>December 14</b>
<b>Issue 24</b>	<b>December 16</b>	<b>December 28</b>

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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