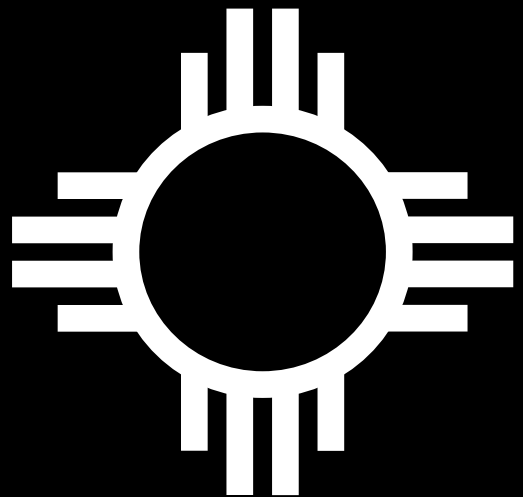


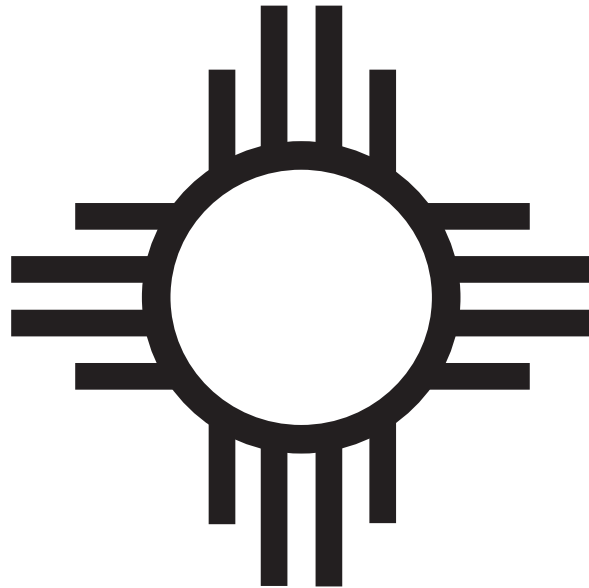
**NEW  
MEXICO  
REGISTER**



Volume XXVI  
Issue Number 24  
December 30, 2015

# **New Mexico Register**

**Volume XXVI, Issue 24  
December 30, 2015**



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

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2015

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# New Mexico Register

Volume XXVI, Issue 24

December 30, 2015

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

## Notices of Rulemaking and Proposed Rules

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### Notice of Public Hearing 2016-2018 CCDF State Plan

The Children, Youth and Families Department, Early Childhood Services, will hold a formal public hearing on Monday, February 1, 2016, from 9:00 a.m. to 12:00 p.m. in the Public Regulation Commission hearing room on the ground floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding proposed updates to the 2016-2018 Child Care and Development Fund State Plan (CCDF State Plan).

The draft CCDF State Plan may be obtained at [www.newmexicokids.org](http://www.newmexicokids.org) or by calling 800-832-1321. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on Monday, February 1, 2016. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Early Childhood Services, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, NM 87502; Fax: 505-827-9978.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Early Childhood Services at 800-832-1321. CYFD requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

#### NOTICIA DE AUDICION PÚBLICA 2016-2018 CCDF Plan Estatal

El Departamento de Niños, Juventud y Familias, Servicios de Niñez Temprana, tendrá una audición formal para el público el lunes, 1 de febrero de 2016, a las 9:00 de la mañana hasta mediodía en el salón audición de Comisión de Regulación Pública, localizado en el plata baja del PERA edificio en 1120 Paseo de Peralta, Santa Fe, Nuevo Mexico, para recibir comentarios públicos con respecto a actualizaciones propuestos el 2016-2018 Cuidado del Niño y Plan de desarrollo fondo estado (Plan de estatal de CCDF).

El borrador de Plan de estatal de CCDF

puede obtenerse en [www.newmexicokids.org](http://www.newmexicokids.org) o por llamar al 800-832-1321. Las personas interesadas pueden testificar en la audición o someter comentarios escritos hasta las 5:00 de la tarde el lunes, 1 de febrero de 2016. Los comentarios escritos serán dados la misma consideración como testimonio oral en la audición. Los comentarios escritos deben ser dirigidos a: Early Childhood Services, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, NM 87502; Fax: 505-827-9978.

Si usted es una persona con incapacidades y usted requiere esta información en un formato alternativo o requiere alojamientos especiales para tomar parte en la audición pública, por favor llame 505-827-7499 o 1-800-832-1321. CYFD requiere aviso de las peticiones por lo menos 10 días de preaviso para proporcionar formatos solicitados alternativos y alojamientos especiales.

### DEPARTMENT OF FINANCE AND ADMINISTRATION

#### Notice of Proposed Rulemaking

The Department of Finance and Administration is in the process of introducing a new rule: *Approval of Refunding Bonds* (2.61.8 NMAC). Copies of the proposed new rule are available in room 180, Bataan Memorial Building, Santa Fe, NM and on the Department of Finance and Administration website, [http://nmdfa.state.nm.us/Office\\_of\\_the\\_Secretary\\_2.aspx](http://nmdfa.state.nm.us/Office_of_the_Secretary_2.aspx). The Department will consider adopting the proposed new rule at a public hearing on February 8, 2016, which will take place at 1:00 p.m. in the Old Senate Chambers, also known as the "Red Room," on the second floor of the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501. Please mail or deliver written comments on the proposed new rule to: Stephanie Schardin Clarke, Deputy Cabinet Secretary, Department of Finance and Administration, 180 Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501, or by email at [Stephanie.Schardin@state.nm.us](mailto:Stephanie.Schardin@state.nm.us) by January 29, 2016.

If you are an individual with a disability who is in need of a reader, amplifier,

qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the public hearing, please contact Ms. Clarke at least one week prior to the public hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Ms. Clarke at 505-827-3930 or [Stephanie.Schardin@state.nm.us](mailto:Stephanie.Schardin@state.nm.us) if a summary or other type of accessible format is needed.

### RACING COMMISSION

#### Notice of Rulemaking and Public Hearing

**NOTICE IS HEREBY GIVEN** that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on January 21, 2016. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Boardroom at 4900 Alameda Blvd. NE, Albuquerque, NM.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 16.47.1 NMAC, 15.2.6 NMAC, 15.2.1 NMAC and 15.2.5 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from the NMRC Executive Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

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

/Robert Doughty, Chairman/  
Executive Director

Dated: December 4, 2015

**REGULATION AND  
LICENSING DEPARTMENT**

**NURSING HOME  
ADMINISTRATOR BOARD**

**Public Rule Hearing and Regular  
Board Meeting**

The New Mexico Nursing Home Administrators Board will hold a Rule Hearing on Tuesday, February 2, 2016. Following the Rule Hearing the New Mexico Nursing Home Administrators Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Nursing Home Administrators Board Rule Hearing will begin at 10:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held in the Rio Grande Room at the Regulation and Licensing Department, Toney Anaya Building located at the, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adopting a new part to the Board Rules in 16.13. NMAC: The new part is 16.13.6 NMAC: Licensure for Military Service Members, Spouses and Veterans, and amendments and additions to 16.13.1 NMAC: General Provisions, 16.13.3 NMAC: Application for Licensure by Examination, 16.13.8 NMAC License Renewal, 16.13.10 NMAC: Expired License and 16.13.12 NMAC License Reactivation.

The Board may go into executive session pursuant to 10-15-1.H of the Open Meetings Act to discuss pending complaints and licensure issues. A final agenda for the board meeting will be available at the Board Office at least 72 hours prior to the meeting and can be obtained on the website at [www.rld.state.nm.us](http://www.rld.state.nm.us).

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico, or call (505)476-4622 after January 2, 2016 or from the Board's website [http://](http://www.rld.state.nm.us)

[www.rld.state.nm.us/boards/](http://www.rld.state.nm.us/boards/). In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than January 18, 2016. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

Gabriella Romero, Administrator  
PO Box 25101, Santa Fe, NM 87505

**REGULATION AND  
LICENSING DEPARTMENT**

**BOARD OF PHARMACY**

**Regular Board Meeting - Notice to  
the Public**

The New Mexico Board of Pharmacy will convene on January 25<sup>th</sup> & 26<sup>th</sup>, 2016 at 9:00 a.m. and continue until finished in the \*Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM for the purpose of conducting a regular board meeting. Anyone who needs special accommodations for the meeting should contact the board office at (505) 222-9830 or contact Debra Wilhite, Administrative Secretary, at (505) 222-9835 or fax (505) 222-9845, e-mail [debra.wilhite@state.nm.us](mailto:debra.wilhite@state.nm.us) as soon as possible.

You may view and obtain copies of the agenda (tentative) starting January 15, 2016 through the board's website: [www.rld.state.nm.us/boards/pharmacy.aspx](http://www.rld.state.nm.us/boards/pharmacy.aspx).

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Executive Director, Ben Kesner, [Ben.Kesner@state.nm.us](mailto:Ben.Kesner@state.nm.us) or Debra Wilhite, [debra.wilhite@state.nm.us](mailto:debra.wilhite@state.nm.us) no later than Monday, January 15, 2016,

if in attendance must provide 12 copies of the documentation for distribution to board members. (Board staff is not required to make copies.)

The Board will address:

Rule Hearings:

- 16.19.4 NMAC Pharmacist; citation amendment
- 16.19.12 NMAC Fees;
- 16.19.37 NMAC Outsourcing licensing fee
- 16.19.29 NMAC Controlled Substance Prescription Monitoring Program; identifier amendment

\*Executive Director's Report:

\*The board may go into Executive Session to discuss these items and any other items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

Published in the Albuquerque Journal  
December 18, 2015

**REGULATION AND  
LICENSING DEPARTMENT**

**REAL ESTATE COMMISSION**

**Notice of Rule Hearing**

The New Mexico Real Estate Commission will hold a public rule hearing on Friday, February 19, 2016 at 9:00 a.m. at the offices of the Greater Albuquerque Association of Realtors, 1635 University Boulevard NE in Albuquerque, New Mexico.

The Commission is seeking real estate broker and public input on proposed changes to the rules detailed below. The Commission will take final action on proposed rules at its March 21, 2016 regular meeting to be held at 9:00 a.m. at the Commission offices at 5500 San Antonio Drive NE in Albuquerque.

Copies of the proposed rule changes are available from the Commission office at 5500 San Antonio Drive NE, Suite B, Albuquerque, New Mexico or from the Commission web site at [www.rld.state.nm.us](http://www.rld.state.nm.us). Copies of the agenda for the rule hearing may be obtained from the Commission office no later than seventy two (72) hours before the hearing.

Real estate brokers and members of the public may comment on the proposed rule changes during the hearing and may submit written comments to the Commission up to the day of the hearing. Written comments submitted prior to the hearing should be mailed to Wayne W. Ciddio, Executive Secretary, New Mexico Real Estate Commission, 5500 San Antonio Drive NE, Suite B, Albuquerque, New Mexico 87109 or emailed to Mr. Ciddio at wayne.ciddio@state.nm.us.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the rule hearing, please contact Wayne W. Ciddio, Executive Secretary, New Mexico Real Estate Commission at (505) 222-9829 or by email at wayne.ciddio@state.nm.us at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and proposed rule changes, can be provided in various accessible formats. Please contact Mr. Ciddio if a summary or other type of accessible format is needed.

Proposed Change, Part 3, Examination and Licensing Application Requirements  
An extension of the waiver of the national portion of the broker’s examination to New Mexico associate brokers upgrading to qualifying broker.

Discussion  
Real estate brokers licensed in other states applying for New Mexico licenses are not required to take the national portion of the broker’s exam which is standard across the country. The proposed change would extend the waiver of the national portion of the exam to New Mexico associate brokers upgrading to qualifying broker.

Proposed Change, Part 5, Errors and Omissions Insurance  
An amendment clarifying that an errors and omissions insurance policy will include a 90-day extended reporting period as part of the basic policy. Also known as “tail coverage”, an extended reporting period covers claims made after a policy expires.

Discussion  
The current rule erroneously states that errors and omissions insurance policies should include a 365-day extended reporting period. Although a 365-day extended reporting period is available by paying an additional premium, it is not

part of a basic policy.

Proposed Change, Part 6, Designation of a Qualifying Broker to Qualify a Real Estate Brokerage  
An amendment specifying that a business entity wishing to engage in real estate brokerage activity must designate a qualifying broker to qualify that business to engage in brokerage activity.

Discussion  
The current rule states that the Commission will issue a qualifying broker’s license to an individual that meets the requirements for such license, but does not say that a business entity must have a qualifying broker in order to engage in real estate brokerage. The change would insert that language and make the rule consistent with the definition of qualifying broker in the Definitions section of the rules.

Proposed Change, Part 7, Fingerprinting and Arrest Records Checks  
An amendment providing that license or license renewal applicants be fingerprinted no earlier than twenty-one (21) days prior to making application for licensure or license renewal.

Discussion  
The current rule allows license applicants to be fingerprinted up to six (6) months prior their application for licensure or license renewal. Because criminal background checks generated by fingerprinting are only accessible to Commission investigators for thirty (30) days after fingerprinting, a rule change is necessary to be able to access this information within the 30-day window.

Proposed Change, Part 15, Approval of Real Estate Courses, Sponsors, and Instructors  
Renaming the Education Steering Committee the Education Advisory Committee, restructuring the Committee, and granting continuing education credit for attending Committee meetings.

An amendment to continuing education rules replacing the eight (8) hour Mandatory Course required of all brokers every three (3) years with a four (4) hour Core Course required annually. Increasing from 30 hours to 36 hours continuing education required as a condition of license renewal.

Discussion  
The Education Steering Committee is appointed by the Commission to

review and make recommendations to the Commission on applications from individuals seeking approval to instruct and offer pre-licensing and continuing education courses. The proposed change would rename the committee the Education Advisory Committee, restructure the committee to make it less instructor-dominated, and allow brokers to earn continuing education credit by attending committee meetings. Brokers are currently allowed to earn up to four (4) hours of continuing education credit every three years by attending Commission meetings, disciplinary hearings, and rule hearings.

Based on a survey of more than 1,000 brokers the Commission is proposing to replace the current eight (8) hour course that focuses primarily on rules with a four (4) hour course that includes an annual review of broker duties, law and rules updates, errors and omissions insurance claims information, and disciplinary case studies.

The increase in total hours required for license renewal is a reflection of the Commission’s desire to have better educated brokers in the field to counteract an increasing number of complaints and errors and omissions insurance claims.

Proposed Changes, Part 16, Qualifying Broker: Affiliation and Responsibilities  
A requirement that the name and contact information of the qualifying broker be included in every express written agreement between a brokerage and a customer or client.

A requirement that broker’s license numbers be included in all forms of advertising.

An amendment to the Qualifying Broker rule allowing “virtual” real estate offices to display their licenses on the brokerage web site.

An amendment to the Qualifying Broker rule allowing qualifying brokers to substitute an electronic copy of the current Commission Law and Rule Book for a paper copy to be maintained in the brokerage office.

Discussion  
Because the qualifying broker is responsible for all activity conducted by the brokerage, requiring that the qualifying broker’s name, contact information, and license number be clearly displayed in all written documents



and advertising would make it easier for consumers to contact the qualifying broker if they had a question or concern about a transaction.

Because the current rule requiring the display in the brokerage office of the licenses of all affiliated brokers was written with a “bricks and mortar” office in mind, the proposed change would recognize that some brokerages operate “virtual” web-based brokerages.

The proposed change would allow qualifying brokers to substitute an on-line copy of the Commission Law and Rule book available on the Commission web site for a paper copy.

Proposed Change, Part 17, Associate Broker: Affiliation and Responsibilities

An amendment to the Associate Broker rule clarifying that an associate broker who puts their license on inactive status at the time of initial licensure will have one year from the time they activate their license to complete the New Broker Business Practices course.

Discussion

Brokers are currently required to complete the New Broker Business Practices course within their first year of licensure. Because new brokers are allowed to place their licenses on inactive status until they find a qualifying broker with whom to affiliate, the rule is being changed to allow associate brokers one year from when they activate their license to complete the course.

Proposed Changes, Part 19, Broker Duties and Brokerage Relationships

An amendment to the Broker Duties rule adding “ethical and professional conduct” to the current broker duty of “honesty and reasonable care”.

A rewrite of the broker duties rule breaking out which duties are owed to (a) property owners and tenants (b) customers and clients and (3) other brokers.

Discussion

This rule change, in combination with a new definition of “honesty, reasonable care, and ethical and professional conduct”, would give the Commission flexibility to prosecute cases in which ethical and professional behavior, although not in direct violation of a specific license law or rule, are at issue.

The most important Commission Rules

are those which specify what duties are owed to consumers by real estate brokers prior to and in the course of a real estate transaction. They include honesty and reasonable care, compliance with applicable local, state, and federal laws, prompt accounting for clients’ money, disclosure of adverse material facts, disclosure of conflicts of interest, and others. They are also the most debated and contentious rules.

The proposed rules would specify which broker duties are owed to property owners and tenants, clients and customers, and other brokers. Significantly, the changes would bring the Commission Rules in line with the Owner Resident Relations Act which specifies that brokers managing property for others are the exclusive agents of property owners.

Proposed Changes, Part 27, Foreign Brokers

Reinstating the “foreign broker” rule reflecting the revised foreign broker law passed by the 201 legislature.

Creating a definition of “commercial real estate” to be consistent with the definition in the new foreign broker law.

Discussion

“Foreign brokers” are real estate brokers licensed by other states doing real estate business in New Mexico without a New Mexico license through a co-brokerage agreement with a New Mexico licensed qualifying broker.

The legislature repealed the foreign broker law in 2013 but reinstated it in 2014 with a provision that it be limited to commercial transactions. The proposed rule would reinstate the “foreign broker” rule in the Commission Rules and create a definition of “commercial real estate” consistent with the definition in the foreign broker statute.

Proposed Changes, Part 32 Advertising

Requiring associate brokers and qualifying brokers to include their license numbers in any form of advertising.

Strengthening the advertising rule to ensure that the name and telephone number of the brokerage with which associate brokers are affiliated are prominently displayed in any advertising conducted by associate brokers or teams of associate brokers.

Adding to the advertising rule language

that accommodates the limitations of some forms of social media.

Discussion

A broker’s license number is the best identifier in an advertisement that may include an associate broker’s name, a team name, and a brokerage name. The proposed rule would require brokers to include their license number or numbers in any form of advertising.

The emergence of a business model in which teams of associate brokers are encouraged by brokerage firms to establish their own identities has led to consumer confusion about who they are dealing with and who are the responsible parties. The proposed rule would require associate brokers and teams of associate brokers to display the trade name and telephone number of the brokerage with which they are affiliated in a type size no smaller than 33 percent of the size of the name of the associate broker or team of associate brokers.

Currently, character limitations in some forms of social media make it difficult for brokers to make the required disclosures in advertising. The proposed rule would exempt such advertising from disclosure requirements provided that displays are linked to a display that includes all of the required disclosures.

Proposed Change, Part 36, Complaints and Investigations

An amendment giving the Commission specific authority to offer settlement agreements in disciplinary cases in lieu of referring such cases to the Attorney General’s Office for prosecution

Discussion

For years, the Commission has offered respondents in disciplinary cases Pre-Notice of Contemplated Action (NCA) settlement offers to resolve cases of a minor or technical nature in lieu of sending the cases to the Attorney General’s Office for prosecution. The result has been that many cases are resolved quickly and without the time and expense involved in a formal disciplinary hearing.

The Commission is proposing an amendment to its Complaints and Investigations Rule that would specifically give it the authority to make such offers with the understanding that if a respondent declines the offer the case is referred to the Attorney General’s Office for prosecution.

## STATE GAME COMMISSION

### Commission Meeting and Rulemaking Notice

On **Thursday, January 14, 2016**, beginning at 9:00 a.m., at the **Santa Fe Community College Board Room**, located at **6401 Richards Avenue, Santa Fe, NM**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Election of Chair and Vice Chair of the State Game Commission, Annual Adoption of the Open Meetings Resolution, Future Meeting Schedule and Locations, Action to be Taken on Turner Endangered Species Fund Appeals of the Denial of Applications to Import and Possess Mexican Gray Wolves, Revocations, Initiation of Migratory Bird Rule for 2016-2017 Hunting Seasons, Fiscal Year 2015 Department Audit Results and Review (tentative), 2016 Department Program Priorities, Final Proposed Amendments to the Aquatic Invasive Species Rule (NMAC 19.30.14), Final Proposed Amendments to Hunting and Fishing License Application Rule (NMAC 19.31.3), State Game Commission Award, Commission to Designate A Commissioner to Review and Select the 2016 Recipient, Property Acquisition (tentative), and Closed Executive Session.

Obtain a copy of the agenda from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

## DEPARTMENT OF WORKFORCE SOLUTIONS

### Notice of Public Hearing

The New Mexico Department of Workforce Solutions ("Department") hereby gives notice that the Department will conduct a public hearing in the auditorium of the State Personnel Office located at 2600 Cerrillos Road, Santa Fe, New Mexico on February 3, 2016 from 2:00 P.M. until 4:00 P.M. The purpose of the public hearing will be to obtain input on amendments to 11.2.31 NMAC, Job Training Apprenticeship Assistance.

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M., 87103, attention Attorney Rudolph Arnold. Written comments must be received no later than 5 p.m. on February 3, 2016. However, the submission of written comments as soon as possible is encouraged.

Copies of the amended rules may be accessed at <http://www.dws.state.nm.us/> or obtained from Rudolph Arnold Tel.: (505) 841-8672 or [rudolph.arnold@state.nm.us](mailto:rudolph.arnold@state.nm.us). The amended rules will be made available at least thirty days prior to the hearing.

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

## 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.

#### **ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

##### **ENERGY CONSERVATION AND MANAGEMENT DIVISION**

#### **TITLE 3            TAXATION CHAPTER 3        PERSONAL INCOME TAXES PART 34           NEW SUSTAINABLE BUILDING TAX CREDIT FOR RESIDENTIAL BUILDINGS**

**3.3.34.1            ISSUING AGENCY:**  
Energy, Minerals and Natural Resources  
Department.  
[3.3.34.1 NMAC - N, 12/30/15]

**3.3.34.2            SCOPE:** 3.3.34  
NMAC applies to the application and  
certification procedures for administration  
of the new sustainable building tax credit  
for sustainable residential buildings.  
[3.3.34.2 NMAC - N, 12/30/15]

**3.3.34.3            STATUTORY  
AUTHORITY:** 3.3.34 NMAC is  
established under the authority of Laws  
2015, Chapter 130 and Section 9-1-5  
NMSA 1978.  
[3.3.34.3 NMAC - N, 12/30/15]

**3.3.34.4            DURATION:**  
Permanent.  
[3.3.34.4 NMAC - N, 12/30/15]

**3.3.34.5            EFFECTIVE DATE:**  
December 30, 2015, unless a later date is  
cited at the end of a section.  
[3.3.34.5 NMAC - N, 12/30/15]

**3.3.34.6            OBJECTIVE:**  
3.3.34 NMAC's objective is to establish  
procedures for administering the program  
to issue a certificate of eligibility for the  
new sustainable building tax credit for  
sustainable residential buildings.  
[3.3.34.6 NMAC - N, 12/30/15]

**3.3.34.7            DEFINITIONS:**  
**A.** "Annual cap" means  
the annual total amount of the new

sustainable building tax credit available to  
taxpayers owning sustainable residential  
buildings.

**B.** "Applicant" means  
a taxpayer who owns a sustainable  
residential building in New Mexico  
and who desires to have the department  
issue a certificate of eligibility for a new  
sustainable building tax credit.

**C.** "Application package"  
means the documents an applicant submits  
to the department to apply for a certificate  
of eligibility for a new sustainable  
building tax credit.

**D.** "Build green  
New Mexico certification" means the  
verification by a department-approved  
verifier, that a building project has met  
certain prerequisites and performance  
benchmarks or credits within each  
category of the build green New Mexico  
rating system resulting in the issuance of a  
certification document.

**E.** "Build green New  
Mexico rating system" means the  
certification standards adopted by build  
green New Mexico in November 2014,  
which includes water conservation  
standards.

**F.** "Certification" means  
build green New Mexico certification, or  
LEED certification or energy star qualified  
for manufactured housing.

**G.** "Certificate of  
eligibility" means the document, with a  
unique identifying number that specifies  
the amount and taxable year and specific  
physical address for the approved new  
sustainable building tax credit.

**H.** "Certification level"  
means one of the following:  
**(1)** LEED-H  
silver or build green New Mexico silver;  
**(2)** LEED-H  
gold or build green New Mexico gold; or  
**(3)** LEED-H  
platinum or build green New Mexico  
emerald.

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

**J.** "Division director"  
means the director of the department's  
energy conservation and management  
division.

**K.** "Energy reduction  
requirements" means has achieved a  
HERS index of 60 or lower.

**L.** "Energy star" means  
a joint program of the United States  
environmental protection agency and the  
United States department of energy that  
qualifies homes based on a predetermined  
threshold of energy efficiency and other  
requirements.

**M.** "Energy star qualified  
manufactured home" means a home  
that an in state or out of state energy  
star certified plant has certified as being  
designed, produced and installed in  
accordance with energy star's guidelines.

**N.** "HERS" means home  
energy rating system as developed by  
RESNET.

**O.** "HERS index" means  
a relative energy use index, where 100  
represents the energy use of a home built  
to a HERS reference house and zero  
indicates that the proposed home uses no  
net purchased energy.

**P.** "LEED" means the  
most current mandatory leadership in  
energy and environmental design green  
building rating system guidelines the  
United States (U.S.) green building  
council developed and adopted.

**Q.** "LEED certification"  
means the verification by the U.S. green  
building council, or a department-  
approved verifier, that a building  
project has met certain prerequisites  
and performance benchmarks or credits  
within each category of the LEED-H  
rating system resulting in the issuance of a  
certification document.

**R.** "LEED-H" means the  
LEED rating system for homes at the time  
of project registration.

**S.** "Manufactured  
housing" means a multisectioned home  
that is:

- (1)** a  
manufactured home or modular home;
- (2)** a single-  
family dwelling with a heated area of at  
least 36 feet by 24 feet and a total area of  
at least 864 square feet;
- (3)** constructed  
in a factory to the standards of the

U.S. department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit's construction; and

(4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.

T. "New sustainable building tax credit" for the purposes of 3.3.34 NMAC means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.

U. "Person" does not include state, local government, public school districts or tribal agencies.

V. "Qualified occupied square footage" means the occupied spaces of the building as determined by:

(1) the U.S. green building council for those buildings obtaining LEED certification; or

(2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or

(3) the U.S. environmental protection agency for energy star certified manufactured homes.

W. "Rating system" means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

X. "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards-making body for building energy efficiency rating systems.

Y. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

Z. "Sustainable residential building" means:

(1) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating system that:

(a) is certified by the U.S. green building council as LEED-H silver or higher; or by build green New Mexico as silver or higher;

(b) has achieved a home energy rating system

index of 60 or lower as developed by the residential energy services network;

(c) has indoor plumbing fixtures and water-using appliances, that on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; when plumbing fixtures, plumbing features, and water-using appliances are used that have no known equivalent flow rates to WaterSense labeled products, but in aggregate combined exceed the whole-house consumption of a home with only WaterSense plumbing fixtures, then the water efficiency rating score shall be used to prove the whole-house water consumption is equal to or lower than a home with only plumbing fixtures certified by WaterSense;

(d) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and

(e) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(2) manufactured housing that is energy star qualified by the U.S. environmental protection agency.

AA. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act, 7-2-1 et seq. NMSA 1978.

BB. "Taxpayer" means any individual subject to the tax imposed by the Income Tax Act, 7-2-1 et seq. NMSA 1978.

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

DD. "Tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

EE. "Verifier" means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems.

FF. "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance. [3.3.34.7 NMAC - N, 12/30/15]

**3.3.34.8 GENERAL PROVISIONS:**

A. A person who is the owner of a building in New Mexico that has been constructed, renovated or manufactured to be a sustainable residential building and that receives certification on or after January 1, 2017 may receive a certificate of eligibility for a new sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

B. The annual total amount in a calendar year of the new sustainable building tax credit pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is limited to \$3,375,000 for sustainable residential buildings that are not manufactured housing. When the \$3,375,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible new sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) the department may issue certificates of eligibility to applicants who meet the requirements for the new sustainable residential buildings tax credit in a taxable year when applications for the new sustainable residential buildings tax credit exceed the annual cap and applications for the new sustainable commercial buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by March 1 of any year in which the tax credit is in effect; or

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

C. There is a \$375,000 annual cap for sustainable residential buildings that are manufactured housing.

D. In the event of a discrepancy between a requirement of 3.3.34 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.34 NMAC's adoption, the existing rule governs.

E. All notices and

applications required to be submitted to the department under 3.3.35 NMAC shall be submitted to the energy conservation and management division of the department.  
[3.3.34.8 NMAC - N, 12/30/15]

**3.3.34.9 VERIFIER ELIGIBILITY:**

**A.** The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications, which shall be provided annually to the department, based on the following criteria:

- (1) the verifier is independent from the homebuilders or homeowners that may apply for certification;
- (2) the verifier has adequate staff and expertise to provide certification services, including:
  - (a) experience in green home building services;
  - (b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;
  - (c) a method of auditing the certification process to maintain adequate stringency; and
  - (d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;
- (3) the verifier can identify the geographic area being served; and
- (4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

**B.** The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

**C.** The verifier shall notify the department 30 calendar days prior to making changes to its certification process or rating systems.

**D.** The department may rescind an existing verifier's approval if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The

department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.  
[3.3.34.9 NMAC - N, 12/30/15]

**3.3.34.10 APPLICATION FOR THE NEW SUSTAINABLE BUILDING TAX CREDIT:**

**A.** In order to obtain the new sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department on a department-developed form. An applicant may obtain an application form from the department.

**B.** An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time on 8½ inch by 11 inch paper the department may consider the application incomplete.

**C.** An applicant shall

submit a complete application package to the department no later than March 1 of the taxable year for which the applicant seeks the new sustainable building tax credit. If an applicant does not submit a complete application package by March 1, any remaining new sustainable residential building tax credit funds under the cap may be used in that taxable year for completed new sustainable commercial building or manufactured housing applications. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

**D.** The completed application form shall consist of the following information:

- (1) the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2) the name of the applicant's authorized representative;
- (3) the ending date of the applicant's taxable year;
- (4) the address of the sustainable residential building, including the property's legal description;
- (5) whether the applicant was the building owner at time of certification or a subsequent purchaser;
- (6) the qualified occupied square footage of the sustainable residential building;
- (7) the rating system under which the sustainable residential building was certified;
- (8) the certification level achieved, if applicable;
- (9) the HERS index;
- (10) documentation that applicant meets water efficiency standards to comply with water efficiency requirements of this program;
- (11) the date of rating system certification;
- (12) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:
  - (a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;
  - (b) applicant has read the requirements contained in 3.3.34 NMAC;
  - (c) if an onsite solar system is used to meet the requirements of either the rating system

certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d)

applicant understands that there are annual caps for the new sustainable building tax credit;

(e)

applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a new sustainable building tax credit; and

(f)

applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the new sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and

(13) a project

number the department assigns to the tax credit application.

**E.** In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software RESNET lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower; and

(5) other information the department needs to review the building project for the new sustainable building tax credit.

[3.3.34.10 NMAC - N, 12/30/15]

**3.3.34.11 APPLICATION REVIEW PROCESS:**

**A.** The department considers applications in the order received, according to the day they are received, but not the time of day.

**B.** The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

**C.** The department reviews the application package to calculate the maximum new sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the new sustainable building tax credit.

**D.** If an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the department verifies that no person has applied for a solar market development tax credit for that solar system. If the department finds that a solar market development tax credit has been approved for that solar system, the department shall disapprove the application for the new sustainable building tax credit. The applicant may submit a revised application package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

**E.** If the department finds that the application package meets the requirements and a new sustainable building tax credit is available, the department issues the certificate of eligibility for a new sustainable building tax credit. If a new sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the new sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the new sustainable building

tax credit amount or amounts and the new sustainable building tax credit's taxable year or years.

[3.3.34.11 NMAC - N, 12/30/15]

**3.3.34.12 CALCULATING THE TAX CREDIT:**

**A.** The department calculates the maximum new sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

**Continued on Next Page**

|  |   |
|--|---|
| LEED-H silver or build green New Mexico silver:    |   |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$3.00  |
| LEED-H gold or build green New Mexico gold:        |   |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$4.50  |
| LEED-H platinum or build green New Mexico emerald: |   |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$6.50  |
| energy star manufactured housing:                  |   |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$3.00. |

**B.** The taxation and revenue department makes the final determination of the amount of the new sustainable building tax credit.  
[3.3.34.12 NMAC - N, 12/30/15]

**3.3.34.13 CLAIMING THE STATE TAX CREDIT:** To claim the new sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.  
[3.3.34.13 NMAC - N, 12/30/15]

**HISTORY OF 3.3.34 NMAC:**  
[RESERVED]

**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

ENERGY CONSERVATION AND MANAGEMENT DIVISION

**TITLE 3 TAXATION  
CHAPTER 3 PERSONAL  
INCOME TAXES  
PART 35 NEW  
SUSTAINABLE BUILDING TAX  
CREDIT FOR COMMERCIAL  
BUILDINGS**

**3.3.35.1 ISSUING AGENCY:** Energy, Minerals and Natural Resources Department.  
[3.3.35.1 NMAC - N, 12/30/15]

**3.3.35.2 SCOPE:** 3.3.35 NMAC applies to the application and certification procedures for administration of the new sustainable building tax credit for sustainable commercial buildings.  
[3.3.35.2 NMAC - N, 12/30/15]

**3.3.35.3 STATUTORY AUTHORITY:** 3.3.35 NMAC is established under the authority of Laws 2015, Chapter 130 and Section 9-1-5 NMSA 1978.  
[3.3.35.3 NMAC - N, 12/30/15]

**3.3.35.4 DURATION:** Permanent.  
[3.3.35.4 NMAC - N, 12/30/15]

**3.3.35.5 EFFECTIVE DATE:** December 30, 2015, unless a later date is cited at the end of a section.  
[3.3.35.5 NMAC - N, 12/30/15]

**3.3.35.6 OBJECTIVE:** 3.3.35 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the new sustainable building tax credit for sustainable commercial buildings.  
[3.3.35.6 NMAC - N, 12/30/15]

**3.3.35.7 DEFINITIONS:**  
**A.** "Annual cap" means the annual aggregate amount of the new sustainable building tax credit available to taxpayers owning sustainable commercial buildings.  
**B.** "Applicant" means a taxpayer who owns a sustainable commercial building in New Mexico and who desires to have the department issue a certificate of eligibility for a new sustainable building tax credit.

**C.** "Application package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a new sustainable building tax credit.

**D.** "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

**E.** "Build green New

Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

**F.** "Building project" means a new construction or renovation project that will result in one or more sustainable commercial buildings.

**G.** "Building type" means the primary use of a building or section of a building as defined in target finder.

**H.** "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year and specific physical address for the approved new sustainable building tax credit.

**I.** "Certification level" means one of the following:  
**(1)** LEED-H silver or build green New Mexico silver;  
**(2)** LEED-H gold or build green New Mexico gold; or  
**(3)** LEED-H platinum or build green New Mexico emerald.

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

**K.** "Division director" means the director of the department's energy conservation and management division.

**L.** "Energy reduction requirements means":  
**(1)** for a sustainable commercial building that is not a multifamily dwelling unit means beginning January 1, 2012, a sixty percent energy reduction based on the national average for that building type as published by the United States (U.S.) department of energy;

**(2)** for a multifamily dwelling unit means that it has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network.

**M.** "HERS" means home



energy rating system as developed by RESNET.

**N.** “HERS index” means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

**O.** “LEED” means the most current mandatory leadership in energy and environmental design green building rating system guidelines developed and adopted by the U.S. green building council.

**P.** “LEED certification” means the U.S. green building council’s verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.

**Q.** “LEED-CI” means the LEED rating system for commercial interiors.

**R.** “LEED-CS” means the LEED rating system for the core and shell of buildings.

**S.** “LEED-EB” means the LEED rating system for existing buildings.

**T.** “LEED-H” means the LEED rating system for homes at the time of project registration.

**U.** “LEED-NC” means the LEED rating system for new buildings and major renovations.

**V.** “LEED rating system” means one of the following:

- (1) LEED-CI;
- (2) LEED-CS;
- (3) LEED-EB;
- (4) LEED-H; or
- (5) LEED-NC.

**W.** “LEED registration” means the notification to the U.S. green building council that a project is pursuing LEED certification.

**X.** “New sustainable building tax credit” for the purposes of 3.3.35 NMAC means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable commercial building.

**Y.** “Person” does not include state, local government, public school districts or tribal agencies.

**Z.** “Qualified occupied square footage” means the occupied spaces of the building as determined by the U.S. green building council for those buildings obtaining LEED certification or the administrators of the build green New Mexico rating system for those

homes obtaining build green New Mexico certification; or the U.S. environmental protection agency for energy star-certified manufactured homes.

**AA.** “RESNET” means the residential energy services network, an industry not-for-profit membership corporation and national standards-making body for building energy efficiency rating systems.

**BB.** “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

**CC.** “Sustainable commercial building” means:

(1) a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the U.S. green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network; or

(2) a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the U.S. green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED “energy and atmosphere”, if included in the applicable rating system; and

(c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the U.S. department of energy as substantiated by the U.S. environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development.

**DD.** “Target finder” means the web-based program developed by the U.S. environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.

**EE.** “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act, 7-2-2 et seq. NMSA 1978.

**FF.** “Taxpayer” means any

individual subject to the tax imposed by the Income Tax Act, 7-2-1 et seq. NMSA 1978.

**GG.** “Taxpayer identification number” means the taxpayer’s nine digit social security number.

**HH.** “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

**II.** “Verifier” means an entity the department approves to provide certification for homes under the build green New Mexico or LEED-H rating systems.

[3.3.35.7 NMAC - N, 12/30/15]

**3.3.35.8 GENERAL PROVISIONS:**

**A.** A person who is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after the effective date of the adoption of 3.4.22 NMAC may receive a certificate of eligibility for a new sustainable building tax credit.

**B.** The total amount in a calendar year of the new sustainable building tax credit available pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act to taxpayers owning sustainable commercial buildings is limited to \$1,250,000. When the \$1,250,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible new sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

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

**C.** The department may issue certificates of eligibility to applicants who meet the requirements for the new sustainable commercial buildings tax credit in a taxable year when applications for the new sustainable commercial buildings tax credits exceed the annual cap and applications for the new sustainable residential building or manufactured housing tax credits are

under the annual cap for that type of sustainable building by March 1 of any year in which the tax credit is in effect.

**D.** In the event of a discrepancy between a requirement of 3.3.35 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.35 NMAC's adoption, the existing rule governs.

**E.** All notices and application required to be submitted to the department under 3.3.35 NMAC shall be submitted to the energy conservation and management division of the department. [3.3.35.8 NMAC - N, 12/30/15]

**3.3.35.9 VERIFIER'S ELIGIBILITY:**

**A.** The department reviews the qualification for verifiers of the build green New Mexico or LEED certifications, which shall be provided annually to the department, based on the following criteria:

- (1) the verifier is independent from the builder or owner that may apply for certification;
- (2) the verifier has adequate staff and expertise to provide certification services, including;
  - (a) experience in green building services;
  - (b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;
  - (c) a method of auditing the certification process to maintain adequate stringency; and
  - (d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;
- (3) the verifier can identify the geographic area being served; and
- (4) the verifier provides a statement that expresses a commitment to promoting energy efficient green building with the highest standard of excellence.

**B.** The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

**C.** The verifier shall notify the department 30 calendar days prior to making changes to its certification process or rating systems.

**D.** The department may rescind an existing verifier's approval if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The division director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.3.35.9 NMAC - N, 12/30/15]

**3.3.35.10 APPLICATION FOR THE NEW SUSTAINABLE BUILDING TAX CREDIT:**

**A.** In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application for the new sustainable building tax credit after the building is completed, the applicant has fulfilled all other requirements and the total annual cap for the new sustainable building tax credit has not been met. An applicant may obtain an application form from the department.

**B.** An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time.

An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time on 8½ inch by 11 inch paper the department may consider the application incomplete.

**C.** An applicant shall submit a complete application package to the department no later than March 1 of the taxable year for which the applicant seeks the new sustainable building tax credit. If an applicant does not submit a complete application package by March 1, any remaining new sustainable commercial building tax credit funds under the cap may be used in that taxable year for completed new sustainable residential building or manufactured housing applications. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

**D.** The completed application form shall consist of the following information:

- (1) the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2) the address of the sustainable commercial building, including the property's legal description;
- (3) whether the applicant was the building owner at time of certification or a subsequent purchaser;
- (4) the rating system under which the sustainable commercial building was certified;
- (5) the certification level achieved;
- (6) for sustainable commercial buildings that are not multifamily dwelling units, the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;
- (7) for sustainable commercial buildings that are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent;
- (8) the qualified occupied square footage of the sustainable commercial building;

(9) the date of certification;

(10) for multifamily dwelling units, the HERS index; and

(11) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;

(c) if an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d) applicant understands that there are annual caps in place for the new sustainable building tax credit;

(e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a new sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the tax year in which the new sustainable commercial building was certified or if the new sustainable building tax credit's annual cap has been reached for the next tax year in which funds are available.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a current warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable commercial building;

(2) a copy of the rating system certification form;

(3) a copy of the final LEED project info or project summary that shows the building's square footage;

(4) a copy

of the final certification review LEED checklist that shows the LEED credits achieved or the build green New Mexico final certification review checklist;

(5) for sustainable commercial buildings that are not multifamily dwelling units, a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;

(6) for sustainable commercial building that are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent;

(7) a copy of the final LEED commissioning template, if available under the applicable LEED rating system;

(8) for multifamily dwelling units, a copy of a HERS certificate from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software RESNET lists as eligible for certification of the federal tax credit, showing the HERS index achieved, if applicable; and

(9) other information the department needs to review the building project for the new sustainable building tax credit.

[3.3.35.10 NMAC - N, 12/30/15]

**3.3.35.11 APPLICATION REVIEW PROCESS:**

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package.

C. The department reviews the application package to calculate the maximum new sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the new sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied

for in the new sustainable building tax credit or the energy reduction requirement achieved, the department verifies that no person has applied for a solar market development tax credit for that solar system. If the department finds that a solar market development tax credit has been approved for that solar system, the department shall disapprove the application for the new sustainable building tax credit. The applicant may submit a revised application package to the department that excludes electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

E. If the department finds that the application package meets the requirements and funds for a new sustainable building tax credit are available, the department issues the certificate of eligibility for a new sustainable building tax credit. If funds for a new sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the new sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application's completed review. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the new sustainable building tax credit amount or amounts and the new sustainable building tax credit's taxable year or years.

F. The department shall disapprove an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

[3.3.35.11 NMAC - N, 12/30/15]

**3.3.35.12 VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:**

A. In the event the

sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the department reviews the submitted documentation. The following information shall be included:

(1) a narrative describing the methodology used;

(2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and

(3) all formulas, assumptions and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

**B.** The department uses the following criteria to evaluate the alternative method:

(1) clarity and completeness of the description of the alternative method;

(2) reasonableness of assumptions and comparisons; and

(3) thoroughness of justification of the method.

**C.** If the department rejects an alternative method it notifies the applicant of the reasons for the rejection.

**D.** The applicant may request that the department obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the department, on their assessment of the alternative method, at which time the department may:

(1) reconsider the decision and accept the alternative method;

(2) recommend a revised alternative method; or

(3) reaffirm the rejection of the alternative method.

[3.3.35.12 NMAC - N, 12/30/15]

### **3.3.35.13 CALCULATING THE TAX CREDIT:**

**A.** The department calculates the maximum new sustainable building tax credit for sustainable commercial buildings that are not multifamily dwelling units based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification

and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

**Continued on Next Page**

|                              |  |
|------------------------------|--|
| LEED-NC silver:              |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$3.50; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.75; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70       |
| LEED-NC gold:                |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$4.75; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.00; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.00      |
| LEED-NC platinum:            |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$6.25; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$3.25; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$2.00      |
| LEED-EB OR LEED-CS silver:   |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.25; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.50       |
| LEED-EB OR LEED-CS gold:     |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$3.35; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.40; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70       |
| LEED-EB OR LEED-CS platinum: |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$4.40; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.30; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.40      |
| LEED-CI silver:              |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$1.40; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.70; plus  |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.30       |
| LEED-CI gold:                |  |

|                          |  |
|--------------------------|--|
| first 10,000 square feet | equals the qualified square footage less than or equal to 10,000 multiplied by \$1.90; plus                  |
| next 40,000 square feet  | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.80; plus  |
| next 450,000 square feet | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.40       |
| LEED-CI platinum:        |  |
| first 10,000 square feet | equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus                  |
| next 40,000 square feet  | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.30; plus |
| next 450,000 square feet | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.80       |

**B.** The department calculates the maximum new sustainable building tax credit for multifamily dwelling units based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

|  |  |
|--|--|
| LEED-H silver or build green New Mexico silver:    |  |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$3.00 |
| LEED-H gold or build green New Mexico gold:        |  |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$4.50 |
| LEED-H platinum or build green New Mexico emerald: |  |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$6.50 |

**C.** The taxation and revenue department makes the final determination of the amount of the new sustainable building tax credit.

[3.3.35.13 NMAC - N, 12/30/15]

**3.3.35.14 CLAIMING THE STATE TAX CREDIT:** To claim the new sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that calendar year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

[3.3.35.14 NMAC - N, 12/30/15]

**HISTORY OF 3.3.35 NMAC:** [RESERVED]

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT**

ENERGY CONSERVATION AND  
MANAGEMENT DIVISION

**TITLE 3 TAXATION  
CHAPTER 4 CORPORATE  
INCOME TAXES  
PART 21 NEW  
SUSTAINABLE BUILDING TAX  
CREDIT FOR RESIDENTIAL  
BUILDINGS**

**3.4.21.1 ISSUING AGENCY:**  
Energy, Minerals and Natural Resources  
Department.  
[3.4.21.1 NMAC - N, 12/30/15]

**3.4.21.2 SCOPE:** 3.4.21  
NMAC applies to the application and  
certification procedures for administration  
of the new sustainable building tax credit  
for sustainable residential buildings.  
[3.4.21.2 NMAC - N, 12/30/15]

**3.4.21.3 STATUTORY  
AUTHORITY:** 3.4.21 NMAC is  
established under the authority of Laws  
2015, Chapter 130 and Section 9-1-5  
NMSA 1978.  
[3.4.21.3 NMAC - N, 12/30/15]

**3.4.21.4 DURATION:**  
Permanent.  
[3.4.21.4 NMAC - N, 10-31-07]

**3.4.21.5 EFFECTIVE DATE:**  
December 30, 2015, unless a later date is

cited at the end of a section.  
[3.4.21.5 NMAC - N, 12/30/15]

**3.4.21.6 OBJECTIVE:**  
3.4.21 NMAC’s objective is to establish  
procedures for administering the program  
to issue a certificate of eligibility for the  
new sustainable building tax credit for  
sustainable residential buildings.  
[3.4.21.6 NMAC - N, 12/30/15]

**3.4.21.7 DEFINITIONS:**  
**A.** “Annual cap” means  
the annual total amount of the new  
sustainable building tax credit available to  
taxpayers owning sustainable residential  
buildings.

**B.** “Applicant” means  
a taxpayer who owns a sustainable  
residential building in New Mexico

and who desires to have the department issue a certificate of eligibility for a new sustainable building tax credit.

**C.** “Application package” means the documents an applicant submits to the department to apply for a certificate of eligibility for a new sustainable building tax credit.

**D.** “Build green New Mexico certification” means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

**E.** “Build green New Mexico rating system” means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

**F.** “Certification” means build green New Mexico certification, or LEED certification or energy star qualified for manufactured housing.

**G.** “Certificate of eligibility” means the document, with a unique identifying number that specifies the amount and taxable year and specific physical address for the approved new sustainable building tax credit.

**H.** “Certification level” means one of the following:

- (1) LEED-H silver or build green New Mexico silver;
- (2) LEED-H gold or build green New Mexico gold; or
- (3) LEED-H platinum or build green New Mexico emerald.

**I.** “Department” means the energy, minerals and natural resources department.

**J.** “Division director” means the director of the department’s energy conservation and management division.

**K.** “Energy reduction requirements” means has achieved a HERS index of 60 or lower.

**L.** “Energy star” means a joint program of the United States (U.S.) environmental protection agency and the U.S. department of energy that qualifies homes based on a predetermined threshold of energy efficiency and other requirements.

**M.** “Energy star qualified manufactured home” means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in

accordance with energy star’s guidelines.

**N.** “HERS” means home energy rating system as developed by RESNET.

**O.** “HERS index” means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

**P.** “LEED” means the most current mandatory leadership in energy and environmental design green building rating system guidelines developed and adopted by the U.S. green building council.

**Q.** “LEED certification” means the verification by the U.S. green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED-H rating system resulting in the issuance of a certification document.

**R.** “LEED-H” means the LEED rating system for homes at the time of project registration.

**S.** “Manufactured housing” means a multisectioned home that is:

- (1) a manufactured home or modular home;
- (2) a single-family dwelling with a heated area of at least 36 feet by 24 feet and a total area of at least 864 square feet;
- (3) constructed in a factory to the standards of the U.S. department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit’s construction; and
- (4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.

**T.** “New sustainable building tax credit” for purposes of 3.4.21 NMAC means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.

**U.** “Person” does not include state, local government, public school districts or tribal agencies.

**V.** “Qualified occupied square footage” means the occupied spaces of the building as determined by:

- (1) the United States (U.S.) green building council

for those buildings obtaining LEED certification; or

(2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or

(3) the (U.S.) environmental protection agency for energy star certified manufactured homes.

**W.** “Rating system” means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

**X.** “RESNET” means the residential energy services network, an industry not-for-profit membership corporation and national standards-making body for building energy efficiency rating systems.

**Y.** “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

**Z.** “Sustainable residential building” means:

(1) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating system that:

(a) is certified by the (U.S.) green building council as LEED-H silver or higher; or by build green New Mexico as silver or higher;

(b) has achieved a home energy rating system index of 60 or lower as developed by the home energy rating services network;

(c) has indoor plumbing fixtures and water-using appliances, that on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; when plumbing fixtures, plumbing features, and water-using appliances are used that have no known equivalent flow rates to WaterSense labeled products, but in aggregate combined exceed the whole-house consumption of a home with only WaterSense plumbing fixtures, then the water efficiency rating score shall be used to prove the whole-house water consumption is equal to or lower than a home with only plumbing fixtures certified by WaterSense;

(d) if landscape area is available at the front of the property, has at least one water line

outside the building below the frost line that may be connected to a drip irrigation system; and

(e) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(2) manufactured housing that is energy star qualified by the (U.S.) environmental protection agency.

AA. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, Section 7-2A-1 et seq. NMSA 1978.

BB. "Taxpayer" means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, Section 7-2A-1 et seq. NMSA 1978.

CC. "Taxpayer identification number" means the taxpayer's nine digit social security number or the corporation's nine digit employer identification number.

DD. "Tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

EE. "Verifier" means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems.

FF. "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance. [3.4.21.7 NMAC - N, 12/30/15]

**3.4.21.8 GENERAL PROVISIONS:**

A. A corporation who is the owner of a building in New Mexico that has been constructed, renovated or manufactured to be a sustainable residential building and that receives certification on or after January 1, 2017 may receive a certificate of eligibility for a new sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

B. The annual total amount in a calendar year of the new sustainable building tax credit pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act available to

taxpayers owning sustainable residential buildings is limited to \$3,375,000 for sustainable residential buildings that are not manufactured housing. When the \$3,375,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible new sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) the department may issue certificates of eligibility to applicants who meet the requirements for the new sustainable residential buildings tax credit in a taxable year when applications for the new sustainable residential buildings tax credit exceed the annual cap and applications for the new sustainable commercial buildings and manufactured housing tax credits are under the annual cap for that type of sustainable building by March 1 of any year in which the tax credit is in effect; or

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

C. There is a \$375,000 annual cap for sustainable residential buildings that are manufactured housing.

D. In the event of a discrepancy between a requirement of 3.4.21 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.21 NMAC's adoption, the existing rule governs.

E. All notices and applications required to be submitted to the department under 3.4.21 NMAC shall be submitted to the energy conservation and management division of the department. [3.4.21.8 NMAC - N, 12/30/15]

**3.4.21.9 VERIFIER ELIGIBILITY:**

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for

certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy and water-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the department 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.



(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.4.21.9 NMAC - N, 12/30/15]

**3.4.21.10 APPLICATION FOR THE NEW SUSTAINABLE BUILDING TAX CREDIT:**

**A.** In order to obtain the new sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department on a department-developed form. An applicant may obtain an application form from the department.

**B.** An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time on 8½ inch by 11 inch paper the department may consider the application incomplete.

**C.** An applicant shall submit a complete application package to the department no later than March 1 of the taxable year for which the applicant seeks the new sustainable building tax credit. If an applicant does not submit a complete application package by March 1, any remaining new sustainable residential building tax credit funds under the cap may be used in that taxable year for completed new sustainable commercial buildings or manufactured housing applications. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

**D.** The completed application form shall consist of the following information:

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

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable residential building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential building;

(7) the rating system under which the sustainable residential building was certified;

(8) the certification level achieved, if applicable;

(9) the HERS index;

(10) documentation that applicant meets water efficiency standards to comply with water efficiency requirements of this program;

(11) the date of rating system certification;

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

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.4.21 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d) applicant understands that there are annual caps for the new sustainable building tax credit;

(e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a new sustainable building tax credit; and

(f) applicant understands that the department

issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the new sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and

(13) a project number the department assigns to the tax credit application.

**E.** In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software RESNET lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower; and

(5) other information the department needs to review the building project for the new sustainable building tax credit.

[3.4.21.10 NMAC - N, 12/30/15]

**3.4.21.11 APPLICATION REVIEW PROCESS:**

**A.** The department considers applications in the order received, according to the day they are received, but not the time of day.

**B.** The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

**C.** The department reviews the application package to calculate the maximum new sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate

of eligibility for the new sustainable building tax credit.

**D.** If an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the department verifies that no person has applied for a solar market development tax credit for that solar system. If the department finds that a solar market development tax credit has been approved for that solar system, the department shall disapprove the application for the new sustainable building tax credit. The applicant may submit a revised application package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

**E.** If the department finds that the application package meets the requirements and a new sustainable building tax credit is available, the department issues the certificate of eligibility for a new sustainable building tax credit. If a new sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the new sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the new sustainable building tax credit amount or amounts and the new sustainable building tax credit's taxable year or years.

[3.4.21.11 NMAC - N, 12/30/15]

**3.4.21.12 CALCULATING THE TAX CREDIT:**

**A.** The department calculates the maximum new sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

|  |   |
|--|---|
| LEED-H silver or build green New Mexico silver:    |   |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$3.00  |
| LEED-H gold or build green New Mexico gold:        |   |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$4.50  |
| LEED-H platinum or build green New Mexico emerald: |   |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$6.50  |
| energy star manufactured housing:                  |   |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$3.00. |

**B.** The taxation and revenue department makes the final determination of the amount of the new sustainable building tax credit.

[3.4.21.12 NMAC - N, 12/30/15]

**3.4.21.13 CLAIMING THE STATE TAX CREDIT:** To claim the new sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

[3.4.21.13 NMAC - N, 12/30/15]

**HISTORY OF 3.4.21 NMAC:** [RESERVED]

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT**

ENERGY CONSERVATION AND  
MANAGEMENT DIVISION

TITLE 3 TAXATION  
CHAPTER 4 CORPORATE  
INCOME TAXES  
PART 22 NEW  
SUSTAINABLE BUILDING TAX  
CREDIT FOR COMMERCIAL  
BUILDINGS

**3.4.22.1 ISSUING AGENCY:**  
Energy, Minerals and Natural Resources  
Department.

[3.4.22.1 NMAC - N, 12/30/15]

**3.4.22.2 SCOPE:** 3.4.22  
NMAC applies to the application and  
certification procedures for administration  
of the new sustainable building tax credit  
for sustainable commercial buildings.

[3.4.22.2 NMAC - N, 12/30/15]

**3.4.22.3 STATUTORY  
AUTHORITY:** 3.4.22 NMAC is  
established under the authority of Laws  
2015, Chapter 130 and Section 9-1-5  
NMSA 1978.

[3.4.22.3 NMAC - N, 12/30/15]

**3.4.22.4 DURATION:**  
Permanent.

[3.4.22.4 NMAC - N, 12/30/15]

**3.4.22.5 EFFECTIVE DATE:**  
December 30, 2015, unless a later date is  
cited at the end of a section.

[3.4.22.5 NMAC - N, 12/30/15]

**3.4.22.6 OBJECTIVE:**  
3.4.22 NMAC's objective is to establish  
procedures for administering the program  
to issue a certificate of eligibility for the  
new sustainable building tax credit for  
sustainable commercial buildings.

[3.4.22.6 NMAC - N, 12/30/15]

3.4.22.7

**DEFINITIONS:**

**A.** "Annual cap" means the annual aggregate amount of the new sustainable building tax credit available to taxpayers owning sustainable commercial buildings.

**B.** "Applicant" means a taxpayer that owns a sustainable commercial building in New Mexico and who desires to have the department issue a certificate of eligibility for a new sustainable building tax credit.

**C.** "Application package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a new sustainable building tax credit.

**D.** "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

**E.** "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.

**F.** "Building project" means a new construction or renovation project that will result in one or more sustainable commercial buildings.

**G.** "Building type" means the primary use of a building or section of a building as defined in target finder.

**H.** "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year and specific physical address for the approved new sustainable building tax credit.

**I.** "Certification level" means one of the following:  
**(1)** LEED-H silver or build green New Mexico silver;  
**(2)** LEED-H gold or build green New Mexico gold; or  
**(3)** LEED-H platinum or build green New Mexico emerald.

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

**K.** "Division director" means the director of the department's energy conservation and management division.

**L.** "Energy reduction requirements means":  
**(1)** for a

sustainable commercial building that is not a multifamily dwelling unit means beginning January 1, 2012, a sixty percent energy reduction based on the national average for that building type as published by the United States (U.S.) department of energy;

**(2)** for a multifamily dwelling unit means that it has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network.

**M.** "HERS" means home energy rating system as developed by RESNET.

**N.** "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

**O.** "LEED" means the most current mandatory leadership in energy and environmental design green building rating system guidelines developed and adopted by the U.S. green building council.

**P.** "LEED certification" means the U.S. green building council's verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.

**Q.** "LEED-CI" means the LEED rating system for commercial interiors.

**R.** "LEED-CS" means the LEED rating system for the core and shell of buildings.

**S.** "LEED-EB" means the LEED rating system for existing buildings.

**T.** "LEED-H" means the LEED rating system for homes at the time of project registration.

**U.** "LEED-NC" means the LEED rating system for new buildings and major renovations.

**V.** "LEED rating system" means one of the following:  
**(1)** LEED-CI;  
**(2)** LEED-CS;  
**(3)** LEED-EB;  
**(4)** LEED-H; or  
**(5)** LEED-NC.

**W.** "LEED registration" means the notification to the U.S. green building council that a project is pursuing LEED certification.

**X.** "New sustainable building tax credit" for the purposes of 3.4.22 NMAC means the income tax

credit the state of New Mexico issues to an applicant for a sustainable building.

**Y.** "Person" does not include state, local government, public school districts or tribal agencies.

**Z.** "Qualified occupied square footage" means the occupied spaces of the building as determined by the U. S. green building council for those buildings obtaining LEED certification or the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification.

**AA.** "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

**BB.** "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

**CC.** "Sustainable commercial building" means:  
**(1)** a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the U.S. green building council as LEED-H silver or higher and has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network or  
**(2)** a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:  
**(a)** is certified by the U.S. green building council at LEED silver or higher;  
**(b)** achieves any prerequisite for and at least one point related to commissioning under LEED energy and atmosphere, if included in the applicable rating system; and  
**(c)** has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the U.S. department of energy as substantiated by the U.S. environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development.

**DD.** "Target finder" means the web-based program developed by the U.S. environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for

predetermined building types.

**EE.** “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, Section 7-2A-1 *et seq.* NMSA 1978.

**FF.** “Taxpayer” means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, Section 7-2A-2 *et seq.* NMSA 1978.

**GG.** “Taxpayer identification number” means the corporation’s nine digit employer identification number.

**HH.** “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

**II.** “Verifier” means an entity the department approves to provide certification for homes under the build green New Mexico or LEED-H rating systems. [3.4.22.7 NMAC - Rp, 3.4.22.7 NMAC, 1-1-14]

**3.4.22.8 GENERAL PROVISIONS:**

**A.** A corporation that is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after the effective date of the adoption of 3.4.22 NMAC may receive a certificate of eligibility for a new sustainable building tax credit.

**B.** The total amount in a calendar year of the new sustainable building tax credit available pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act to taxpayers owning sustainable commercial buildings is limited to \$1,250,000. When the \$1,250,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible new sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

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

**C.** The department may issue certificates of eligibility to applicants who meet the requirements for the new sustainable commercial buildings tax credit in a taxable year when applications for the new sustainable commercial buildings tax credits exceed the annual cap and applications for the new sustainable residential buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by March 1 of any year in which the tax credit is in effect.

**D.** In the event of a discrepancy between a requirement of 3.4.22 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.22 NMAC’s adoption, the existing rule governs.

**E.** All notice and applications required to be submitted to the department under 3.3.35 NMAC shall be submitted to the energy conservation and management division of the department. [3.4.22.8 NMAC - N, 12/30/15]

**3.4.22.9 VERIFIER ELIGIBILITY:**

**A.** The department reviews the qualification for verifiers of the build green New Mexico or LEED-H certifications, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy efficient

green building with the highest standard of excellence.

**B.** The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

**C.** The verifier shall notify the department 30 calendar days prior to making changes to its certification process or rating systems.

**D.** The department may rescind an existing verifier’s approval if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier’s approval. The verifier shall file a request for review within 20 calendar days after the department’s notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier’s approval. The division director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department’s secretary a division director’s decision. The notice of appeal shall include the reasons that the secretary should overturn the division director’s decision. The secretary shall consider any appeal from a division director’s decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director’s issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes. [3.4.22.9 NMAC- N, 12/30/15]

[3.4.22.9 NMAC- N, 12/30/15]

**3.4.22.10 APPLICATION FOR THE NEW SUSTAINABLE BUILDING TAX CREDIT:**

**A.** In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application

for the new sustainable building tax credit after the building is completed, the applicant has fulfilled all other requirements and the total annual cap for the new sustainable building tax credit has not been met. An applicant may obtain an application form from the department.

**B.** An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time on 8½ inch by 11 inch paper, the department may consider the application incomplete.

**C.** An applicant shall submit a complete application package to the division no later than March 1 of the taxable year for which the applicant seeks the new sustainable building tax credit. If an applicant does not submit a complete application package by March 1, any remaining new sustainable commercial building tax credit funds under the cap may be used in that taxable year for completed new sustainable residential buildings or manufactured housing applications. The division may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

**D.** The completed application form shall consist of the following information:

- (1) the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2) the name of the authorized representative of the applicant, if different from the tax credit request form;
- (3) the ending date of the applicant's taxable year;
- (4) the address of the sustainable commercial building, including the property's legal description;
- (5) whether the applicant was the building owner at time of certification or is a subsequent purchaser;
- (6) the rating system under which the sustainable commercial building was certified;
- (7) the certification level achieved;
- (8) for

sustainable commercial buildings that are not multifamily dwelling units, the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;

(9) for sustainable commercial buildings that are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent;

(10) the qualified occupied square footage of the sustainable commercial building;

(11) the date of certification;

(12) for multifamily dwelling units, the HERS index; and

(13) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;

(c) if an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d) applicant understands that there are annual caps in place for the new sustainable building tax credit;

(e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a new sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the tax year in which the sustainable commercial building was certified or if the applicant submitted the application after March 1 or

the new sustainable building tax credit's annual cap has been reached for the next tax year in which funds are available.

**E.** In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a current warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable commercial building;

(2) a copy of the rating system certification form;

(3) a copy of the final LEED project info or project summary that shows the building's square footage;

(4) a copy of the final certification review LEED checklist that shows the LEED credits achieved or the build green New Mexico final certification review checklist;

(5) for sustainable commercial buildings that are not multifamily dwelling units, a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;

(6) for sustainable commercial buildings that are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent; and

(7) a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system;

(8) for multifamily dwelling units, a copy of a HERS certificate from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower; and

(9) other information the department needs to review the building project for the new sustainable building tax credit.

[3.4.22.10 NMAC - N, 12/30/15]

**3.4.22.11 APPLICATION REVIEW PROCESS:**

**A.** The department considers applications in the order received, according to the day they are received, but not the time of day.

**B.** The department approves or disapproves an application package following the receipt of the complete application package.

**C.** The department reviews the application package to calculate the maximum new sustainable building tax credit, check accuracy of the applicant’s documentation and determine whether the department issues a certificate of eligibility for the new sustainable building tax credit.

**D.** If an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the department verifies that no person has applied for a solar market development tax credit for that solar system. If the department finds that a solar market development tax credit has been approved for that solar system, the department disapproves the application for the new sustainable building tax credit. The applicant may submit a revised application package to the division that excludes electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

**E.** If the department finds that the application package meets the requirements and funds for a new sustainable building tax credit are available, the department issues the certificate of eligibility for a new sustainable building tax credit. If funds for a new sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the new sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application’s completed review. The notification shall include the taxpayer’s contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building,

the new sustainable building tax credit maximum amount or amounts and the new sustainable building tax credit’s taxable year or years.

**F.** The department disapproves an application that is not complete or correct. The department’s disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

[3.4.22.11 NMAC - N, 12/30/15]

**3.4.22.12 VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:**

**A.** In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the department reviews the submitted documentation. The following information shall be included:

- (1) a narrative describing the methodology used;
- (2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and
- (3) all formulas, assumptions, and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

**B.** The department uses the following criteria to evaluate the alternative method:

- (1) clarity and completeness of the description of the alternative method;
- (2) reasonableness of assumptions and comparisons; and
- (3) thoroughness of justification of the method.

**C.** If the department rejects an alternative method it notifies the applicant of the reasons for the rejection.

**D.** The applicant may request that the department obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the division, on their

assessment of the alternative method, at which time the department may:

- (1) reconsider the decision and accept the alternative method;
- (2) recommend a revised alternative method; or
- (3) reaffirm the rejection of the alternative method.

[3.4.22.12 NMAC - N, 12/30/15]

**3.4.22.13 CALCULATING THE TAX CREDIT:**

**A.** The department calculates the maximum new sustainable building tax credit for sustainable commercial buildings that are not multifamily dwelling units based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

**Continued on Next Page**

|                              |  |
|------------------------------|--|
| LEED-NC silver:              |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$3.50; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.75; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70       |
| LEED-NC gold:                |  |
| first 10,000 square          | equals the qualified square footage less than or equal to 10,000 multiplied by \$4.75; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.00; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.00      |
| LEED-NC platinum:            |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$6.25; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$3.25; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$2.00      |
| LEED-EB OR LEED-CS silver:   |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.25; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.50       |
| LEED-EB OR LEED-CS gold:     |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$3.35; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.40; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70       |
| LEED-EB OR LEED-CS platinum: |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$4.40; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.30; plus |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.40      |
| LEED-CI silver:              |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$1.40; plus                  |
| next 40,000 square feet      | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.70; plus  |
| next 450,000 square feet     | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.30       |
| LEED-CI gold:                |  |
| first 10,000 square feet     | equals the qualified square footage less than or equal to 10,000 multiplied by \$1.90; plus                  |

|                          |  |
|--------------------------|--|
| next 40,000 square feet  | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.80; plus  |
| next 450,000 square feet | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.40       |
| LEED-CI platinum:        |  |
| first 10,000 square feet | equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus                  |
| next 40,000 square feet  | the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.30; plus |
| next 450,000 square feet | the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.80       |

**B.** The department calculates the maximum new sustainable building tax credit for multifamily dwelling units based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

|  |  |
|--|--|
| LEED-H silver or build green New Mexico silver:    |  |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$3.00 |
| LEED-H gold or build green New Mexico gold:        |  |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$4.50 |
| LEED-H platinum or build green New Mexico emerald: |  |
| up to 2,000 square feet                            | equals the qualified square footage less than or equal to 2,000 multiplied by \$6.50 |

**C.** The taxation and revenue department makes the final determination of the amount of the new sustainable building tax credit.  
[3.4.22.13 NMAC - N, 12/30/15]

**3.4.22.14 CLAIMING THE STATE TAX CREDIT:** To claim the new sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that taxable year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.  
[3.4.22.14 NMAC - N, 12/30/15]

**HISTORY OF 3.4.22 NMAC:** [RESERVED]

**GAME AND FISH DEPARTMENT**

At its November 19, 2015 meeting, the State Game Commission repeals its rule 19.31.4 NMAC, filed 3-10-2010, and replaces it with 19.31.4 NMAC, effective 12-30-2016.

**GAME AND FISH DEPARTMENT**

**TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 31 HUNTING AND FISHING PART 4 FISHERIES**

**19.31.4.1 ISSUING AGENCY:** New Mexico Department of Game and Fish.  
[19.31.4.1 NMAC - Rp, 19.31.4.1 NMAC, 12-30-2015]

**19.31.4.2 SCOPE:** Sportfishing. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 through 34 of Title 19 NMAC.  
[19.31.4.2 NMAC - Rp, 19.31.4.2 NMAC, 12-30-2015]

**19.31.4.3 STATUTORY AUTHORITY:** 17-1-14 and 17-1-26, and 17-2-1 NMSA 1978, provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978

and all other acts pertaining to protected species.  
[19.31.4.3 NMAC - Rp, 19.31.4.3 NMAC, 12-30-2015]

**19.31.4.4 DURATION:** December 30, 2015 through March 31, 2018.  
[19.31.4.4 NMAC - Rp, 19.31.4.4 NMAC, 12-30-2015]

**19.31.4.5 EFFECTIVE DATE:** December 30, 2015, unless a later date is cited at the end of a section.  
[19.31.4.5 NMAC - Rp, 19.31.4.5 NMAC, 12-30-2015]

**19.31.4.6 OBJECTIVE:** Establishing open seasons, bag limits, and other rules pertaining to management and



harvest of the fisheries resources of New Mexico.  
[19.31.4.6 NMAC - Rp, 19.31.4.6 NMAC, 12-30-2015]

**19.31.4.7 DEFINITIONS:**

Specific terms as used in this regulation are defined.

**A. Boundary descriptions**

(1) "U.S.", as used in boundary descriptions herein, shall mean United States highway.

(2) "N.M.", as used in boundary descriptions herein, shall mean New Mexico state road.

(3) "I", as used in boundary descriptions herein, shall mean interstate highway.

**B. "Daylight hours"** shall mean from one-half hour before sunrise to sunset.

**C. "Barbless" lure or fly** shall mean an artificial lure made of wood, metal, or hard plastic or an artificial fly made from fur, feathers, other animal or man-made materials tied onto a hook to resemble or simulate insects, bait fish, or other foods. A fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids, or rubber or plastic moldings of these or other foods are not included.

**D. "Chum"** as used herein, is organic material that is not injurious to aquatic life and is used to attract fish.

**E. "Snagging"** as used herein, is the intentional taking of fish with hooks, gang hooks, or similar devices where the fish is hooked in a part of the body other than the mouth.

**F. "Bait fish"** is defined as those nongame fish which are not otherwise protected by statute or regulation.

**G. "Angling"** shall mean taking or attempting to take fish by hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.  
[19.31.4.7 NMAC - Rp, 19.31.4.7 NMAC, 12-30-2015]

**19.31.4.8 TROUT WATERS AND WARM WATERS:**

**A. Regular trout waters:** The following are designated as regular trout waters: All streams, lakes and ponds lying within the following described areas except licensed class A lakes and lakes, ponds, and ranch tanks

not fed by public waters and not open to public fishing.

(1) Northern area: That portion of New Mexico bounded by a line starting at the intersection of I-25 with the Colorado-New Mexico state line and running south along I-25 to its junction with U.S. 64; thence, south and west on U.S. 64 to its junction with N.M. 58 at Cimarron; thence, south and east on N.M. 21 to its junction with I-25; thence, south, west, and southwest on I-25 and U.S. 84-85 to its junction with U.S. 285-84 at Santa Fe; thence, north on U.S. 285-84 to its intersection with N.M. 502; thence, west on N.M. 502 to the west bank of the Rio Grande; thence, southwesterly along the west bank of the Rio Grande to its intersection with N.M. 44 at Bernalillo; thence, north and west on N.M. 44 to its intersection with U.S. 550; thence, west on U.S. 550 to the west bank of the Animas river; thence, north along the west bank of the Animas river to the Colorado-New Mexico state line; thence, east along the state line to its intersection with I-25. (Except the San Juan river from U.S. 64 bridge at Blanco downstream to N.M. 44 bridge at Bloomfield.)

(2) Ruidoso area: That portion of New Mexico bounded by a line starting at the junction of U.S. 54 and N.M. 506 and running north on U.S. 54 to its intersection with U.S. 380 at Carrizozo; thence, east on U.S. 380 to its junction with N.M. 246 at Capitan; thence, north and east on N.M. 246 to the eastern boundary of the Lincoln national forest; thence, south to Tinnie; thence, west on U.S. 380 to Hondo; thence, south on a north-south line to the junction of N.M. 24 and U.S. 82 north of Dunken; thence south and west on N.M. 24 to Piñon; thence, south approximately one mile to N.M. 506; thence, west along N.M. 506 to its junction with U.S. 54 at Paxton.

(3) Gila area: That portion of New Mexico bounded by a line starting at the junction of U.S. 180 with the Arizona-New Mexico state line and running north along the state line to its intersection with U.S. 60; thence, east on U.S. 60 to its junction with N.M. 52 west of Magdalena; thence, south on N.M. 52 to Winston and west along the road to Chloride and the eastern boundary of the Gila national forest; thence, south along the forest boundary to its intersection with N.M. 152 east of Kingston; thence, west on N.M. 152 to its junction with U.S. 180 at Central; thence, west and northwest on U.S. 180 to its junction with the Arizona-

New Mexico state line. (Except Bear Canyon lake.)

(4) in Sandoval county: all of Las Huertas (Ellis creek);

(5) in San Juan county: the Animas river from the 550 highway bridge in the city of Aztec and downstream to its confluence with the San Juan river;

(6) in Torrance county: all of Tajique creek;

(7) in Union county: all of Dry Cimarron;

(8) in Cibola county: Bluewater creek;

(9) Pecos river from I-25 south to the southeast boundary of Villanueva state park;

(10) the following lakes, ponds, and reservoirs: Alice, Bluewater, Blue Hole Park ponds, Chiuilla well, Clayton, lake Farmington, Jackson, Maloya, Maxwell lake 13, McAllister, McGaffey, Power dam, Perch, Manzano, and Ramah.

(11) In Sierra county: Rio Grande from Elephant Butte dam downstream to, and including, Caballo lake.

**B. Winter trout waters:**

The following are designated as winter trout waters from November 1 through March 31 of the effective years: Sumner lake stilling basin; that portion of the Black river extending from one mile upstream to one mile downstream of Higby hole and located in Sections 8 and 9, T. 24 S., R. 28 E., N.M.P.M., in Eddy county; that portion of the Pecos river from the southeast boundary of Villanueva state park downstream to, but not including Santa Rosa lake; the following drains: Albuquerque, Atrisco, Belen Riverside, Bernalillo, Corrales, Peralta, and Tome; and the following lakes: Bataan, Bear Canyon, Bill Evans, Bosque Redondo, Bottomless lakes, Burn, Carlsbad municipal, Carrizozo, Chaparral, Conservancy park/Tingley beach, Escondida, Eunice, Greene Acres, Green Meadow, ponds on Harry McAdams park, Jal, Ned Houk lakes, Oasis park, and Van.

**C. Warm waters:** "Warm waters", as used herein, shall include all streams, lakes, and ponds except those designated as trout waters above, and except licensed class A lakes.  
[19.31.4.8 NMAC - Rp, 19.31.4.8 NMAC, 12-30-2015]

**19.31.4.9 SEASON DATES:**

**A. General seasons:** All trout and warm waters in New Mexico shall be open for the taking of game

fish from April 1 through March 31 of the effective years, with the following exceptions:

(1) Special waters

(a) The following waters shall be open between 12 noon March 1 through 12 noon October 31: McAllister lake, upper and lower Charette lakes, Maxwell lakes 13 and 14, and Clayton lake.

(b) All waters in the Valle Vidal (Vermejo tract of the Carson national forest) shall be open from July 1 through December 31.

(c) Laguna del Campo at Los Ojos trout hatchery shall be open from May 1 through October 31.

(d) Red River city ponds shall be open from March 1 through November 15.

(e) Black Canyon creek in Grant county upstream from lower Black Canyon campground and Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon shall be open from July 1 through October 31.

(f) All waters on the Valles Caldera National Preserve shall be open from May 1 to October 15.

(2) Waters on national wildlife refuges waters on U. S. national wildlife refuges shall be open for the taking of game fish in accordance with regulations of the U. S. fish and wildlife service; provided that season dates shall be from April 1 through March 31, on those national refuges for which the fish and wildlife service has not regulated season dates.

**B. Special Kokanee salmon seasons, dates, and location**

(1) The following waters shall be open October 1 through December 31 for the special Kokanee salmon season: Abiquiu reservoir, Chama river from El Vado lake upstream to the west boundary of the Rio Chama wildlife and fishing area, Eagle Nest lake, El Vado lake, and Navajo lake including the Pine river.

(2) Heron lake shall be open for the special Kokanee salmon season from the second Friday in November through December 31.

(3) Heron lake, including the Willow creek tributary, and the Pine river shall be closed to Kokanee salmon fishing between October 1 and

the second Thursday of November. If November 1 is a Friday, then these waters shall be closed to Kokanee salmon fishing between October 1 and the first Thursday of November.

[19.31.4.9 NMAC - Rp, 19.31.4.9 NMAC, 12-30-2015]

**19.31.4.10 HOURS OF FISHING:**

**A. Day and night fishing** for all species of game fish shall be permitted in all waters during the open season, except Alto, Bonito, Butler street, and Eagle Nest lake where fish may be taken or fished for only between the hours of 5 a.m. and 10 p.m.; and U. S. fish and wildlife service waterfowl refuges where fish may be taken or fished for only during the hours posted at the refuge.

**B. Laguna del Campo** located at Los Ojos trout hatchery, Red River hatchery pond at the Red River state fish hatchery, Glenwood pond at the Glenwood state fish hatchery, waters within the Valle Vidal portion of the Carson national forest, and Maddox lake shall be during **daylight hours only**.

**C. Fishing at Ned Houk park lakes and Greene Acres** shall be during the **hours posted** by the city of Clovis; fishing at Santa Cruz lake shall be between the **hours of 6 a.m. and 10 p.m.**

**D. Fishing at Conservancy park/Tingley beach** shall be only between sunrise and sunset. [19.31.4.10 NMAC - Rp, 19.31.4.10 NMAC, 12-30-2015]

**19.31.4.11 DAILY BAG, POSSESSION LIMITS AND REQUIREMENTS OR CONDITIONS:**

**A. Trout**  
(1) Waters with reduced bag limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, rainbow, cutthroat, Gila, lake, brook trout and Kokanee salmon:

(a) The daily bag limit shall be five trout and no more than 10 trout shall be in possession, unless otherwise specified in special trout waters, Paragraph (4) of Subsection A. of 19.31.4.11 NMAC.

(b) The daily bag limit for cutthroat trout shall be two trout and no more than two cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in Subparagraph (a) of Paragraph (2) of

Subsection A. of 19.31.4.11 NMAC.

(c) The daily bag limit for lake trout shall be two trout and no more than four lake trout shall be in possession.

(3) Special Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season.

(4) Special trout waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(a) On those sections of the following waters the daily bag limit shall be two trout and no more than two trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; in Colfax county; the Shuree lakes on the Valle Vidal; all waters of the Valles Caldera National Preserve; In Sandoval county: a posted portion of the Rio San Antonio from the Valles Caldera National Preserve boundary downstream approximately 2.0 miles; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state highway 518 upstream approximately one mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately one mile posted portion of the Pecos river beginning approximately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 0.2 miles below the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream.

(b) On those sections of the following waters every person must comply with any special requirements listed and no

fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately 3.75 miles to the east side of section 16; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to McKinney pond; In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Sandoval county, Capulin creek from its confluence with the Rio Grande to the headwaters, In Taos county: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy Ghost creek upstream to its headwaters; In Mora county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal except Leandro creek (Vermejo tract - Carson national forest); In Grant and Catron counties: Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon. Every person angling for fish on these portions of Mogollon creek must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

(c)

In Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be one fish and no more than one fish may be in possession.

(d)

At Conservancy park/Tingley beach in Albuquerque: the southernmost pond shall be catch-and-release only and the

remaining two ponds shall have daily bag limits of four trout with no more than four trout in possession.

(e)

On those sections of the following waters the daily bag limit shall be three trout and no more than three trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters may be used. In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge; In Taos county: goose lake; In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande; In Taos county: the designated fishing pond at Red River state fish hatchery; In Taos county: the Red River city ponds; In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately seven miles to the river crossing bridge on U.S. 84 at Abiquiu; In Rio Arriba county: Laguna del Campo at Los Ojos trout hatchery; In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake; In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.

(f)

On those sections of the following waters no cutthroat trout may be kept or held in possession and the bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited: In Sandoval county: the Rio Cebolla from McKinney pond to the headwaters; In Taos county: upper Cabresto creek and its tributaries from Cabresto canyon upstream to the headwaters; In Colfax county: the Vermejo river and its tributaries from the Vermejo Park ranch boundary to the headwaters; and in Colfax county: public portions of Leandro creek.

(g)

On those sections of the following waters the daily bag limit shall be two Gila trout and no more than two Gila trout in possession, and the bag limit and possession limit for brown trout is unlimited. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters must be used. In Catron county: waters upstream from the confluence of Gilita creek and Snow creek including Gilita, Willow and Little Turkey creeks.

(h)

On those sections of the following waters no Gila trout may be kept or held in possession and the bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited: in Grant county, Black canyon from the forest road 150 (North Star Mesa road) crossing to the headwaters. Every person angling for fish on these portions of Black canyon must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

**B. Warm-water fishes:**

The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

- (1) striped bass one fish;
- (2) largemouth, smallmouth, and spotted bass five fish;
- (3) walleye five fish;
- (4) crappie 20 fish;
- (5) white bass and white bass x striped bass hybrid 25 fish;
- (6) northern pike 10 fish;
- (7) catfish (all species, except bullheads) 15 fish;
- (8) yellow perch 30 fish;
- (9) all other warm-water game species 20 fish.

**C. The following**

**exception shall apply:**

- (1) At Conservancy park/Tingley beach in Albuquerque; lake Van (Chaves county); Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; Estancia Park lake (Torrance county); Corona lake (Lincoln county); Grants city pond (Cibola county); Conoco lake (Lea county); Dennis Chavez pond (Curry county); Jal lake (Lea county); Ned Houk lakes (Curry county); Young pond (Dona Ana county); Roswell kids pond (Chavez county); Perch lake (Guadalupe county); and Blue Hole park pond (Guadalupe county): the daily bag limit for channel catfish will be two fish and the possession

limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) Statewide, the limit for tiger muskie (*Esox lucius x E. masquinongy*) shall be one fish over forty (40) inches in length and the possession limit shall be equal to the daily bag limit.

(4) In Eddy county, the Pecos river beginning at the north boundary of Brantley wildlife management area to Brantley reservoir dam including Brantley reservoir, all fish caught must immediately be released, except during official fishing tournaments during which fish may be held in a live well until they are weighed and measured, on site, and then immediately released back into the lake.

(5) In Colfax county, Eagle Nest lake there is no bag or possession limit for northern pike. All northern pike caught at Eagle Nest lake must be kept in possession. No northern pike shall be intentionally returned to Eagle Nest lake.

[19.31.4.11 NMAC - Rp, 19.31.4.11 NMAC, 12-30-2015]

**19.31.4.12 SIZE LIMITS:**  
**A. Salmonids**

(1) On Shuree lakes, on the Valle Vidal tract, any trout taken that are less than 15 inches long shall be immediately returned to the water.

(2) In Colfax county, a posted portion of the Cimarron river where only barbless lures or flies may be used (and more specifically described in Subsection A. of 19.31.4.11 NMAC), any trout taken that are less than 16 inches long shall be immediately returned to the water.

(3) [Reserved]

(4) Any trout taken that are less than 12 inches long shall be immediately returned to the water in the following locations:

(a) In San Miguel county: a posted portion of the Pecos river where only barbless lures or flies may be used (more specifically described in Subsection A. of 19.31.4.11 NMAC).

(b) In Lincoln county: a posted section of the Rio Ruidoso where only barbless lures or flies may be used (more specifically described in Subsection A. of 19.31.4.11 NMAC).

(c) In

Taos county: a posted section of the Red River from the confluence with Goose creek one mile upstream.

**B. Black basses**  
**(1) Any**

largemouth or spotted bass taken which is less than 14" long shall be immediately returned to the water.

(2) Any smallmouth bass taken which is less than 12" long shall be immediately returned to the water except at Ute and Conchas reservoirs where any smallmouth bass taken which is less than 14" long shall be immediately returned to the water.

**C. Walleye:** Any walleye taken which are less than 14" long shall be immediately returned to the water.  
[19.31.4.12 NMAC - Rp, 19.31.4.12 NMAC, 12-30-2015]

**19.31.4.13 [RESERVED]**

**19.31.4.14 WATERS WITH AGE OR INDIVIDUALS WITH DISABILITIES USE RESTRICTIONS:**

**A. Only persons under 12 years of age** may fish in the following waters: Shuree kids' ponds on Valle Vidal (Vermejo tract-Carson national forest); valley improvement association ponds at Belen, Harris pond in Las Vegas, Spring river park in Roswell, and the Brood pond at Seven Springs state fish hatchery.

**B. Only persons under 12 years of age, those 65 years and over, and individuals with disabilities** may fish in the designated Red River hatchery pond located at the Red River state fish hatchery, Blue Hole park pond (formerly Santa Rosa seniors pond), Estancia park lake at Estancia, and in ponds located in Harry McAdams park.

**C. Only individuals with disabilities and those under 12 years of age** may fish in the posted small pond at Cowles.

**D. Olympic pond:** Only persons under 12 years of age and those 65 years and over may fish in Olympic pond located at Angel Fire.

**E. Laguna del Campo:** Only persons 14 years of age and under, those 65 years and over, individuals with disabilities, or up to two parents/guardians in direct supervision of a child or children 14 years of age and under who are fishing, may fish in Laguna del Campo located near Los Ojos trout hatchery.

**F. Conservancy park/Tingley beach kids' pond:** Only persons 12 years of age and under may fish in Conservancy park/Tingley beach kids' pond in Albuquerque.

**G. Red River city middle kids' pond:** Only individuals with disabilities and those 12 years of age and under may fish in Red River city middle kids' pond.

**H. Grants city pond:** Only persons under 17 years of age, those 65 years and over, and individuals with disabilities may fish in Grants City pond in Grants.  
[19.31.4.14 NMAC - Rp, 19.31.4.14 NMAC, 12-30-2015]

**19.31.4.15 [RESERVED]**

**19.31.4.16 CLOSED WATERS:**  
**A. Waters closed to fishing**

(1) In Catron county: Big Dry creek from Golden link cabin upstream through its headwaters.

(2) In Catron county: Little creek from the "barrier" upstream through all tributaries.

(3) In Catron county: Spruce creek.

(4) In Catron and Sierra counties: Main Diamond creek above the point of confluence with east fork of Diamond creek and the south Diamond creek drainage.

(5) In Colfax county: a posted area lying within 300 feet of Eagle Nest dam, which is closed to entry.

(6) In Colfax county: a posted area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures.

(7) In Grant county: east fork of Mogollon creek upstream of Trail canyon including Woodrow canyon.

(8) In Grant county: McKnight creek.

(9) In Grant county: Sheep corral creek.

(10) In Lincoln county: Pinelodge creek and posted areas of Alto reservoir and Bonito lake near the outlets.

(11) In Catron county: White creek from waterfall near White creek cabin upstream to headwaters.

(12) In Catron county: West fork of the Gila river and all tributaries above waterfalls between FS Trail No. 151 crossing of the West fork of the Gila river near White creek cabin and FS Trail No. 151 crossing of the West fork of the Gila river near Lilley canyon.

(13) In Catron county: Iron creek in the Gila wilderness

upstream of the constructed waterfall barrier located in T12SR17WSec16NE.

(14) In Catron county: McKenna creek.

**B. Taking fish from hatchery waters:** No person shall take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs state fish hatchery, and Laguna del Campo at Los Ojos state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

**C. Taking fish from or through the ice:** Fish may be taken from or through the ice except on the following waters: Santa Cruz lake, Monastery lake, Bonito lake, and Springer lake. [19.31.4.16 NMAC - Rp, 19.31.4.16 NMAC, 12-30-2015]

**19.31.4.17 [RESERVED]**

**19.31.4.18 ESTABLISHING FREE FISHING DAYS:** The first Saturday in June and the last Saturday in September during the effective dates of this regulation, are established as free fishing days whereby anglers may fish public waters in New Mexico as otherwise provided by regulation, but without benefit of a fishing license or habitat improvement stamp. [19.31.4.18 NMAC - Rp, 19.31.4.18 NMAC, 12-30-2015]

**19.31.4.19 [RESERVED]**

**HISTORY OF 19.31.4 NMAC:** The material in this part was derived from that previously filed with the State Records Center & Archives under: Regulation No. 488, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of The Fisheries Resources of New Mexico 1968-1969 License Year, April 1, 1968 Through March 31, 1969, filed 12-15-67; Regulation No. 500, Concerning Method & Manner of Hunting, Taking, Possessing, Disposing & Transporting of Game Animals, Birds, Fish Or Bullfrogs, Or Parts Thereof, Taken In NM, filed 5-25-67; Regulation No. 525, Concerning the Method And Manner of Hunting, Taking, Possessing, Disposing And Transporting of Game Animals, Game

Birds, Game Fish Or Bullfrogs, Or Parts Thereof, Taken In New Mexico, filed 8-21-68; Regulation No. 499, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico 1969-1970 License Year, April 1, 1969 Through March 31, 1970, filed 12-10-68; Regulation No. 509, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico 1970-1971 License Year, April 1, 1970 Through March 31, 1971, filed 12-8-69; Regulation No. 518, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico 1971-1972 License Year, April 1, 1971 Through March 31, 1972, filed 1-14-71; Regulation No. 530, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico, 1972-1973 License Year, April 1, 1972 Through March 31, 1973, filed 1-11-72; Regulation No. 535, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1972 Through March 31, 1973, filed 5-31-72; Regulation No. 550, Basic Regulation Governing Water Pollution, Water Diversion, Animal Releases, Possession of Game, Manner of Hunting And Fishing, And Use of Department Lands, Filed 5-31-72; Regulation No. 543, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1973 Through March 31, 1974, filed 12-11-72; Regulation 552, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of Mexico For the Period April 1, 1974 Through March 31, 1975, filed 1-11-74; Regulation No. 562, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1975 Through March 31, 1976, filed 1-3-75; Regulation No. 571, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1976 Through March 31, 1977, filed 2-10-76; Regulation No. 579, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest

of the Fisheries Resources of New Mexico For the Period of April 1, 1977, Through March 31, 1978, filed 9-21-76; Regulation No. 581, Establishing Rules Pertaining To Management And Harvest of Commercial Fish Resources of New Mexico, filed 12-20-76; Regulation No. 586, Establishing Rules Pertaining To Management And Harvest of Commercial Fish Resources of New Mexico, filed 5-24-77; Regulation No. 589, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1978, Through March 31, 1979, filed 10-5-77; Regulation No. 595, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1979, Through March 31, 1980, filed 10-3-78; Regulation No. 602, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1980, Through March 31, 1981, filed 11-21-79; Regulation No. 607, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1981, Through March 31, 1983, filed 10-22-80; Regulation No. 612, Basic Regulation Governing Water Pollution, Water Diversion, Animal Releases, Possession of Game, Manner of Hunting and Fishing, Use of Department Lands, Retention of Protected Species, Permits and Licenses Issued, and the Hunter Safety Certificate Requirement, filed 3-2-82; Regulation No. 619, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1983, Through March 31, 1985, filed 12-8-82; Regulation No. 632, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1985, Through March 31, 1987, filed 11-28-84; Regulation No. 647, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1987, Through March 31, 1989, filed 1-5-87; Regulation No. 662, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1989, Through March 31, 1991,

filed 12-19-88; Regulation No. 677, Basic Regulation Governing Water Pollution, Possession of Game, Permits and Licenses Issued, Retention and Importation of Protected Species, Manner of Hunting and Fishing, Use of Department Lands, Hunter Training Course Required, Hunting License Revocation, filed 6-25-90; Regulation No. 681, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1991, Through March 31, 1993, filed 1-11-91; Regulation No. 694, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1993, Through March 31, 1995, filed 3-11-93

**NMAC History:**

19 NMAC 31.4, Hunting and Fishing Regulations - Fisheries, 4-1-95.  
 19.31.4 NMAC, Hunting and Fishing Regulations - Fisheries, 11-15-2000.  
 19.31.4 NMAC, Hunting and Fishing - Fisheries, 4-15-2002.  
 19.31.4 NMAC, Hunting and Fishing - Fisheries, 3-10-2010.  
 19.31.4 NMAC, Hunting and Fishing - Fisheries, 12-30-2015.

**History of Repealed Material:**  
**[RESERVED]**

**HUMAN SERVICES  
 DEPARTMENT**

**INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.410 NMAC, Sections 12 and 14, effective 01/01/2016.**

**8.139.410.12 [EMPLOYMENT, TRAINING AND WORK REGISTRATION:] SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) WORK PROVISIONS AND EMPLOYMENT AND TRAINING PROGRAM (E&T):**

Any SNAP recipient may be subject to work requirements. SNAP recipients who do not meet a federal exemption must meet the work requirements in accordance with Subsection B of this section. Federal exemptions from work requirements are found at 7 Code of Federal Regulation (CFR) 273.7(a) (6) and (b). SNAP recipients may be subject to E&T program participation requirements. SNAP recipients who do

not meet a state or federal exemption for E&T work program participation are General Participants (Participants). The state and federal exemptions are listed in Paragraphs (1) and (2) of Subsection C of this section. A participant will follow all program requirements per 7 CFR 273.7 and as contained in this rule. Participants are voluntary until October 1, 2016, when they become mandatory, unless exempted, at the time of initial application or at recertification, whichever occurs first.

**A. [Employment and training E&T work registration:] Work requirements:** [Compliance with work registration is a prerequisite to certification, unless exempt. Benefits may not be conditionally granted before registration of all mandatory household members, except when verification cannot be obtained prior to the expedited service time limit. Work registration exemptions must be verified before certification.] The department will administer the work requirements in accordance with 7 CFR 273.7(a), (b) and (c). As a condition of eligibility for participation in SNAP, every household member who does not qualify for a federal exemption, must meet work requirements as outlined in Section B of this section. Federal exemptions from work requirements are found at 7 CFR 273.7(a)(6) and 273.7(b). Physical and mental unfitness for the federal exemption is defined as an individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be:

- (1) obvious to the department and documented in the case file; or
- (2) not obvious to the department, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

**B. Compliance with work requirements:** [As a condition of eligibility for participation in SNAP, every physically and mentally fit household member who is 16 years of age or older and younger than age 60 and who is determined mandatory, must register for the E&T program.] An individual who is not temporarily waived or exempt in accordance with 7 CFR 273.7(a)(6) and (b) must:

- (1) register for work at the time of application and every 12 months thereafter; all SNAP participants are considered registered for work with the head of household's signature on an application or recertification form for SNAP participation;
- (2) participate in an E&T program to the extent required by law;
- (3) provide ISD or E&T program service provider with information regarding employment status, participation in E&T program status, or availability for work;
- (4) report to an employer referred to by ISD or its designee if the potential employment meets the suitability requirements in accordance with 7 CFR 273.7(h).
- (5) accept a bona fide offer of suitable employment at a site or plant not subject to a strike or lockout, at a wage equal to the higher of the federal or state minimum wage or eighty percent of the wage that would have governed had the minimum hourly rate of the Fair Labor Standards Act been applicable to the offer of employment; and
- (6) not voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week in accordance with 7 CFR 273.7(a)(vii) and 8.139.410.13 NMAC.

**C. [Non-compliance with E&T work requirements:** Non-compliance with E&T work requirements is considered to exist when an individual:

- (1) refuses, at the time of application and every 12 months thereafter, to register for employment in a manner prescribed by income support division (ISD); or
- (2) fails or refuses to comply with the requirements under Title IV-A of the Social Security Act, or work requirements for individuals receiving UCB.] **E&T program participation exemptions:** The department will screen each work registrant in accordance with 7 CFR 273.7(c). SNAP recipients not otherwise exempted as determined by the department are subject to the E&T program participation requirements beginning on October 1, 2016. Failure to comply with the requirements, without good cause, will result in disqualification in accordance with Subsection L of 8.139.410.12 NMAC.

(1) Federal exemptions: Individuals are temporarily

waived or exempt from the E&T program participation in accordance with 7 CFR 273.7(a)(6), (b)(1), and (d)(4)(v).

**(2) State**

exemptions: The following individuals are exempt from E&T program participation:

**(a)**

a parent or other household member who is responsible for the care of a dependent child under age thirteen; if the child has their 13th birthday during the certification period, the individual responsible for the care of the child is required to participate in the E&T program as part of the next scheduled recertification, unless the individual qualifies for another exemption:

**(b)**

a pregnant woman;

**(c)**

workers in ACTION programs (such as VISTA) who average 30 or more hours of work per week are exempt, even though they earn less than minimum wage;

**(d)**

any individual residing in or relocating to a county that has an unemployment rate twenty percent above the national average as defined by the department, will not be required to participate in the E&T program;

**(e)**

any individual residing in or relocating to pueblos, tribes, and nations, with an estimated employment to population ratio as a measure for insufficient job availability as determined by the department; or

**(f)**

any individual determined to be an able bodied adult, in accordance with 8.139.410.14 NMAC.

**(3) Interim**

changes in status: Anyone losing exempt status because of changes required to be reported under 7 CFR 273.12, will have their E&T status determined at recertification. Anyone gaining exempt status because of changes reported will have their E&T status updated when it is reported.

**(4) Relocation**

changes: Participants who relocate within the state retain their E&T participation status at their new location unless their circumstances change or their new location falls under a waiver as defined by the department.

**D. [E&T work requirements:] General E&T program procedures:**

**(1) General**

**conditions for registration:**

**(a)**

Unless exempt, every household member 16 years of age or older and younger than age 60 must register for employment. If a household member has their 16<sup>th</sup> birthday within a certification period, the work registration requirement must be fulfilled as part of the next scheduled recertification process, unless the member qualifies for an exemption:

**(b)**

An individual who does not qualify for an exemption must be registered for employment at initial certification or when added to the SNAP household and at least every 12 months thereafter, as a condition of eligibility:

**(c)**

Strikers whose households are eligible to apply for assistance, as defined in Subsection B of 8.139.400.11 NMAC, must register for work, unless covered by an exemption:

**(d)**

Individuals exempt from registration may volunteer to participate in the E&T program:

**(2) Individuals**

**exempt from registration:** The following individuals are exempt from the work registration requirement:

**(a)**

an individual younger than 16 years of age or an individual 60 years of age or older;

**(b)**

an individual age 16 or 17 who is attending school or enrolled in an employment and training program at least half time, as defined by the school or employment and training program;

**(c)**

an individual who is physically or mentally unfit for employment. This can be demonstrated by providing reliable medical and or behavioral health documentation:

**(i)**

the caseworker shall review all information available to him/her, including documentation, when required, and will make the determination about whether an individual SNAP participant should be exempted from the E & T Program;

**(ii)**

to obtain verification, the caseworker shall use electronic databases when available;

**(iii)**

when electronic databases are not available; the SNAP participant is responsible for providing the necessary documentation in accordance with 8.100.130.8 NMAC;

**(iv)**

to determine an exemption exists on the basis of pregnancy, physical or mental unfitness, the individual must provide written documentation by a medical practitioner such as a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist or social worker. The claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment;

**(v)**

in the case of a pregnancy, the documentation must verify the pregnancy and identify the expected date of delivery;

**(vi)**

if a SNAP participant is deemed physically and mentally fit, and thus not exempt from the E&T Program, the participant will have an opportunity to appeal the mandatory status decision to the fair hearing bureau in accordance with 8.100.970.8 NMAC:

**(d)**

a parent or other household member who is responsible for the care of a dependent child under age thirteen or an incapacitated person;

**(i)**

if the child has their thirteenth birthday during the certification period, the individual responsible for the care of the child is required to be registered as part of the next scheduled recertification, unless the individual qualifies for another exemption;

**(ii)**

the exemption applies to the person who actually provides the care;

**(iii)**

the dependent child or incapacitated person need not be considered a member of the SNAP household or even reside with the household;

**(iv)**

a SNAP participant who is the sole provider of the care for an ill or incapacitated person. In order to meet this exemption, the SNAP participant must provide medical documentation (which could include a letter from the incapacitated individuals health provider) that the person is the sole caretaker for a disabled person and must demonstrate that the SNAP participant cannot be out of the home for the number of hours necessary, or on the computer as is necessary, to meet the work participation hours;

**(v)**

Only those care activities around which work program activities cannot be

scheduled are taken into consideration. Food purchase and preparation activities, home maintenance chores, etc. are activities which may be scheduled and performed at time other than work program participation hours;

(e) an individual subject to and complying with any work requirement under Title IV of the Social Security Act, including TANF work requirements or subject to and complying with ABAWD work requirements;

(f) an individual who receives unemployment compensation benefits (UCB) and is subject to and complying with a federal or state unemployment compensation system; an individual who has applied for but who has not yet received UCB is exempt if required to register with the department of workforce solutions as part of the unemployment compensation application process;

(g) an individual who is a regular participant in a state certified drug or alcohol treatment and rehabilitation program;

(h) an individual who is employed or self-employed and working a minimum of 30 hours a week or receiving weekly earnings at least equal to the federal minimum wage multiplied by 30 hours;

(i) migrant and seasonal farm workers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days are exempt, although this does not prevent such individuals from seeking services from the E&T program;

(j) workers in ACTION programs (such as VISTA) who average 30 or more hours of work per week are exempt, even though they earn less than minimum wage;

(k) a student who is eligible to participate in the SNAP program, and who is enrolled at least half time in any recognized school, high school, training program, or institution of higher education; this exemption remains in effect during normal periods of class attendance, vacations, and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer session);

(l) a household member who has made application for SSI and SNAP benefits at the social security administration, and whose application for SNAP benefits

has been received by HSD, and who is determined eligible for SNAP benefits, shall be exempt from work registration until an SSI determination is made; a household member who is determined ineligible for SSI shall have the exemption from E&T work requirements evaluated at the time of the denial of SSI;

(m) a pregnant woman; or

(n) residing in a county that has an unemployment rate 20 percent above the national average as defined by the department.

(3) **Interim changes in status:**

(a) Anyone losing exempt status because of changes subject to the reporting requirements in Paragraph (2) of Subsection A of 8.139.120.9 NMAC, will be required to register at the next recertification.

(b) Anyone gaining or losing exempt status because of changes not subject to the reporting requirements in Paragraph (2) of Subsection A of 8.139.120.9 NMAC, will have his/her work status evaluated at the next recertification.

(4) **Processing changes:** Mandatory work participants who move from one county to another retain their work registration status at their new location, unless they become exempt.

(5) **Residing in a non-work program county:**

(a) The appropriate work registration code of any individual living in a county which does not administer a work program through the income support division (ISD), and who is not exempt from E&T work registration, will be entered into the individual's computer file. Those individuals will be dropped from referral to the E&T work program.

(b) Any household member living in a non-work program area may volunteer to participate in the E&T work program.]

(1) **Good cause for non-compliance with E&T participation:** ISD will address good cause in accordance with 7 CFR 273.7(i).

(a) Good cause is determined by considering the facts and circumstances involved, including information submitted by the individual, the individual's representative, the work experience service site or community service site.

(b)

Good cause includes circumstances beyond an individual's control, such as, but not limited to:

(i) participant illness;

(ii) illness of another household member requiring the presence of the participating member;

(iii) an individual or family crisis or a family circumstance that may preclude participation;

(iv) lack of transportation and the distance to walk to the activity site exceeds five miles roundtrip;

(v) participant whose physical residence is more than 30 miles away from an income support field office, workforce solutions office or E&T program service provider;

(vi) court appearance of participant or household member;

(vii) farmworkers who are away from their permanent residence or home base who travel to work in agriculture or a related industry during part of the year;

(viii) an absence of dependent care or transportation support services necessary for participation;

(ix) participant's receipt of job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

(x) participant is a victim of family violence; or

(xi) no available jobs within reasonable commuting distance; a distance is considered unreasonable if the round trip exceeds two hours by public or private transportation.

(2) **E&T program service provider responsibilities:** The E&T program service provider is responsible for providing participants referred to the E&T program with an explanation of exemptions, assessment, orientation, development of individual responsibility plan (IRP), a work participation agreement (WPA) and good cause. The department and the E&T program service provider will provide language access services and any necessary reasonable accommodations to SNAP participants, in accordance with 7 CFR 15.



(a)  
Scheduling and conducting assessment and orientation sessions: The E&T program service provider will inform each participant of:

- (i) E&T program requirements and opportunities, including rights, responsibilities, good cause and exemptions;
- (ii) services; and
- (iii) benefits.

(b)  
Placing a participant in an activity component: A participant may be placed in any component deemed appropriate in accordance with 7 CFR 273.7(c) by the E&T program service provider.

(c)  
Authorizing reimbursements: The E&T program service provider staff will notify ISD of requests for reimbursement of expenses that are reasonably necessary and directly related to participation in the E&T program. ISD will authorize allowable reimbursements up to the monthly limit established by the department in accordance with 7 CFR 273.7(d)(4).

(d)  
Reporting changes to the department: The following changes, if reported by the participant to the E&T program service provider, will be shared with ISD:

- (i) participants who become exempt;
- (ii) potential good cause;
- (iii) participants who request closure of SNAP benefits;
- (iv) participants who relocate;
- (v) participants who fail or refuse to comply; or
- (vi) voluntary work participants who no longer wish to volunteer.

**E. [E&T work program:** ISD administers the work program for applicants and recipients of SNAP benefits who are mandatory and who voluntarily participate in the work program. The purpose of the work program is to assist household members participating in SNAP to gain skills, opportunities, training or experience that will improve their employment prospects or earning potential.] **Assessment:** An assessment must be completed by a participant and the E&T program service

provider no later than 15 calendar days after an application or recertification form for SNAP participation is approved. Assessment tools and forms will be used to address the participant's education, skills, prior work experience, employability, and barriers. The assessment will be utilized to identify exemptions, potential good cause, and to determine appropriate activity placement.

(1) Work-  
registrant responsibilities: Each household member who must be registered for work is required to register at the time of initial application and every 12 months thereafter:

- (2) HSD-  
responsibilities: HSD is responsible for:
  - (a) screening each household member to determine work registration status;
  - (b) registering mandatory and voluntary participants;
  - (c) providing information and explaining to each applicant the E&T work requirements, rights and responsibilities and consequences for failure or refusal to comply; such information must be provided at application, at recertification, and when a previously exempt or new household member must be registered;
  - (d) disqualifying non-compliant individuals, and reinstating individuals who are subsequently determined to meet an exemption.

(3) Reporting  
changes to the E&T work program: The following changes will be reported to the E&T work program:

- (a) work participants who become exempt from work registration;
- (b) work participants who are no longer certified for participation;
- (c) work participants who move from the project area; and
- (d) voluntary work participants who are deregistered.

In most cases, the changes listed above are reported by entering the appropriate information into the household's computer file. In some cases, a manual form is used to report new information to the work program.

(4) Work-  
program responsibilities: The E&T work program service provider is

responsible for providing mandatory and voluntary participants referred to the E&T work program with the orientation, assessment, and development of a work participation agreement (WPA) and an individual responsibility plan (IRP).

(a)  
**Scheduling and conducting assessment sessions:** the work program will inform each participant of:

- (i) mandatory and voluntary E&T work program requirements, including rights and responsibilities;
- (ii) services;
- (iii) benefits;

(b)  
**Placing a voluntary participant in a work activity:** a participant may be placed in any work activity deemed appropriate by the work program;

(c)  
**Authorizing reimbursements:** the work program staff will authorize allowable reimbursements up to the regulatory monthly limit for reasonable and necessary costs directly related to work program participation.

(d)  
**Reporting requirements:** the E&T work program service provider is responsible for reporting the following to HSD:

- (i) mandatory participants fail or refuse to comply;
- (ii) voluntary work participants wish to de-register.

(5) Good cause  
for noncompliance with E&T work

**requirements:** The work program will report participants who fail or refuse to comply with work registration or who voluntarily quit a job, or reduce their work hours without good cause. The HSD has the primary responsibility to determine whether good cause exists for a failure or refusal to comply. Good cause will be evaluated on an individual basis and will only be granted until the cause no longer exists or at the next recertification, whichever is sooner.

(a)  
Good cause is determined by considering the facts and circumstances involved, including information submitted by the household member and the work experience or community service site.

(b)  
Good cause includes circumstances beyond an individual's control, such as, but not limited to:

- (i) participant household member's illness;
- (ii) illness of another household member requiring the presence of the participating member;
- (iii) an individual or family crisis or a family circumstance that may preclude participation;
- (iv) lack of transportation and the distance to walk to the activity site exceeds five miles roundtrip;
- (v) individual whose physical residence is more than 30 miles away from an income support field office, workforce solutions office or employment services provider;
- (vi) court appearance;
- (vii) farmworkers who are away from their permanent residence or home base who travel to work in agriculture or a related industry during part of the year and are under contract or similar agreement with an employer to begin work within 30 days of the date the individual notified HSD or E&T work program service provider;
- (viii) an absence of dependent care or transportation support services necessary for participation;
- (ix) receipt of job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;
- (x) individual is a victim of family violence;
- (xi) no available jobs within reasonable commuting or distance; a distance is considered unreasonable if the round trip exceeds two hours by public or private transportation;
- (xii) the individual's monthly expenses for transportation and dependent care expenses, which are necessary and directly related to participation in the E&T program, exceed the allowable reimbursement amount.]

**F. Orientation:**

Participants [of E&T shall be provided an E&T work program orientation with their assessment, which explains the work program and its objectives to the participant] will be provided a program orientation that explains the program and its objectives. The orientation [shall] will include the following information:

- (1) the

- participants rights and responsibilities;
- (2) support services;
- (3) benefits of participation in the E&T work program; and
- (4) consequences of non-compliance with the E&T work program requirements.

**G. [Assessment:**

- (1)

**Requirements:** No later than 15 calendar days after an application is approved, participants shall have an assessment done by the E&T work program service provider. The assessment is a necessary precursor to the IRP, development of WPA, and is a crucial and necessary element in meeting the E&T work program requirements.

- (2) **Elements:**

- (a)

Complete the assessment no later than 15 calendar days following approval of assistance for the participant in which the assessment is carried out; there are a variety of assessment tools and forms that may be used, provided that they address the participant's education, skills, prior work experience and employability.

- (b)

The assessment may include referrals for counseling, if a barrier to employment exists related to alcohol or drug abuse or mental health.

- (3)

**Disqualification:** No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in SNAP if the individual fails or refuses, without good cause, to comply with E&T allowable components.] **Individual responsibility plan (IRP):** Participants may complete an IRP with the assistance of the E&T program service provider. The IRP shall include a specific achievable goal or goals and a plan for securing and maintaining employment.

**H. [Individual responsibility plan (IRP):**

- (1)

**Requirements:** Mandatory participants may complete an IRP with the assistance of the E&T work program service provider no later than 15 days from the date of approval of assistance.

- (2) **General**

**purpose:** The IRP is:

- (a)

a personal planning tool, intended to assist the participant in long-term career planning, address barriers and secure and maintain employment;

- (b)

intended to assist the participant in setting realistic long-term employment goals and to identify those steps which must be taken to achieve the stated goals; and

- (c)

not intended to fulfill the limited purpose of identifying work activities which will meet E&T work program participation requirements; the participant is encouraged to use the IRP to assist in setting long-term employment goals.

- (3) **Elements:**

The IRP shall include a specific achievable employment goal or goals and a plan for securing and maintaining employment.] **Work participation agreement (WPA):**

- (1)

**Requirements:** The WPA is an agreement between the participant and the department. Participants must complete the WPA with the E&T program service provider.

- (a) no

later than 30 calendar days from date of approval for benefits;

- (b)

no later than five calendar days after the expiration of an existing WPA; and

- (c)

the WPA will be reevaluated by the parties at recertification and for changes in circumstances as reported.

- (2) **WPA**

**elements:** The WPA will:

- (a)

list the participant's approved E&T allowable component(s);

- (b)

list the level of effort for each activity;

- (c)

list the support services available and to be provided by the department;

- (d)

list the reasonable accommodations that may be necessary to ensure meaningful engagement;

- (e) be

explained to the participant; and

- (f) be

approved and signed by the E&T program service provider.

**I. [Work participation agreement (WPA):**

- (1) **General:**

The purpose of the WPA is to assure the participant and the department that the work activities in which the participant is engaged meet the E&T work program requirements and the participant is referred to receive available support services.

- (2) **Contents of**

**the agreement:** At a minimum, the WPA shall:

- (a) list the participant's approved work component;
- (b) list the level of effort for each activity;
- (c) list the support services to be provided by the department;
- (d) list the reasonable accommodations that may be necessary to ensure meaningful engagement;
- (e) be signed by the participant; and
- (f) upon approval of the component and support services, signed by the E&T work program service provider.

**(3) Completion of a WPA:** The participant must complete the WPA with the E&T work program service provider:

- (a) no later than 30 calendar days from date of approval for benefits; or
- (b) prior to requesting support services associated with such activity;
- (c) no later than five days after the expiration of an existing WPA.

**(4) Disqualification:** No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in SNAP if the individual fails or refuses, without good cause, to comply with E&T allowable components.] **E&T allowable components:** ISD will administer E&T components in accordance with 7 CFR 273.7(e).

**(1) Determination of required hours:** At initial eligibility and recertification, participants will be required to participate in any combination of the components below, as assigned by the E&T program service provider, for a minimum requirement of up to 12 or 24 activity hours within the initial consecutive three month period during the 12 month certification period.

**(a)** Individuals in a rural area will be required to complete up to 12 activity hours. Rural area is defined as a county containing a core urban area of 50,000 or fewer people as defined by office of management and budget (OMB) metropolitan statistical area designation. An individual residing on a tribe, pueblo, or nation that is also

within such a county, will be defined as living in a rural area. Individuals residing in an area that is determined to be non-rural, as defined by OMB, will be required to complete up to 24 activity hours.

**(b)** The collective hours a household must complete will be determined in accordance with 7 CFR 273.7(e)(3)(ii).

**(2) Individual or group job search with employer contacts:**

**(a) General:** The purpose of the job search component is to provide the participant a reasonable opportunity to find suitable employment.

**(b) Component activities:** All participants are required to register as a "job seeker" through the New Mexico department of workforce solutions (DWS), "New Mexico workforce connection". The department will verify registration in accordance with 8.100.130.9 NMAC. All participants in this component are required to complete the individual or group job search training with employer contacts. One job search activity is equal to one hour of activity. Job search activity examples can be found at 7 CFR 273(e).

**(3) Work experience:**

**(a) General:** The purpose of the work experience component is to improve the employability of participants.

**(b) Component activities:**

- (i) on-the-job skills training;
- (ii) work experience related to their occupational interests.

**(c)** The number of hours necessary for compliance in this component are calculated in accordance with 7 CFR 273.7(e)(1).

**(4) Community service:**

**(a) General:** The purpose of the community service component is to provide on-the-job skills training and to assist the communities of participants.

**(b) Component activities:**

- (i) on-the-job skills training;
- (ii) work-like experience.

**J. [E&T allowable components:**

**(1) Individual or group job search with employer contacts:**

**(a) General:** The purpose of the Job Search component is to provide the participant a reasonable opportunity to find suitable employment. Individual or group job search with employer contacts is an allowable E&T component for mandatory and voluntary participants. Support services such as the transportation reimbursement and child care assistance is to be provided for participants in this component. This is a two part component which may include class room training and requires a minimum of 12 or 24 employer contacts over a two month period.

**(b) Component Activities:** All mandatory and voluntary participants are required to register as a "job seeker" through the New Mexico department of workforce solutions (DWS), "New Mexico workforce connection" online portal for job-matching services and resources. The mandatory and volunteer participants are required to submit a copy of the registration to the E&T work program service provider to verify completion of the registration within 30 days after the WPA is approved.

**(i)** All mandatory and voluntary participants in this component are required to complete the individual or group job search training with employer contacts.

**(ii)** The participant is required to have completed and submitted verification of the completion of a minimum of 12 employer contacts within 30 days of the approved WPA and submit no later than 60 days of the approved WPA, verification of the additional 12 employer contacts to equal the requirement of 24 employer contacts.

**(iii)** Individuals residing in an area that is determined to be rural, as defined by the department, will only be required to complete the 12 verifiable employer contacts, within a thirty-day period.

**(c) Disqualification:** Failure to complete each element of the individual and group job search training with employer contacts component is subject to disqualification from SNAP, unless good cause exists.

**(d) Successful completion:** Participants who successfully complete the individual or group job search and employer

contact component are eligible for the transportation reimbursement, subject to available funding:

(2) **Work**

**Experience:**

(a)

**General:** The purpose of the work experience component is to improve the employability of household members through actual work experience or training, or both, and to enable individuals involved with such programs to move promptly into regular public or private employment. Support services such as the transportation reimbursement and child care assistance may be available for participants:

(b)

**Component Activities:**

(i)

The maximum monthly participation hours are calculated by dividing the total household SNAP benefits received by the Federal minimum wage:

(ii)

On-the-job skills training:

(iii)

Work experience related to their occupational interests:

(c)

**Disqualification:** Failure to complete each element of the work experience component is subject to disqualification from SNAP, unless good cause exists:

(d)

**Successful completion:** Participants who successfully complete the work experience component are eligible for the transportation reimbursement, subject to available funding:

(3) **Community**

**Service:**

(a)

**General:** The purpose of the community service component is to provide opportunities for on-the-job skills training, improve employability and/or assistance to communities. Support services such as the transportation reimbursement and child care assistance may be available for participants:

(b)

**Component Activities:**

(i)

The maximum monthly participation hours are calculated by dividing the total household SNAP benefits received by the Federal minimum wage:

(ii)

On-the-job skills training:

(iii)

Work-like experience:

(c)

**Disqualification:** Failure to complete

each element of the community service component is subject to disqualification from SNAP, unless good cause exists:

(d)

**Successful completion:** Participants who successfully complete the community service component are eligible for the transportation reimbursement, subject to available funding. **Federal financial participation:** Federal financial participation will be in accordance with 7 CFR 273.7(d).

**K. [E&T work program support services:**

(1) **Child care:**

Mandatory and volunteer participants may be eligible for child care services to meet the required E&T activities:

(a)

Mandatory and volunteer participants must have a completed WPA from the E&T work program service provider to identify the number of hours child care will be needed to successfully complete the activity:

(b)

E&T mandatory and volunteer participants may only receive child care services when they are placed in the approved E&T components:

(2)

**Transportation reimbursements:**

Mandatory and volunteer participants are eligible to receive a transportation reimbursement as determined by the department if they have completed the required E&T activities as defined in Paragraph J of this section:

(3)

Support services are subject to the availability of state and federal funding. ]

**Reimbursement:** Participants who incur expenses that are reasonably necessary and directly related to participation in the E&T program will be reimbursed up to the monthly limit as determined by the department, in accordance with 7 CFR 273.7(d)(4).

**L. Disqualification for non-compliance:** [No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in SNAP if the individual fails or refuses, without good cause, to comply with E&T allowable components. This disqualification process applies to participants who are not required to complete the 20-hour-a-week work requirement:

(1) **Individual**

**disqualification:** Any individual who fails or refuses to comply with the work registration, without good cause will be disqualified as follows:

(a)

**first occurrence:** for three months or until compliance, whichever occurs earlier;

(b)

**second occurrence:** for six months or until compliance, whichever occurs earlier;

(c)

**third occurrence:** for one year or until compliance whichever occurs earlier:

(2) **Individual**

**that is voluntarily participating:** Any individual that is voluntarily participating in the work program is not subject to disqualification for non-compliance with work requirements:

(3) **Treatment**

**of income and resources:** All the income and resources of an individual disqualified for noncompliance with work requirements will be counted to determine the household's income and resource maximum levels, and benefit amount (see Subsection C of 8.139.520.10 NMAC). Any reported change that does not relate to the individual disqualification shall be processed after the appropriate determination is made. SNAP benefits shall be increased or decreased according to the change processing requirements at 8.139.120.10 NMAC:

(4) **Notice**

**of adverse action:** Within 10 days of determining that a participant has failed to meet an E&T requirement, the department or its designee shall issue notice of adverse action that the payment shall be reduced. The payment reduction shall take place with the first payment following expiration of the notice of adverse action:

(5)

**Determining the disqualification period:**

(a)

**At application:** An individual who is a member in an applicant household, and who is in a prior disqualification period, will be denied SNAP benefits beginning with the month of application:

(b)

**During participation:** An individual who has failed or refused to comply with work requirements while participating in SNAP will be ineligible to participate beginning with the month following the month in which the notice of adverse action time limit expires:

(c)

**Simplified reporting households:** An individual who has failed or refused to comply with work requirements during a simplified reporting period, shall be ineligible to participate in SNAP:

beginning with the month following the month the notice of adverse action time limit expires. If the adverse action time limit will expire in the month after the notice would have been sent, the caseworker must wait until the first day of the following month to send the notice of adverse action.

(6)

**Disqualification in the last month of certification:** For all participating households, including households subject to simplified reporting:

(a)

If a notice of noncompliance is received in the last month of the certification period, an adverse action notice will be sent to the household. The disqualification period begins the first month following the month the adverse action time limit expires, whether or not the household reapplies for SNAP benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

(b)

If the adverse action time limit expires in the last month of the household's certification period, the disqualification penalty will begin the following month, whether or not the household reapplies for SNAP benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

(7)

**Lifting the disqualification:** An individual who has been disqualified may resume participation in SNAP benefits if:

(a)

The participant corrects the failure of compliance with E&T requirements during the notice of adverse action 13-day time period. Once corrected, the occurrence shall not count as an occurrence of noncompliance.

(b)

Failure to comply during the notice of adverse action 13-day time period shall cause the occurrence to become effective.

(c)

the participant becomes exempt or meets a good cause from E&T work requirements listed in 8.139.410.12 NMAC or;

(d)

The participant corrects the failure of compliance and has been disqualified a minimum of one month.

(i)

The disqualification will continue until the participant complies or serves out the time frame for the occurrence level.

(ii)

Participants disqualified due to not meeting the required hours, must demonstrate the hourly compliance prior to lifting disqualification.] Participants who fail to:

(1) timely

complete the assessment;

(2) timely

complete a WPA; and

(3) comply with

assigned component requirements and their required hours of participation as outlined in their WPA will be disqualified in accordance with 7 CFR 273.7(f).

(4) **Individual**

**disqualification:** A participant who fails or refuses to comply with the E&T program participation will be considered an ineligible household member in accordance with 7 CFR 273.7(f). Any participant who fails or refuses to comply with the E&T participation, without good cause will be disqualified as follows:

(a)

first occurrence: for three months or until compliance, whichever occurs earlier;

(b)

second occurrence: for six months or until compliance, whichever occurs earlier;

(c)

third occurrence: for one year or until compliance, whichever occurs earlier.

(5) **Individual**

**that is voluntarily participating:** Any individual that is voluntarily participating in the E&T program is not subject to disqualification for non-compliance.

(6) **Treatment**

**of income and resources:** All the income and resources of an individual disqualified for non-compliance with work requirements will be counted to determine the household's income and resource maximum levels and benefit amount in accordance with 8.139.520 NMAC.

(7) **Notice**

**of adverse action:** Within 10 days of determining that a participant has failed to meet an E&T requirement, the department shall issue a notice of adverse action in accordance with 7 CFR 273.7(c)(3).

(8)

**Determining the SNAP ineligibility period:** ISD will determine, track and notify participants of disqualification periods in accordance with 7 CFR 273.7(f) and 273.13.

**M. Head of household provisions:**

(1)

**Designation:** [The household may designate any adult parent of a child in the household as the head of household, if all adult household members making application agree to the selection. A household may designate the head of household each time the household is certified for participation in SNAP but may not change the designation during a certification period, unless there is a change in household composition.] The household may designate a head of household in accordance with 7 CFR 273.1(d).

(2)

**[Compliance with E&T work requirements:** For purposes of determining compliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the head of household will be considered as an individual household member. The head of household will be disqualified in accordance with the disqualification penalties in Paragraph (1) of Subsection H of 8.139.410.12 NMAC.

(a)

If the head of household leaves the household during a period of ineligibility, the disqualification follows the individual. The remaining household members, if otherwise eligible, continue to be eligible to participate in SNAP.

(b)

If the head of household becomes the head of another household, the individual disqualification continues to apply. The other household members continue to be eligible to participate in SNAP.]

**E&T requirements:** For purposes of determining compliance with the E&T program, the head of household will be considered as an individual household member. If the head of household fails to comply, the head of household will be disqualified in accordance with the disqualification penalties in 8.139.410.12 NMAC.

**N. Fair hearings:** Each

individual or household has the right to request a fair hearing to appeal a denial, reduction or termination of benefits due to a determination of nonexempt status, or a state agency determination of failure to comply with SNAP work requirements, in accordance with 7 CFR 273.7(f)(6).

[02/01/95, 07/01/98; 8.139.410.12 NMAC - Rn, 8 NMAC 3.FSP.415, 05/15/2001; A, 10/15/2003; A, 01/01/2004; A, 04/01/2010; A, 06/01/2013; A, 10/01/2014; A, 01/01/2016; A, 01/01/2016]

**8.139.410.14** ~~[ABLE-BODIED-ADULTS WITHOUT DEPENDENTS-(ABAWDS):~~ An applicant or recipient who is a mandatory work participant in the SNAP E&T program shall be considered for compliance with the 20-hour-a-week work requirement for ABAWDs. Unless determined exempt, any individual who is a mandatory ABAWD shall be required to comply with the 20-hour-a-week work requirement to maintain eligibility for SNAP benefits. The ABAWD 20-hour-a-week work requirement will be in effect as of January 1, 2016 through December 31, 2018.] **REQUIREMENTS FOR ABLE BODIED ADULTS:** The department will administer this program in accordance with 7 Code of Federal Regulation (CFR) 273.24. This rule becomes effective as of January 1, 2016. The department will use a fixed 36 month period for measurement and tracking purposes. The first fixed period will be in effect from January 1, 2016 through December 31, 2018.

**A. [Exemptions:** Certain individuals are exempt from the ABAWD 20-hour-a-week work:

- (1) an individual determined to be exempt from work requirements of the SNAP E&T program set forth at Subsection D of this section;
- (2) an individual under age 18 or age 50 or older;
- (3) an individual medically certified as physically or mentally unfit for employment as defined in subsection D of 8.139.410 NMAC;
- (4) a pregnant woman;
- (5) an individual residing in a SNAP household that includes at least one child under the age of 18, even if the child is not eligible for SNAP benefits;
- (6) a natural, adoptive or step-parent residing in a SNAP household that includes at least one child under the age of 18, even if the child is not eligible for SNAP benefits;
- (7) residing in a non-ABAWD county as documented by federal waiver or suspension of the 20-hour-a-week work requirement.] **Able bodied adults can comply by:**

(1) working 20 hours per week, averaged monthly; for purposes of this provision, 20 hours per week averaged monthly means 80 hours per month; work is defined as:

(a) work in exchange for money;

(b) work in exchange for goods or services (“in kind” work); or

(c) unpaid work, which includes work without compensation that gives a person experience in a job or industry, tests a person’s job skills, or involves volunteer time and effort to a not-for-profit organization.

(2) Participating, for an average of 80 hours a month, in a combination of the E&T work program components found at Subsection I of 8.139.410.12 NMAC as long as the job search component is less than fifty percent of the total activities; or

(3) Participating for an average of 80 hours a month, in a combination of Paragraphs (1) and (2) of this subsection.

**B. [Time limited eligibility for ABAWDs:** An ABAWD who is determined mandatory to comply with the 20-hour-a-week work requirement shall not be eligible to participate in the SNAP program as a member of any household if the individual received SNAP benefits but failed to comply with the 20-hour-a-week work requirement for three countable months in a 36-month period, until they subsequently meet the requirements to regain eligibility.

(1) **36-month period:** The 36-month period is a fixed calendar month period beginning on January 1, 2016 through December 31, 2018.

(2) Countable months in the 36-month time limit: Within the fixed 36-month period, an ABAWD shall have a month counted toward the three-month time limit if the 20-hour-a-week work requirement is not met and the household received a full month’s benefits.

(a) In no event shall a month be counted toward the three-month time limit if the individual has not attained the age of 18.

(b) A month that an ABAWD has used without fulfilling the work requirement in another state shall be counted toward the three-month time limit as long as the other state verifies the month has been used as a non-work month.] **Good cause:** As determined by the department, if an individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirement if the absence from work

is temporary and the individual retains their job. Good cause shall include circumstances beyond the individual’s control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation.

**C. [Fulfilling the 20-hour-a-week work requirement:**

(1) Working: For purposes of determining the activities that count towards the 20-hour-a-week work requirement, the time spent working in exchange for money, or working in exchange for goods or services, or unpaid work, or any combination of these activities shall be considered as employment and credited toward the 20-hour-a-week work requirement.

(2) **Work activities:** Allowable work activities that count towards the 20-hour-a-week work requirement include:

- (a) employment for at least 20 hours a week averaged monthly or 80 hours a month, but not unreported employment; in the case of self-employment income, gross monthly earnings, as determined under Paragraph (2) of Subsection E of 8.139.520.10 NMAC, are divided by the federal minimum wage to determine the number of hours that are countable in meeting the work requirement;
- (b) participation in and compliance with the requirements of a work program at least 20 hours a week;
- (c) any combination of employment and participation in a work program for at least 20 hours a week;
- (d) job search or job search training activities that are incorporated into the department’s work program or another state or local program that meets SNAP E&T requirements as long as the job search or job search training activities equal less than half the work requirement; or
- (e) participation in and compliance with a workfare program.

(3) **Work program:** Allowable activities in a work program include those performed under:

- (a) the Workforce Investment Act (Public Law 105-220);
- (b) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296);
- (c)

the department's SNAP E&T program;

(d)

any other state or local program which is recognized by the department as meeting SNAP E&T program requirements.] **Waived from the time**

**limit requirements:** The department will waive the three month time limit requirement for the following in accordance with 7 CFR 273.24(f):

(1) any

individual residing in or relocating to a county that has an unemployment rate twenty percent above the national average as defined by the department;

(2) any

individual residing in or relocating to pueblos, tribes, and nations, with an estimated employment to population ratio as a measure for insufficient job availability as determined by the department.

**D. [Reporting and verifying work participation:**

(1) It is the

responsibility of the individual subject to the work requirement to report:

(a)

whether or not that individual has worked or participated in a work program;

(b)

the number of hours spent in work or work program activities;

(c)

how the work requirement was fulfilled; and

(d)

when the individual's work hours fall below 20 hours a week, averaged monthly, or 80 hours a month.

(2) Verification

of the time spent working is mandatory in order to receive credit toward the work requirement. It is the responsibility of the individual subject to the work requirement to provide verification of participation in work activities by the fifth calendar day of each month following the month of participation in work activities.] **Able bodied adults who are determined to be ineligible for SNAP benefits because of non-compliance with the time limit requirements can regain eligibility in accordance with 7 CFR. 273.24(d)(i), (d)(ii), (d)(iii), or (d)(v).**

**E. [Good cause for**

**failure to meet the work requirement,** as defined in Subsection E of 8.139.410.12 NMAC: An ABAWD may establish good cause for failure to meet the 20-hour-a-week work requirement if the absence from work is temporary and the individual retains employment, or if participation in work activities resulted from a temporary

absence due to circumstances beyond the individual's control. Good cause is established on an individual basis.]

**Exceptions to the three month time limit:**

(1) Exceptions

to the three month time limit required participation are found at 7 CFR 273.24(c).

(2) Physical and

mental unfitness for the three month time limit requirements exception is defined as an individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves.

(a)

unfitness can be obvious to the department and documented in the case file; or

(b)

not obvious, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist or social worker as being unfit to work; this claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

**F. [Regaining**

**eligibility:** An individual who becomes ineligible due to failure to meet the work requirement for three months can regain eligibility by working or participating in an approved work program for at least 80 hours during any 30 consecutive day period following the date of ineligibility.

(1) An

individual who regains eligibility is eligible on an ongoing basis provided he or she continues to meet the 20-hour-a-week work requirement.

(2) There is no

limit to the number of times an individual may regain eligibility during the 36-month period.] The department will administer the fifteen percent exemptions, as allowed by the food and nutrition service (FNS) and as determined by the department, in accordance with 7 CFR 273.24(g).

**G. Failure to meet the work requirement after regaining eligibility:**

An individual who has regained eligibility and who subsequently fails to meet the 20-hour-a-week work requirement in any month left in the 36-month period shall be eligible to receive SNAP benefits for a three consecutive month period.

(1) The three-

month period begins with the month the work requirement was not met, provided

the individual is otherwise eligible:

(2) Upon

expiration of the three months, the individual becomes ineligible for the remainder of the fixed 36-month period.

(3) The

individual may re-establish eligibility by either regaining eligibility or because a determination is made that the individual becomes exempt from the 20-hour-a-week work requirement.

**H. Costs:**

Except for costs assumed by HSD pursuant to an approved SNAP E&T supportive services plan, HSD has no financial responsibility for any costs or liabilities incurred by persons electing to participate in a work program in order to meet the SNAP work requirement.]

[8.139.410.14 NMAC - N, 04/01/2010; A, 10/01/2014; A, 2/13/2015; A, 01/01/2016; A, 01/01/2016]

**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

The Public Employees Retirement Association (PERA) approved, at its 11/10/2015 rule hearing, to repeal 2.80.200 NMAC, Organization and Operation of the Public Employees Retirement Board (filed 12-28-2000) and replace it with 2.80.200 NMAC, Organization and Operation of the Public Employees Retirement Board, effective 12/30/15.

The Public Employees Retirement Association (PERA) approved, at its 11/10/2015 rule hearing, to repeal 2.80.2100 NMAC, Member Contributions (filed 12-28-2000) and replace it with 2.80.2100 NMAC, Member Contributions, effective 12/30/15.

**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

TITLE 2 PUBLIC FINANCE  
CHAPTER 80 PUBLIC  
EMPLOYEES RETIREMENT  
PART 200 ORGANIZATION  
AND OPERATION OF THE PUBLIC  
EMPLOYEES RETIREMENT  
BOARD

2.80.200.1 ISSUING AGENCY:  
Public Employees Retirement Association

(PERA), 33 Plaza La Prensa, Santa Fe, New Mexico 87507  
[2.80.200.1 NMAC - Rp, 2.80.200.1 NMAC, 12/30/15]

**2.80.200.2 SCOPE:** This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board and the association under the Public Employees Retirement Act.  
[2.80.200.2 NMAC - Rp, 2.80.200.2 NMAC, 12/30/15]

**2.80.200.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-11-130, 10-11A-4, 10-12B-3, 10-12C-3 NMSA 1978, as amended.  
[2.80.200.3 NMAC - Rp, 2.80.200.3 NMAC, 12/30/15]

**2.80.200.4 DURATION:** Permanent.  
[2.80.200.4 NMAC - Rp, 2.80.200.4 NMAC, 12/30/15]

**2.80.200.5 EFFECTIVE DATE:** December 30, 2015, unless a different date is cited at the end of a section.  
[2.80.200.5 NMAC - Rp, 2.80.200.5 NMAC, 12/30/15]

**2.80.200.6 OBJECTIVE:** The objective of this rule is to establish procedures for the organization and operation of the retirement board.  
[2.80.200.6 NMAC - Rp, 2.80.200.6 NMAC, 12/30/15]

**2.80.200.7 DEFINITIONS:** [Reserved]

**2.80.200.8 - 9** [Reserved]

**2.80.200.10 RULES AND REGULATIONS:**  
**A.** Except as otherwise provided in the Public Employees Retirement Act and rules and regulations periodically adopted in accordance therewith, the board may provide for its organization, operation and procedures by vote of the board at any meeting of the board.

**B.** The board may promulgate rules and regulations for the administration of the Public Employees Retirement Act, Judicial Retirement Act, Magistrate Retirement Act, Volunteer Firefighters Retirement Act and Deferred Compensation Act.

**(1)** Prior to the adoption, amendment or repeal of any rule, the board shall, at least 30 days prior to its proposed action:

**(a)** publish notice of its proposed action in a newspaper with a general statewide circulation; the notice shall:

**(i)** give the time and place of any public hearing and state the manner in which data, views or arguments may be submitted to the board by any interested person;

**(ii)** describe the substance of the proposed action, or state the subjects and issues involved;

**(iii)** include any additional matter required by any law, together with specific reference to the statutory authority under which the rule is proposed; and

**(b)** afford all interested persons reasonable opportunity to submit data, views or arguments orally or in writing; if the board finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing; the board shall consider fully all written and oral submissions addressing the proposed rule; upon adoption of a rule contested at hearing or otherwise, the board shall issue a concise statement of its principal reasons for adoption of the rule; all persons heard or represented at any hearing, or who submit any writing to be considered in connection with the proposed rule, shall promptly be given a copy of the rule, by mail or otherwise, if such persons so request in writing.

**(2)** If the board finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the soundness of the fund or general welfare of the association, or if the board for good cause finds that observance of the requirements of notice and public hearing would be contrary to the interests of the association, the board may dispense with such requirements and adopt, amend or suspend the rule as an emergency. The board's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency rule, amendment or suspension. No emergency rule, amendment or suspension shall remain in effect for longer than 60 days, unless notice shall be given within 15 days of the adoption of the emergency rule and a hearing held as provided in this section within 90 days of the notice.

[2.80.200.10 NMAC - Rp, 2.80.200.10 NMAC, 12/30/15]

**2.80.200.11 ACTUARIAL**

**ASSUMPTIONS AND USE OF TRUST FUND:**

**A.** Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, the assumptions shall be specified by the board in a manner that precludes employer discretion.

**B.** No part of the corpus or income of the fund may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries.

**C.** The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

[2.80.200.11 NMAC - Rp, 2.80.200.11 NMAC, 12/30/15]

**2.80.200.12 - 19** [Reserved]

**2.80.200.20 OFFICERS:**

**A.** At the first regular meeting of each calendar year, the board shall elect a chair and a vice-chair. The duties of the officers shall include the following.

**(1)** The chair shall preside at all regular and special meetings of the board.

**(2)** The vice-chair shall serve as chair in the absence of the chair.

**B.** In the absence of the chair and vice-chair, the board may elect a temporary chair to preside at a meeting from which both officers are absent.

[2.80.200.20 NMAC - Rp, 2.80.200.20 NMAC, 12/30/15]

**2.80.200.21 BOARD TRAINING AND EDUCATION:**

**A.** New board members shall attend a new board member orientation within two months of being elected or appointed to office. New board member orientation shall be provided by PERA staff and shall include fiduciary responsibility, investing principles, an actuarial primer and an overview of the operations of the association.

**B.** Each board member shall annually certify his or her compliance with the statutory requirements of Section 10-11-133(F) NMSA 1978 on the form prescribed by the association on or before December 31<sup>st</sup> of each calendar year.

[2.80.200.21 NMAC - Rp, 2.80.200.21 NMAC, 12/30/15]

**2.80.200.22 - 29** [Reserved]



**2.80.200.30 VACANCY ON THE BOARD:**

**A.** In the event any member of the PERA board retires from his or her job, resigns from the board or dies, except the ex-officio members of the board, that member shall be considered to have resigned from the board and the board shall, by resolution, declare that office vacant as of the date of the adoption of such resolution. Such resolution shall be adopted within 30 days after the board member's retirement, resignation or death. Members of the retirement board shall serve until their successors have qualified.

**B.** In the event any member of the PERA board, except the ex-officio members of the board, ceases employment with an affiliated public employer, and is not reemployed by an affiliated public employer from the same membership (state, county or non-county municipal) group from which that member was elected within 30 days, that member shall be considered to have resigned from the board. For purposes of 2.80.200.30 NMAC, the term "ceases employment" shall include leave without pay status that extends for more than 12 weeks.

**C.** The resolution declaring the vacancy shall be publicized immediately in conjunction with a notice inviting eligible individuals to apply for appointment to the position within 30 days of the publication of notice of vacancy. Publication shall be, at the minimum, by special notice to employees in the affected membership group through their employers. The board shall select the new member from among the interested persons who apply pursuant to the publication of the notice of vacancy. If no applications are received, the board shall entertain nominations by the members present.

**D.** Any vacancy of member, except ex-officio member, occurring on the board shall be filled by the remaining board members, even though a quorum not be present, at a regularly scheduled board meeting within 90 days after the adoption of the resolution declaring the vacancy. The member selected to fill the vacancy shall be selected from the membership group, whether state, county or non-county municipal or retired member, which experienced the vacancy. If a vacancy in the municipal membership group is that of a county member, the replacement member shall be a county employee. The selected member shall be appointed to serve for the remainder of the vacated term.

[2.80.200.30 NMAC - Rp, 2.80.200.30 NMAC, 12/30/15]

**2.80.200.31 - 39 [Reserved]**

**2.80.200.40 BOARD MEETINGS:**

**A.** The board shall hold regular meetings on the last Thursday of each month, unless otherwise established by resolution of the board. The board may establish by resolution a different meeting schedule for regular meetings of the board.

**B.** A majority of the board members shall constitute a quorum at any meeting of the board and each attending member, including the chair, shall be entitled to one vote on each issue.

**C.** No "proxy" votes shall be allowed.  
[2.80.200.40 NMAC - Rp, 2.80.200.40 NMAC, 12/30/15]

**2.80.200.41 - 49 [Reserved]**

**2.80.200.50 COMMITTEES:**

**A.** The chair shall appoint no more than six board members to each of the following standing committees: rules and administration, audit and budget, legislative, investments and deferred compensation investment plan. The disability review committee shall have at least three but no more than five board members. The chair of the board shall appoint the chair of each committee. Though the board shall have standing committees, the board chair reserves the right to cancel any committee meeting and allow the entire board to discuss and act on matters that may be within the subject matter of standing committees.

**(1)** The rules and administration committee shall consider and recommend to the board new rules and amendments to or repeal of existing rules governing the organization and operation of the board and the association. Administrative matters requiring specific direction from the board may also be considered by the committee.

**(2)** The audit and budget committee shall provide policy assistance to the board and the executive director of PERA in fulfilling PERA's responsibilities for accounting, auditing, budgeting, and the quality and integrity of the financial reports of the association.

**(3)** The legislative committee shall consider and recommend to the board proposals for new statutes and amendments to or repeal

of existing statutes. The committee shall also monitor the introduction and progress of proposed legislation affecting the board or association and report this information to the board.

**(4)** The disability review committee is described in 2.80.1000.20 NMAC.

**(5)** The investment committee shall review and monitor the administration of the investment policy adopted by the board.

**(6)** The deferred compensation committee shall review and monitor the administration of the deferred compensation plan investment policy adopted by the board.

**B.** The chair, with the advice and consent of the board, shall appoint an election committee to consist of nine members of the association: four members from state departments, two members from non-county municipal employers, one member from a county employer and two retired members.

**(1)** The election committee shall serve until replaced by the chair and shall receive no compensation other than that authorized by the Per Diem and Mileage Act.

**(2)** The duties of the election committee are described in 2.80.200.60, 2.80.200.70 and 2.80.200.80 NMAC.

**C.** From time to time, the board may authorize, and the chair may appoint, such ad hoc committees as the board finds necessary.

[2.80.200.50 NMAC - Rp, 2.80.200.50 NMAC, 12/30/15]

**2.80.200.51 - 59 [Reserved]**

**2.80.200.60 ELECTION OF RETIRED BOARD MEMBERS:**

**A.** During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of retired board member.

**B.** Any retired member who is receiving a disability or normal retirement pension under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act is eligible for election to a retired board member position.

**C.** Nominating petitions shall be signed only by retired members under the Public Employees Retirement

Act, Judicial Retirement Act or the Magistrate Retirement Act. To be eligible, a candidate must have a minimum of 50 nominations. A valid nomination shall include a signature, legible printing of the retiree's name, and one of the following: 1) the last four digits of the retiree's social security number; 2) the retiree's date of birth; 3) the retiree's PERA identification number. A nomination that does not include at least one of these elements may not be counted. A retired member may sign more than one nominating petition for different candidates. The five candidates with the highest number of nominations shall be included on the ballot and the other or others shall be eliminated. The names of the five retired members receiving the highest number of nominations shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

**D.** In the event any nominee is unable or unwilling to accept a nomination, that nominee's name shall be removed from the ballot and the resulting vacancy on the ballot shall not be filled. If the inability or unwillingness to accept a nomination occurs after the ballots have been printed the election committee shall treat all votes cast for that nominee as void.

**E.** If only one retiree is nominated for a retired board member position, the election shall be cancelled and that retiree shall automatically be declared the winner for the retired board member position pursuant to 2.80.200.80 NMAC.

**F.** Only retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible to participate in the election of retired board members.

**G.** The campaign contribution limit of twenty-five dollars (\$25.00) contained in Section 10-11-130.1(B) NMSA 1978 (2000) shall apply to each four year term retired board member election.  
[2.80.200.60 NMAC - Rp, 2.80.200.60 NMAC, 12/30/15]

**2.80.200.61 - 69** [Reserved]

**2.80.200.70 ELECTION OF NON-RETIRED BOARD MEMBERS:**

**A.** During the January monthly meeting, the retirement board

shall adopt a resolution specifying when nominating petitions are due to be returned to PERA. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of non-retired board member.

**(1)** Candidates nominated for any non-retired board member position shall be vested members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act.

**(2)** Only state members, including members under the Judicial Retirement Act or the Magistrate Retirement Act, may nominate candidates for state board member positions. Only county members may nominate candidates for the county board member position. Only non-county municipal members may nominate candidates for the remaining municipal board member positions.

**(3)** To be eligible, a candidate must have a minimum of 150 valid nominations of non-retired PERA members from the candidate's membership group on his or her nominating petition. A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and one of the following: 1) the last four digits of the member's social security number; 2) the member's date of birth; or 3) the member's PERA identification number. A nomination that does not include at least one of these elements may not be counted. A member may sign more than one nominating petition for different candidates.

**(4)** The five candidates with the highest number of nominations for each non-retired position shall be included on the ballot and the other or others shall be eliminated. The names of the five non-retired members receiving the highest number of nominations for a position shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

**(5)** In the event any nominee is unable or unwilling to accept the nomination, his or her name shall be removed from the ballot and the vacancy on the ballot shall not be filled. If such a vacancy occurs after the ballots have been printed, the election committee shall treat all votes cast for that candidate as void.

**(6)** If only one member is nominated for a non-retired board member position, the election shall be cancelled and that member shall automatically be declared the winner for the non-retired board member position pursuant to 2.80.200.80 NMAC.

**(7)** All members of record of the membership group for which the election is held shall be eligible to receive a ballot as provided in Subparagraph (a) of Paragraph (8) below, except that only county members shall vote in elections for the county member position, and shall not be eligible to vote in elections for non-county municipal positions. The applicable membership group for any member who is no longer a currently employed, contributing employee of an affiliated public employer shall be determined as of the last date on which the member was a currently employed, contributing employee of an affiliated public employer.

**(8)** For purposes of the election of non-retired board members, "member of record" shall mean the following:

**(a)** all persons listed in PERA electronic membership history records as members, including members covered under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act, no more than 60 days prior to the date of mailing ballots;

**(b)** all persons who have filed with PERA a valid application for membership form 60 days or more prior to the date of mailing ballots;

**(c)** while members of record shall qualify to receive a ballot, in the case of those new members listed in Subparagraph (b) of Paragraph (8) of Subsection A of 2.80.200.70 NMAC, a written request for a ballot must be made to PERA.

**(9)** For purposes of the election of non-retired board members:

**(a)** ballots shall be mailed to all non-county municipal members of record in the case of an election of a non-county municipal board position;

**(b)** ballots shall be mailed to all county municipal members of record in the case of an election of the county municipal board position; and

**(c)** ballots shall be mailed to all state members of record in the case of an

election of a state board position.

**B.** The campaign contribution limit of twenty-five dollars (\$25.00) contained in Section 10-11-130.1(B) NMSA 1978 (2000) shall apply to each four year term non-retired board member election.

[2.80.200.70 NMAC - Rp, 2.80.200.70 NMAC, 12/30/15]

**2.80.200.71 - 79** [Reserved]

**2.80.200.80 ELECTIONS:** The call of the annual meeting and secret election ballots shall be mailed at least 30 days prior to the annual meeting of the association. Ballots shall be held by the United States post office in a locked box until picked up by the election committee or an independent contractor hired by PERA to assist with the election. To be counted, ballots must be in the United States post office locked box by 12:00 noon on the date set by the association.

**A.** Each ballot shall contain an affirmation of the member's eligibility to vote.

**B.** Ballots shall be self-proving and shall be counted by the election committee or an independent contractor hired by PERA to assist with the election. The candidate receiving the greatest number of votes shall be declared the winner for each position. In the event of a tie, the election committee shall select by lottery or similar method the name of the winner. The election committee or an independent contractor hired by PERA to assist with the election shall report the results of the election to the membership at the annual meeting.

**C.** Members whose ballots have not been delivered to them may request and receive another ballot if the original ballot is returned by the United States post office undelivered to PERA or an independent contractor hired by PERA to assist with the election prior to the close of the election. Members whose ballots have been mutilated or spoiled may request and receive another ballot when, prior to the close of the election, the original mailed ballot is returned by the member to PERA.

**D.** If the election committee or an independent contractor hired by PERA to assist with the election recommends for good cause that the results of the election be invalidated, and the board adopts such recommendation, a new election shall be held as soon as possible thereafter and the annual meeting at which the election results are announced shall be continued until

completion of the new election.

**E.** Insignificant departures from the requirements set forth in these regulations pertaining to the conduct of elections shall not invalidate the election unless the results of the election are proven to have been substantially affected.

**F.** A member shall be considered to be "qualified" for office pursuant to Section 10-11-130(D) NMSA 1978 when the board has accepted the election results and the newly-elected member has been sworn into office.

[2.80.200.80 NMAC - Rp, 2.80.200.80 NMAC, 12/30/15]

**2.80.200.81 - 89** [Reserved]

**2.80.200.90 BUILDING AND LAND USE:** Restrictions on building and land use shall be provided for by the executive director as needed subject to the advice and consent of the board.

[2.80.200.90 NMAC - Rp, 2.80.200.90 NMAC, 12/30/15]

**HISTORY of 2.80.200 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: PERA 68-1, (Rule No. 2) Election of Board Members, filed on 7-8-68; PERA 69-1, (Rule No. 2) Election of Board Members, filed on 6-17-69; Rule 200.00, Organization and Operation of the Public Employees Retirement Board, filed on 10-4-79; PERA Rule 200.00 Organization and Operation of the Public Employees' Retirement Board, filed on 11-19-81; PERA Rule 200.00, Organization and Operation of the Public Employees' Retirement Board, filed on 7-1-87; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 10-21-88; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7-1-91; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7-1-93; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 11-1-94; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 12-1-95.

**History of Repealed Material:**

2 NMAC 80.200, Paragraph 60.5, 60.6, 60.7 - Repealed, 11-15-1997.  
2 NMAC 80.200, Paragraph 70.2.1, 70.2.2 - Repealed, 11-15-1997.  
2 NMAC 80.200, Paragraph 70.2, 70.2.3,

70.2.4, 70.2.5, 70.2.6, 70.2.7, 70.2.8 - Repealed, 12-15-1999.

2.80.200 NMAC, Organization and Operation of the Public Employees Retirement Board, filed 12-28-2000 - Repealed effective 12/30/15.

**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

**TITLE 2 PUBLIC FINANCE  
CHAPTER 80 PUBLIC  
EMPLOYEES RETIREMENT  
PART 2100 MEMBER  
CONTRIBUTIONS**

**2.80.2100.1 ISSUING AGENCY:** Public Employees Retirement Association (PERA), 33 Plaza La Prensa, Santa Fe, New Mexico 87507

[2.80.2100.1 NMAC - Rp, 2.80.2100.1 NMAC, 12/30/15]

**2.80.2100.2 SCOPE:** This rule affects the members, public employers, retirement board and the association under the Public Employees Retirement Act.  
[2.80.2100.2 NMAC - Rp, 2.80.2100.2 NMAC, 12/30/15]

**2.80.2100.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-11-124, 10-11-129 and 10-11-130 NMSA 1978, as amended.  
[2.80.2100.3 NMAC - Rp, 2.80.2100.3 NMAC, 12/30/15]

**2.80.2100.4 DURATION:** Permanent.  
[2.80.2100.4 NMAC - Rp, 2.80.2100.4 NMAC, 12/30/15]

**2.80.2100.5 EFFECTIVE DATE:** December 30, 2015, unless a different date is cited at the end of a section.  
[2.80.2100.5 NMAC - Rp, 2.80.2100.5 NMAC, 12/30/15]

**2.80.2100.6 OBJECTIVE:** The objectives of this rule are to establish standards and procedures for refunding member contributions and to identify federal obligations which may be satisfied out of benefits payable.  
[2.80.2100.6 NMAC - Rp, 2.80.2100.6 NMAC, 12/30/15]

**2.80.2100.7 DEFINITIONS:**  
**A.** "Another qualified plan" for the purposes of the direct rollover provisions in Section 10-11-

124 (C) NMSA 1978, means an eligible retirement plan, including:

(1) an individual retirement account described in Internal Revenue Code Section 408(a);

(2) an individual retirement annuity described in Internal Revenue Code Section 408(b);

(3) a qualified trust described in Internal Revenue Code Section 401(a) that accepts the distributee's eligible rollover distribution;

(4) an annuity plan described in Internal Revenue Code Section 403(a);

(5) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);

(6) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan; or

(7) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

**B.** "Direct rollover" means a payment by the retirement system to the eligible retirement plan specified by the distributee.

**C.** "Distributee" means: (1) an employee or a former employee;

(2) an employee's or former employee's surviving spouse;

(3) an employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p);

(4) effective January 1, 2007, a non-spouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E); or

(5) effective January 1, 2002, a surviving spouse, as defined by federal law, or a spouse or former spouse who is an alternate payee under a domestic relations order dividing PERA benefits, as defined in Internal Revenue Code Section 414(p).

**D.** "Eligible rollover distribution" means:

(1) any distribution of all or any portion of the balance to the credit of the distributee,

except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life, or the life expectancy, of the distributee or the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

(2) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; or

(4) any other distribution that is reasonably expected to total less than two hundred dollars (\$200) during the year.

[2.80.2100.7 NMAC - Rp, 2.80.2100.7 NMAC, 12/30/15]

**2.80.2100.8 GENERAL PROVISIONS:**

**A.** No partial refund of a member's contributions is permitted.

**B.** A member shall not receive a refund of contributions if the member terminates employment with one affiliated public employer and is thereafter employed by the same or another affiliated public employer within thirty (30) days of termination. The application for a refund of member contributions, if desired, must be filed prior to any subsequent employment. If the application for refund is not filed within this period of time, no refund shall be permitted until termination of all affiliated public employment.

**C.** Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate.

If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the letters of administration or order of appointment of personal representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) If the

member has been divorced, the member shall provide PERA with complete endorsed copies of all court documents necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required. The requirement for providing a copy of a final decree may be waived, in PERA's discretion, when PERA can establish through online court records that a divorce decree was entered on a specific date and no further documentation is deemed necessary to administer benefits. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered under NMSA 1978, Section 10-11-136, the member's former spouse may request, on a form prescribed by the association, that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code, as specified under Subsection L of 2.80.2100.8 NMAC.

(4) The member's last affiliated public employer must certify to the termination of employment of the member before a refund may be made.

(5) No refund shall be permitted unless a membership application is on file with PERA. The requirement for a membership application may be waived, in PERA's discretion, when PERA can establish membership for the applicable time period through other documentation.

(6) After tax employee contributions that are not includible in gross income may be directly refunded to the member.

**D.** Interest on member contributions shall be posted annually effective June 30 of each year at the rate of 2.0%.

**E.** A refund of member contributions includes interest on those contributions calculated through the last working day of the month prior to the date of refund.

**F.** A refund of member

contributions shall not include the purchase cost received to buy permissive service credit pursuant to Section 10-11-7(H) NMSA 1978.

**G.** If a court order issued pursuant to Section 10-11-136 NMSA 1978 or Section 10-11-136.1 NMSA 1978 restraining, withholding or dividing a refund of member contributions is received by PERA after a request for refund of contributions has been received but has not been paid, PERA will comply with the order.

**H.** Pursuant to Section 10-11-135, NMSA 1978, PERA retirement accounts are not subject to legal process under other state laws, except for division of a community interest in such accounts as provided in Section 10-11-136 NMSA 1978 or in enforcement of child support obligations as provided in Section 10-11-136.1 NMSA 1978. In the following instances, however, federal laws pre-empt the provisions of the Public Employees Retirement Act and PERA will honor the federal action if the account is in pay status, i.e. if the member has terminated employment and requested a refund of contributions or if a pension is payable. If the federal action is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

(1) IRS notices of levy for unpaid taxes.

(2) Orders by a United States bankruptcy court.

(3) Orders of garnishment for fines or restitution by a federal court in a criminal case.

**I.** Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by PERA. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to, the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

**J.** Forfeitures arising from severance of employment, death or any other reason, must not be applied to increase the benefits any member would otherwise receive under the plan. PERA shall make all reasonable efforts to

refund contributions or to pay pensions as required by the plan.

**K.** The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

**L.** For distributions made on or after January 1, 1993, notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the PERA, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) A non-spouse beneficiary may only rollover the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited individual retirement account or annuity.

(2) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred, and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

[2.80.2100.8 NMAC - Rp, 2.80.2100.8 NMAC, 12/30/15]

**2.80.2100.9 UNCLAIMED CONTRIBUTIONS:**

**A.** A member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions pursuant to Section 10-11-128 NMSA 1978 if the following conditions are met:

(1) the member has applied for and received a refund of member contributions;

(2) a balance of five hundred dollars (\$500) or less remains on the member's account;

(3) PERA has sent a letter to the member's last known address on file with the association notifying the member that the funds are available for disbursement and received no response within 60 days of the mailing.

**B.** A deceased member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions, pursuant to Section 10-11-128 NMSA 1978, if the following conditions are met:

(1) PERA has received notification of the member's death through an authorized death notification provider or a certified copy of the member's death certificate;

(2) a survivor pension benefit is not payable;

(3) a balance of member contributions, plus interest, remains in the deceased member's account;

(4) PERA has sent an initial letter to the deceased member's last known address on file with the association and to the address of the member's refund beneficiary or estate, if known, notifying the deceased member's refund beneficiary or estate that the funds are available for disbursement and if no response is received within 60 days of mailing the initial letter, PERA has sent a final letter the following year to the deceased member's last known address on file with the association and to the address of the member's refund beneficiary or estate, if known, notifying the deceased member's refund beneficiary or estate that the funds are available for disbursement.

(5) PERA has received no response within two years of the date of the member's death.

**C.** Unclaimed member contributions, plus interest, shall be credited to the income fund, and the member's account shall be closed.

**D.** PERA shall perpetually maintain a list of members and the value of the accounts which were closed in accordance with this provision.

**E.** No interest shall accrue on unclaimed member contributions which have been credited to the income fund.

**F.** A member, beneficiary or estate of a member may at any time apply to receive a refund of unclaimed member contributions and interest accrued before the account was closed in accordance with the provisions of this rule.

**G.** If a member whose account has been closed is subsequently employed by an affiliated public employer, the member's account shall be reopened effective the date of reemployment, and the account balance, accrued interest and service credit shall be restored to the amounts in effect at the time the account was closed.  
[2.80.2100.9 NMAC - Rp, 2.80.2100.9 NMAC, 12/30/15]

**HISTORY of 2.80.2100 NMAC:**  
**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: PERA Rule 2100, Refund of Member Contributions, filed on 7-1-93; PERA Rule 2100, Member Contributions, filed on 11-1-94.

**History of Repealed Material:**  
2.80.2100 NMAC, Member Contributions, filed 12-28-2000 - Repealed effective 12/30/15.

**SUPERINTENDENT OF INSURANCE**

The Office of Superintendent of Insurance repeals it rule 13.14.18 NMAC, Title Insurance Forms (filed 7-31-14) and replaces it with 13.14.18 NMAC, Title Insurance Forms, effective 03-01-16.

**SUPERINTENDENT OF INSURANCE**

**TITLE 13 INSURANCE**  
**CHAPTER 14 TITLE**  
**INSURANCE**  
**PART 18 FORMS**

**13.14.18.1 ISSUING AGENCY:**  
Office of Superintendent of Insurance, Title Insurance Bureau.  
[13.14.18.1 NMAC - Rp, 13.14.18.1 NMAC, 3-1-16]

**13.14.18.2 SCOPE:** This rule applies to all title insurers and all title insurance agents conducting title insurance business in New Mexico.  
[13.14.18.2 NMAC - Rp, 13.14.18.2 NMAC, 3-1-16]

**13.14.18.3 STATUTORY AUTHORITY:** Sections 59A-30-4 NMSA 1978 and 59A-30-5 NMSA 1978.  
[13.14.18.3 NMAC - Rp, 13.14.18.3 NMAC, 3-1-16]

**13.14.18.4 DURATION:**  
Permanent.  
[13.14.18.4 NMAC - Rp, 13.14.18.4 NMAC, 3-1-16]

**13.14.18.5 EFFECTIVE DATE:**  
March 1, 2016, unless a later date is cited at the end of a section.  
[13.14.18.5 NMAC - Rp, 13.14.18.5 NMAC, 3-1-16]

**13.14.18.6 OBJECTIVE:** The purpose of this rule is to provide title insurance forms and restrictions regarding their use.  
[13.14.18.6 NMAC - Rp, 13.14.18.6 NMAC, 3-1-16]

**13.14.18.7 DEFINITIONS:** See 13.14.1 NMAC.  
[13.14.18.7 NMAC - Rp, 13.14.18.7 NMAC, 3-1-16]

**13.14.18.8 PROMULGATED FORMS:** Policies, endorsements, binders, commitments, certificates, closing protection letters, notice of availability of owners title insurance and facultative reinsurance agreements are not to be filed with the superintendent for approval as the responsibility rests upon the title underwriting companies to see that only standard promulgated forms are used by themselves and their authorized agents to insure interests in New Mexico property.  
[13.14.18.8 NMAC - Rp, 13.14.18.8 NMAC, 3-1-16]

**13.14.18.9 ALTERATION OR SUBSTITUTION OF FORMS PROHIBITED:**

**A.** No person, firm or organization may alter or otherwise change any title insurance form promulgated by the superintendent, or use any non-promulgated endorsement or rider, except (1) upon public hearing called for such purpose and upon a determination by the superintendent that the same be proper, or (2) in a manner specifically authorized by these regulations as amended from time to time.

**B.** Nothing in this regulation shall prevent a title insurer from (1) adding blanks, spaces, labels or brief instructions to the promulgated forms for the purpose of collecting statistical data or (2) from typesetting a promulgated form utilizing type styles, margins or paginations different from the promulgated forms; provided, however, that all language contained in each promulgated form must appear in each form printed or used by each title insurance underwriter or agent verbatim,

and further provided that nothing may be added to a promulgated title insurance form which changes any of the terms of such form except as specifically provided by these regulations.

**C.** Nothing herein shall prohibit the use of the forms in any language other than English, provided, however, that any translated form shall contain the following language in bold-face type on the first page of the form in English and in the translated language: "This translation is provided as a convenience only. The English language version of this form shall control and shall be the operative document for all legal purposes."

**D.** The following language shall be added at the top of schedule A of all commitments and policies in a font not less than the font size of the remaining print of schedule A and be in bold italicized print: "Pursuant to the New Mexico title insurance law Section 59A-30-4 NMSA 1978, control and supervision by superintendent and title insurance regulation 13.14.18.10 NMAC, no part of any title insurance commitment, policy or endorsement form promulgated by the New Mexico superintendent of insurance 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."  
[13.14.18.9 NMAC - Rp, 13.14.18.9 NMAC, 3-1-16]

**13.14.18.10 DELETION OF PREPRINTED TERMS, ADDITION OF UNAUTHORIZED TERMS, AND LETTERS OF INTERPRETATION OR WAIVER THAT CHANGE THE TERMS, PROHIBITED:**

**A.** None of the preprinted terms (or the terms required to be printed) in a promulgated title insurance form may be deleted from such form except in the manner specifically authorized by these rules.

**B.** Nothing may be added to, inserted in or typed upon a promulgated title insurance form except as specifically authorized by these rules; provided, however, that the information

necessary to identify the insured, the insured's estate or interest of record, the property description, all matters of record affecting the insured's interest which are exceptions to the policy, all matters, facts and circumstances, whether or not shown by the public records, constituting a lien, claim, encumbrance, impairment or limitation upon the estate to be insured, whether arising by operation of law or by reason of no recorded information establishing the insured matters, the amount of liability of the policy and, in case of a commitment or binder, any matter constituting a requirement prior to issuance of a policy, may be inserted in the proper places in the various forms and that other information necessary to complete each form (such as the year in the tax exception clause and any required signature or countersignature) must be inserted in the form prior to its issuance.

**C.** Additional specific exceptions may be added to schedule B to except from coverage the effect of encroachments, overlaps, and physical evidence of easement or boundary line disputes, as revealed by a survey or inspection of the property. Additionally, a specific exception as to lack of access to the property may be taken when the search performed fails to reveal that insurable rights of access to the property exist.

**D.** No person, firm or organization may issue, publish or circulate a letter, memorandum or other writing which directly or indirectly modifies or waives the terms or any part of the terms of any promulgated form, nor may any person, firm or organization agree to directly or indirectly do or not do anything, the effect of which is or would be to offer insurance coverages other than those in the promulgated title insurance forms, whether the same be more, less, substitute, alternative, negative or affirmative coverages or risks, except as specifically authorized by these rules; except that insurers shall waive, at no cost or charge to the insured, either by endorsement or language added to schedule B of the policy, the right to demand arbitration pursuant to the conditions and stipulations of title insurance policies issued in New Mexico. The endorsement or the language added to schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when

agreed to by both the company and the insured."

**E.** In no event may any policy, endorsement, binder, commitment, letter, contract, memorandum or other writing or form issued by a title insurance underwriter or agent concerning an interest in New Mexico property contain coverages not expressly authorized by these rules or the superintendent pursuant to the New Mexico title insurance law. [13.14.18.10 NMAC - Rp, 13.14.18.10 NMAC, 3-1-16]

**13.14.18.11 ADDITIONAL AFFIRMATIVE COVERAGES:**

**A.** When issuing a commitment for an owner's or loan policy, or issuing an owner's or loan policy, exceptions as to easements, rights-of-way, and restrictions must detail any matters of violation, protrusion, encroachment or overlap on to easement, right-of-way, adjacent property, building set back lines or other violated restriction, which are revealed by an inspection or survey of the property.

**B.** In the case of commitments issued for loan policies (construction and permanent), and in the issuance of said loan policies, but not in the case of commitments for owner's policies, leasehold owner's policies and contract purchaser's policies, or the issuance of said policies, when there are no violations of restrictions the following language may be added to each such restriction exception: "These (or this) restriction(s) have (has) not been violated, and a 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 these (or this) restriction(s) 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."

**C.** Alternatively, and only in commitments for or the issuance of loan policies, when there are violations revealed, the following language may be added to each such restriction exception: "These (or this) restrictions(s) have (has) been violated in that (insert language stating what violation(s) exist(s)). This (or these) violation(s) will 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 these (or this) restriction(s) 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."

**D.** Additionally, and again only in commitments for or the issuance of loan policies, 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 the insured 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 be inserted into the foundation endorsement, NM form 61, in accordance with 13.14.10.44 NMAC.

**E.** Each insurer shall establish its written underwriting requirements necessary to offer these additional affirmative coverages or determine that it does not desire to offer said coverages under any circumstances. No company may provide affirmative coverage by the intentional omission of an exception to any adverse matter disclosed by inspection, or unrecorded survey or other evidence, or by a search and examination of the public records, or by any adverse matter arising by operation of law except as specifically authorized by these rules.

[13.14.18.11 NMAC - Rp, 13.14.18.11 NMAC, 3-1-16]

**13.14.18.12 PRINTING OF FORMS:** On and after May 1, 1988, all promulgated title insurance forms shall

contain the headings and form designations used on the forms prescribed in this rule.

[13.14.18.12 NMAC - Rp, 13.14.18.12 NMAC, 3-1-16]

**13.14.18.13 APPROVED FORMS:** The following forms are hereby promulgated for use in New Mexico and the text of each referenced ALTA form and their dates of adoption are hereby incorporated by reference. The forms that are not ALTA forms are hereby promulgated in the form set forth at the effective date of this rule in the NMAC. All of the forms herein adopted shall be set forth in their entirety in a repository on a secure website to be created and maintained by the office of superintendent of insurance, which shall be responsible for maintaining the repository. The forms as reproduced in that secure repository shall constitute the exclusive promulgated forms for use in New Mexico, and none of those forms may be altered except to correct non-substantive errors or by proper amendment to this rule approved by the office of superintendent of insurance. To the extent, if any, that there is any discrepancy between any form described herein and any form reproduced in the repository, the form described herein shall control and be deemed the promulgated form. For promulgated title insurance forms, visit [www.osi.state.nm.us](http://www.osi.state.nm.us).

| NM FORM NO. | ALTA FORM NO. & DATE | NAME OF FORM   |
|-------------|----------------------|--|
| 1           | 6-17-06              | Owner's Policy   |
| 2           | 6-17-06              | Loan Policy  |
|             |                      | [Reserved]   |
| 6           | 6-17-06              | Commitment for Title Insurance                           |
| 6.1         | 6-17-06              | Plain Language Commitment for Title Insurance            |
|             |                      | [Reserved]   |
| 9           |                      | Notice of Availability of Owner's Title Insurance        |
| 10          | 9-24-94              | Facultative Reinsurance Agreement                        |
| 11          |                      | Multipurpose Endorsement                                 |
| 12          | 4-06, 10-16-08       | Condominium Endorsement - All Assessments                |
| 13          | 5-06, 10-16-08       | Planned Unit Development Endorsement All Assessments     |
| 13.1        | 5.1-06 10-16-08      | Planned Unit Development Endorsement Unpaid Assessments  |
| 14          | 6-06, 6-17-06        | Variable Rate, Mortgage Endorsement                      |
| 15          | 6.2-06, 6-17-06      | Variable Rate Mortgage Negative Amortization Endorsement |
| 16          | 7-06, 6-17-06        | Manufactured Housing Unit Endorsement                    |
| 16.1        | 7.1-06, 6-17-06      | Manufactured Housing - Conversion (Loan) Endorsement     |
| 16.2        | 7.2-06, 6-17-06      | Manufactured Housing - Conversion (Owner's) Endorsement  |
| 17          |                      | Revolving Credit Endorsement                             |
| 18          | A, 6-1-87            | Construction Loan Policy Endorsement A                   |
|             |                      | [Reserved]   |
| 20          | 13-06, 4-02-12       | Leasehold Owner's Endorsement                            |
| 21          | 13.1-06, 4-02-12     | Leasehold Loan Endorsement                               |
| 22          |                      | Pending Disbursement Down Date Endorsement               |
| 23          |                      | Pending Improvements Endorsement                         |
| 24          | 10-06, 6-17-06       | Assignment Endorsement                                   |
| 24.1        | 10.1-06, 10-16-08    | Assignment and Down Date Endorsement                     |
| 25          |                      | Additional Advance Endorsement                           |
| 26          |                      | Partial Coverage Endorsement                             |
|             |                      | [Reserved]   |
| 28          | 15-06, 6-17-06       | Non-Imputation - Full Equity Transfer Endorsement        |
| 28.1        | 15.1-06, 6-17-06     | Non-Imputation - Additional Interest Endorsement         |
| 28.2        | 15.2-06, 6-17-06     | Non-Imputation - Partial Equity Transfer Endorsement     |
| 29          | 8.1-06, 6-17-06      | Environmental Protection Lien Endorsement                |



|      |                  |   |
|------|------------------|---|
| 30   | 4.1-06, 6-17-06  | Condominium Endorsement Unpaid Assessments  |
| 31   |                  | Owner's Leasehold Conversion Endorsement  |
|      |                  | [Reserved]  |
| 33   |                  | Change of Name Endorsement  |
| 34   | 12-3-12          | U.S. Policy   |
| 35   |                  | Notice to Purchaser Insured   |
| 41   | 12-3-12          | Limited Pre-Foreclosure Title Insurance Policy  |
| 42   | 12-3-12          | Limited Pre-Foreclosure Title Insurance Policy Down Date Endorsement                                      |
| 43   |                  | Insuring Around Endorsement   |
| 44   |                  | Revolving Credit - Increased Credit Limit Endorsement   |
| 45   | 8-1-12           | Residential Limited Coverage Junior Loan Policy   |
| 46   | 8-1-12           | Down Date Endorsement to Residential Limited Coverage Junior Loan Policy JR1                              |
| 47   | 8-1-12           | Endorsement to Residential Limited Coverage Junior Loan Policy JR 2 (Future Advance)                      |
| 48   | 2-06, 6-17-06    | Truth-in-Lending Endorsement  |
| 49   |                  | Notice of Availability of Future Increase in Coverage and Potential Premium Discounts for Future Policies |
| 50   | 9-06, 6-17-06    | Restrictions, Encroachments, Minerals - Loan Policy Endorsement   |
| 50.1 | 9.3-06, 6-17-06  | Restrictions, Encroachments, Minerals - Loan Policy Endorsement   |
| 51   |                  | Land Abuts Street Endorsement   |
| 52   | 22-06            | Location Endorsement  |
|      |                  | [Reserved]  |
| 54   | 19.1-06, 6-17-06 | Contiguity Single Parcel Endorsement  |
| 55   |                  | Named Insured Endorsement   |
| 56   | 9.1-06, 6-17-06  | Restrictions, Encroachments, Minerals - Owner's Policy (Unimproved Land) Endorsement                      |
| 56.1 | 9.4-06, 6-17-06  | Restrictions, Encroachments, Minerals Endorsement (Owner's Policy - Unimproved Land)                      |
| 57   | 9.2-06, 6-17-06  | Restrictions, Encroachments, Minerals - Owner's Policy (Improved Land) Endorsement                        |
| 57.1 | 9.5-06, 6-17-06  | Restrictions, Encroachments, Minerals (Owner's Policy - Improved Land) Endorsement                        |
| 58   | 20-06, 6-17-06   | First Loss - Multiple Parcel Transactions Endorsement   |
|      |                  | [Reserved]  |
| 60   | 12-06, 6-17-06   | Aggregation Endorsement   |
| 60.1 | 12.1-06          | Aggregation Endorsement   |
| 61   |                  | Foundation Endorsement  |
| 62   | 37-06, 11-3-12   | Assignment of Rents or Leases Endorsement   |
| 63   | 12-3-12          | Short Form Residential Loan Policy  |
| 64   | 3-06, 6-17-06    | Zoning - Unimproved Land Endorsement  |
| 64.1 |                  | Zoning- Unimproved Land - No Applicable Zoning Ordinances Endorsement                                     |
| 65   | 3.1-06, 10-22-09 | Zoning - Completed Structure Endorsement  |
| 65.1 | 3.2-06, 4-2-12   | Zoning - Land Under Development Endorsement   |

|      |                   |  |
|------|-------------------|--|
| 65.2 |                   | Zoning - Completed Structure - No Applicable Zoning Ordinances Endorsement                         |
| 66   | 19-06, 6-17-06    | Contiguity - Multiple Parcels Endorsement  |
| 67   | 17-06, 6-17-06    | Access and Entry Endorsement   |
| 68   | 17.1-06, 6-17-06  | Indirect Access and Entry Endorsement  |
| 69   | 17.2-06, 6-17-06  | Utility Access Endorsement   |
| 70   | 8.2-06, 6-17-06   | Commercial Environmental Protection Lien Endorsement   |
| 71   | 14.3-06, 10-22-09 | Reverse Mortgage Endorsement   |
| 72   | 18-06, 6-17-06    | Single Tax Parcel Endorsement  |
| 73   | 18.1-06, 6-17-06  | Multiple Tax Parcel Endorsement  |
| 74   | 24-06, 10-16-08   | Doing Business Endorsement   |
| 75   | 26-06, 6-17-06    | Subdivision Endorsement  |
| 76   | 28-06, 10-16-08   | Easement - Damage or Enforced Removal Endorsement  |
| 77   | 23-06, 6-17-06    | Co-Insurance - Single Policy Endorsement   |
| 78   | 25-06, 6-17-06    | Same as Survey Endorsement   |
| 79   | 25.1-06, 6-17-06  | Same as Portion of Survey Endorsement  |
| 80   | 11-06, 6-17-06    | Mortgage Modification Endorsement  |
| 80.1 | 11.1-06, 10-22-09 | Mortgage Modification With Subordination Endorsement   |
| 80.2 | 11.2-06, 12-2-13  | Mortgage Modification With Additional Amount of Title Insurance Endorsement                        |
| 81   | 4-2-14*           | Closing Protection Letter - Single Transaction   |
| 81.1 | 4-2-14*           | Closing Protection Letter - Multiple Transactions  |
|      |                   | [Reserved]   |
| 82   |                   | Inter-Underwriter Indemnification Agreement  |
| 83   | 32.0-06, 2-3-11   | Construction Loan - Endorsement  |
| 83.1 | 32.1-06, 4-2-13   | Construction Loan - Direct Payment Endorsement   |
| 83.2 | 32.2-06, 4-2-13   | Construction Loan - Insured's Direct Payment Endorsement   |
| 84   | 33-06, 2-3-11     | Disbursement Endorsement   |
| 85   |                   | Identified Risk Coverage Endorsement   |
| 86   | 39-06, 4-2-13     | Policy Authentication Endorsement  |
| 88   | 36-06, 4-2-12     | Energy Project Leasehold/Easement - Owner's Endorsement  |
| 88.1 | 36.1-06, 4-2-12   | Energy Project Leasehold/Easement - Loan Endorsement   |
| 88.2 | 36.2-06, 4-2-12   | Energy Project - Leasehold - Owner's Endorsement   |
| 88.3 | 36.3-06, 4-2-12   | Energy Project - Leasehold - Loan Endorsement  |
| 88.4 | 36.4-06, 4-2-12   | Energy Project Covenants, Conditions & Restrictions - Land Under Development - Owner's Endorsement |
| 88.5 | 36.5-06, 4-2-12   | Energy Project Covenants, Conditions & Restrictions - Land Under Development - Loan Endorsement    |
| 88.6 | 36.6-06, 4-2-12   | Energy Project - Encroachments Endorsement   |
| 88.7 | 36.7-06, 4-2-12   | Energy Project - Fee Estate - Owner's Policy Endorsement   |
| 88.8 | 36.8-064-2-12     | Energy Project - Fee Estate - Loan Policy Endorsement  |
| 89   | 16-06, 6-17-06    | Mezzanine Financing Endorsement  |
| 90   | 12-1-14           | Residential Limited Coverage Mortgage Modification Policy  |
| 91   |                   | Contract Purchaser Conversion Endorsement  |

\* omitting Paragraph 14

[13.14.18.13 NMAC - Rp, 13.14.18.13 NMAC, 3-1-16]

**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 3-7-74.  
 SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9-6-85.  
 SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5-9-86.

**History of Repealed Material.**

13.14.18 NMAC, Forms, filed 5-9-86 - 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 5-9-86), 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 10-2-96); 13 NMAC 14.2.A, Miscellaneous Forms (filed 10-2-96); 13 NMAC 14.6.A, NM Form 1, Owner’s Policy (filed 10-2-96); 13 NMAC 14.6.B, NM Form 4, Leasehold Owner’s Policy (filed 10-2-96); 13 NMAC 14.6.C, NM Form 7, US Policy, ALTA 1963 (filed 10-2-96); 13 NMAC 14.6.D, NM Form 34, US Policy, ALTA 1991 (filed 10-2-96); 13 NMAC 14.7.A, NM Form 2, Loan Policy (filed 10-2-96); 13 NMAC 14.7.B, NM Form 3, Construction Loan Policy (filed 10-2-96); 13 NMAC 14.7.C, NM Form 5, Leasehold Loan Policy (filed 10-2-96); 13 NMAC 14.7.D, NM Form 36, Limited Title Search Policy (filed 10-2-96); 13 NMAC 14.7.E, NM Form 41, Foreclosure Guarantee Policy (filed 10-2-96); 13 NMAC 14.7.F, NM Form 45, Residential Limited Coverage Junior Loan Policy (filed 10-2-96); and 13 NMAC 14.8.A, Endorsement Forms (filed 10-2-96) were all renumbered, reformatted, amended and replaced by 13.14.18 NMAC, Forms, effective 5-15-2000, amended effective 7-31-14.

**SUPERINTENDENT OF INSURANCE**

**This is an amendment to 13.14.1 NMAC, Sections 7, 8, 9, 11, 15, 18, 19, 21, 22 and 24 through 28, effective 3-1-2016.**

**13.14.1.7 DEFINITIONS “A”:**  
 [As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:]

**A. “Abstract plant”** A title plant meeting the requirements of Section 59A-12-13 NMSA 1978.

**B. “Actual charge”**  
 A charge approximating the cost of the actual time, equipment, and expenses incurred.

**C. “Agent”** [A person licensed as a title insurance agent in New Mexico. This term may also refer to the agent’s company or employees.] A person licensed as a title insurance agent in New Mexico including a corporation, partnership, joint venture, limited liability company, affiliate, direct operation, or other business entity in New Mexico (except for title insurers authorized under the laws of New Mexico to transact as insurer the business of title insurance) that hold themselves out as being engaged in the business of title insurance. A sole proprietorship entity may also be referred to as an agent.

**D. “Applicant”** The

person, firm or organization applying for or requesting that a policy of title insurance be issued.

**E. “Available funds”**  
**(1)** For purposes of the title insurance article of the New Mexico Insurance Code only (Chapter 59A, Article 30 NMSA 1978), available funds is money deposited in a depository account with a financial institution held in the name of and subject to the control of a title insurance agent, a title insurer, or third party fiduciary for a real estate closing, that can be totally disbursed immediately by cash withdrawal or cashier’s checks without relying on the balance created by other deposits in the account not made as part of the real estate closing for which disbursement is being made.

**(2)** It is prohibited for title insurance agents, title insurers or third party fiduciaries to guaranty the collectability of funds or indemnify their financial institutions from loss due to uncollected funds. This prohibition shall not affect the authority of title insurers to issue closing protection letters as authorized under the rules and regulations promulgated by the superintendent of insurance; nor the ability of title insurance agents, title insurers, or third party fiduciaries to endorse without qualification, restriction or limitation, checks, drafts, or other similar items for deposit into its account at any financial institution.

**(3)** The

following funds are “available funds” on the day of deposit:

cash; **(a)**

received wired funds managed by the federal reserve system; **(b)**

a cashier’s check or certified check which is issued payable to the title insurance agent, title insurer, or third party fiduciary and has been deposited to its account at the financial institution which issued it; and guaranteed by the financial institution for immediate disbursement; **(c)**

a cashier’s check which is payable to and was purchased by the title insurance agent, title insurer or third party fiduciary, and has been deposited to its account at a financial institution and guaranteed by the financial institution for immediate disbursement. **(d)**

**(4)** The following funds are “available funds” on the next business day after day of deposit:

treasury checks, postal money orders, federal reserve bank checks and federal home loan bank checks; **(a)**

state of New Mexico and local government checks which have been deposited at a financial institution located in New Mexico using a special deposit slip if required by depository institution for next day availability; **(b)**

(c) cashier checks, certified checks and teller's checks which have been deposited at a financial institution using a special deposit slip if required by depository institution for next day availability.

(5) All other modes used for the transfer of monies will be made available on the earliest date they are considered "available funds" in accordance with Regulation CC, "Availability of Funds and Collection of Checks" established by the board of governors of the federal reserve system as amended.

(6) Any funds received under the automated clearing house (ACH) network shall not be considered "available funds".  
[6-16-86...4-1-94; 13.14.1.7 NMAC - Rn, 13 NMAC 14.1.7, 5-15-00; A, 7-1-06; A, 09-15-10; A, 3-1-16]

**13.14.1.8 DEFINITIONS "B":**  
[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:]

**A. "Basic premium rate (schedule)"** The premium rates set from time to time by the superintendent for an original owner's policy of title insurance.

**B. "Binder" A** commitment for title insurance.

**C. "Bona fide order"**  
For purposes of 13.14.5.8 NMAC, a "bona fide order" is defined as follows:

(1) Receipt by a title insurance agent of a fully executed sales and purchase agreement, whether an original, photocopy, facsimile copy or email attachment, signed by the seller and purchaser, either on one document or in counterparts, for the sale of real property supported by an earnest money deposit or other consideration; or

(2) A title order received by a title insurance agent, whether delivered in writing by letter, memorandum, facsimile, electronically or orally, for a new or refinance loan, whether closed end or open end, to be secured by a lien on real property from a lender or lender's representative, including a mortgage broker; or

(3) A title order received by a title insurance agent, whether delivered in writing by letter, memorandum, facsimile, electronically or orally, from a lender, lender's representative, real estate servicing company for the lender or attorney representing the lender dealing with real property which has been foreclosed and is

real estate owned (REO) property held as foreclosed property; or

(4) A title order received by a title insurance agent, whether delivered in writing by letter, memorandum, facsimile, electronically or orally, from a listing real estate agent or owner where there is a signed listing agreement for sale of the real property that is the subject of the title order; or

(5) Any other type of order for title insurance which the receiving title insurance agent reasonably believes will lead to a closing of the sale or financing of real property in due course.

(6) If any order for title insurance is missing one or more terms such as the identity of the proposed insured or the amount of insurance, the title insurance agent shall issue a commitment with one or more terms denominated as "to-be-determined" or "tbd" along with an additional requirement as follows: "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."

(7) A title order from an owner, lender, lender's representative or attorney for the purpose of determining the status of title indicating an intention to file for judicial foreclosure on an existing mortgage or deed of trust, quiet title suit or other litigation in the future, but where the customer has no present intention to purchase a title insurance policy, is not a "bona fide order for title insurance". A title order while a judicial foreclosure, quiet title suit or other litigation is pending shall be considered a "bona fide order for title insurance" under the circumstances.

[6-16-86...4-1-94; 13.14.1.8 NMAC - Rn, 13 NMAC 14.1.8, 5-15-00; A, 3-1-16]

**13.14.1.9 DEFINITIONS "C":**  
[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:]

[A. ] "Company" An insurer, a title insurance underwriter, a title insurance agent, the organization employing a title insurance agent or any entity authorized to issue title insurance policies as either an underwriter or an agent.

[6-16-86...4-1-94; 13.14.1.9 NMAC - Rn, 13 NMAC 14.1.9, 5-15-00; A, 3-1-16]

**13.14.1.11 DEFINITIONS "E":**

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

**A. "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.

**B. "Escrow account"** means an account established pursuant to Section 58-28-4 or 59A-12-22 NMSA 1978.

**C. "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 pursuant to Subsection B of 13.14.4.8 NMAC.

**D. "Extra chain of title"** means a non-contiguous parcel having a separate chain from the original chain being searched, except that two or more lots in the same platted subdivision having the same plat recording data and belonging to the same owner shall be treated as one chain. Contiguous parcels of land shall be treated as one chain provided the title is vested in one owner at the time application for title insurance is made.

**E. "Escrow officer"** means an individual associated with a title insurance agent who is responsible directly or indirectly for the escrow closing and settlement functions of a real estate transaction.

[6-16-86...4-1-94; 13.14.1.11 NMAC - Rn, 13 NMAC 14.1.11, 5-15-00; 13.14.1.11 NMAC - A, 1-1-01; A, 3-1-16]

**13.14.1.15 DEFINITIONS "I":**  
[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:]

[A. ] "Interim title insurance binder" See Binder.  
[6-16-86...4-1-94; 13.14.1.15 NMAC - Rn, 13 NMAC 14.1.15, 5-15-00; A, 3-1-16]

**13.14.1.18 DEFINITIONS "L":**  
[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act:]

**A. "Leasehold policy"**

A leasehold owner's policy or a leasehold loan policy.

**B. "Leasehold loan policy"** NM form 2, loan policy and NM form 21, leasehold loan endorsement.

**C. "Leasehold owner's policy"** NM form 1, owner's policy and NM form 20, leasehold owner's endorsement.

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

**E. "Liability (amount)"** means the stated amount of liability on schedule A of the policy, binder or commitment or, in the case of a pending disbursement clause, the amount which has been disbursed as stated in the policy.

**F. "Loan policy"** The terms "loan policy" or "standard loan policy" shall refer to NM form 2, loan policy.

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

**13.14.1.19 DEFINITIONS**

**"M":** [Reserved]

**A. "Mortgage"** The term "mortgage" shall refer to either a "mortgage" or "deed of trust".

**B. "Mortgagee's policy"** NM form 2, loan policy.  
[13.14.1.19 NMAC - A, 3-1-16]

**13.14.1.21 DEFINITIONS "O":**

[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:]

**A. "One to four family residential property"** Any real property which meets the following conditions:

(1) the property will be owned at date of policy issuance by individual natural persons, and not by corporations, partnerships or other artificial legal entities; and

(2) the improvements to the insured property are primarily designed and used for residential occupancy of from one to four families. This provision applies to each 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.

**B. "Original owner**

**policy premium"** See basic premium rate. [6-16-86...4-1-94; 13.14.1.21 NMAC - Rn, 13 NMAC 14.1.21, 5-15-00; A, 3-1-16]

**13.14.1.22 DEFINITIONS "P":**

[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:]

**A. "Person"** Person includes individuals, corporations, associations, partnerships, trusts and estates.

**B. "Policy"** A policy of title insurance promulgated by the superintendent. Policies include commitments or binders and all endorsements.

**C. "Producer"** A real estate broker, qualifying broker, real estate sales person, lender, mortgage broker, mortgage company, builder, developer, attorney, architect, or any person or entity in a position to refer business to a title insurer or title insurance agent.

[6-16-86...4-1-94; 13.14.1.22 NMAC - Rn, 13 NMAC 14.1.22, 5-15-00; A, 7-1-06; A, 3-1-16]

**13.14.1.24 DEFINITIONS "R":**

[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

**A. "Reissue"** The issuing of title insurance to all or a portion of property previously insured.

[6-16-86...4-1-94; 13.14.1.24 NMAC - Rn, 13 NMAC 14.1.24, 5-15-00; A, 3-1-16]

**13.14.1.25 DEFINITIONS "S":**

[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:]

**A. "Schedule of basic premium rates"** See basic premium rates (schedule).

**B. "Simultaneous (issue)"** Issuing two or more policies bearing the same effective date and insuring the same land.

**C. "Superintendent"** The superintendent of insurance, acting on behalf of the office of the superintendent, or anyone acting in an official capacity on the superintendent's behalf.

**D. "Supplementary rate information"** Rate schedules and manuals, rating rules, and all other information needed to determine the applicable rate in effect or to be in effect.

**E. "Supporting information"** The experience and judgment of the filer and its appointed New Mexico agents, if any, and the experience or data of other insurers and agents relied upon by the filer; the interpretation of any other data relied upon by the filer; descriptions of methods used in making the rates; and any other information required by the superintendent to be filed.

**F. "Survey (recent)"** "Recent survey" as used in 13.14.6.14 NMAC and 13.14.7.13 NMAC is a survey which meets the requirements of the insurer; provided that:

(1) for condominium units, the term also includes the most recently filed as-built or as-modified survey, confirmed by such site inspections, review of documents including condominium by-laws and regulations, and affidavits, if any, as the underwriter may require; and

(2) for improved land, the term also includes the most recent survey made which shows the improvements on the land.

[6-16-86...4-1-94; 13.14.1.25 NMAC - Rn & A, 13 NMAC 14.1.25, 5-15-00; A, 12-30-10; A, 10-1-12; A, 7-31-14; A, 3-1-16]

**13.14.1.26 DEFINITIONS "T":**

[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

**A. "Title plant"** See abstract plant.

[6-16-86...4-1-94; 13.14.1.26 NMAC - Rn, 13 NMAC 14.1.26, 5-15-00; A, 3-1-16]

**13.14.1.27 DEFINITIONS "U":**

[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

**A. "Unusual complexity"** As used in determining additional charges, other unusual complexity may exist when the property being searched is described by metes and bounds or by map and tract and when that same property as described has not been previously searched or examined using that same description and where that description causes an unduly long search or complicated examination.

[6-16-86...4-1-94; 13.14.1.27 NMAC - Rn, 13 NMAC 14.1.27, 5-15-00; A, 3-1-16]

**13.14.1.28 DEFINITIONS "V":**

[As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

~~\_\_\_\_\_A.\_\_\_\_\_~~ **“Vestee”** The name or names of the person or persons in whom title to the land is vested (item 3, Schedule A, Loan Policy).

[6-16-86...4-1-94; 13.14.1.28 NMAC - Rn, 13 NMAC 14.1.28, 5-15-00; A, 3-1-16]

**SUPERINTENDENT OF INSURANCE**

This is an amendment to 13.14.2 NMAC, Sections 1, 9, 10, 11 & 12, effective 03-01-2016

**13.14.2.1 ISSUING**

**AGENCY:** ~~[Public Regulation Commission, Insurance Division;] Office of Superintendent of Insurance, Title Insurance Bureau.~~

[4-1-96; 13.14.2.1 NMAC - Rn, 13 NMAC 14.3.1 & A, 5-15-00; A, 3-1-16]

**13.14.2.9 TITLE INSURANCE AGENT’S LICENSE:**

An “agent” or “nonresident agent,” as defined by Section 59A-12-2 NMSA 1978, who is (1) appointed by a title insurer; (2) is transacting the business of title insurance as defined by Section 59A-30-3C NMSA; and, (3) who owns, operates or controls a title abstract plant as defined in Section 59A-12-13A NMSA 1978, must hold a title insurance agent’s license. The scope of such license is limited to property located in a county or counties for which the licensee has the necessary title abstract plant as specified in Section 59A-12-13 NMSA 1978. For purposes of this definition, the terms “owns, operates, or controls” include the following activities:

**A.** “Owns” - holding legal or equitable title or controlling interest in a title abstract plant, either as sole or joint proprietor, any partner of a general partnership, or the general partner of a limited partnership, holder of more than ten percent (10%) of the voting stock of a corporation, or as a lessee under a written lease agreement or lease-purchase agreement.

**B.** “Operates” - directly responsible for the maintenance, updating or retrieval of information contained in a title abstract plant or the searching, abstracting, or examining of title to real property or preparation of abstracts, searches, or commitments relating to real property derived from research from a title

abstract plant.

**C.** “Controls” - ultimate regulating authority or any intermediate supervisory authority over any person directly responsible for the operation of a title abstract plant, who promulgates or administers the general policies providing for the direction and management of a title abstract plant, including general policies of maintenance, updating, and retrieval of information from a title abstract plant or the purchase, sale, or leasing of a title abstract plant.

**D.** ~~All corporations, partnerships, joint ventures, or other business entities (except for title insurers authorized under the laws of New Mexico to transact as insurer the business of title insurance) that hold themselves out as being engaged in the business of title insurance, or who receive or collect premium for title insurance policies, must hold a title insurance agent license. Applications for a title insurance agent license shall comply with Section 59A-12-15B NMSA 1978.~~

**E.** ~~Title insurers transacting the business of title insurance in New Mexico shall notify the superintendent of insurance in writing, within thirty (30) days of the effective date of the cancellation of any appointment of any individual or entity as an agent of said insurer.~~

**F.** ~~Title agents engaged in the business of title insurance in New Mexico shall provide written notification to title insurers that have currently appointed them as an agent, within thirty (30) days of the effective date of the termination of any employee appointed as an individual agent by said title insurer.~~ [3-1-90; 13.14.2.9 NMAC - Rn, 13 NMAC 14.3.9, 5-15-00; A, 10-1-12; A, 3-1-16]

**13.14.2.10 [TITLE-INSURANCE SOLICITOR’S-LICENSE:] TITLE INSURANCE AGENT LICENSE FOR ESCROW OFFICER:**

~~[Persons not holding a Title Insurance Agent’s License who, with authority from a title insurance agent, solicit or negotiate the issuance of a title insurance policy for compensation shall hold a Title Insurance Solicitor’s License. The term “compensation” includes a payment of wages, salary, or commission, whether provided in money or non-monetary consideration, inducement, or privileges. The licensing requirements of this paragraph do not apply to salaried administrative or clerical employees of a title insurance agent performing~~

functions in the office under the supervision of the employer who do not receive commissions; and those salaried employees rendering solely clerical and administrative services in the employer’s office.] The escrow officer shall be licensed as a title insurance agent. [3-1-90; 13.14.2.10 NMAC - Rn, 13 NMAC 14.3.10, 5-15-00; Rp, 3-1-16] [This section shall have an effective date of October 1, 2016]

**13.14.2.11 [TITLE-INSURANCE AGENCY LICENSE:] [RESERVED]**

~~\_\_\_\_\_A.\_\_\_\_\_ All corporations, partnerships, joint ventures, or other business entities (except for title insurers authorized under the laws of New Mexico to transact as insurer the business of title insurance) that hold themselves out as being engaged in the business of title insurance, or who receive or collect premium for title insurance policies, must hold a title insurance agency license. Applications for a title insurance agency license shall comply with NMSA 1978-Section 59A-12-15B.~~

**B.** ~~Title insurers transacting the business of title insurance in New Mexico shall notify the superintendent of insurance in writing, within thirty (30) days of the effective date of the cancellation of any appointment of any individual or entity as an agent of said insurer.~~

**C.** ~~Title agents engaged in the business of title insurance in New Mexico shall provide written notification to an underwriter that has currently appointed them as an agent, within thirty (30) days of the effective date of the termination of any employee appointed as an individual agent by said underwriter.]~~

[3-1-90; 13.14.2.11 NMAC - Rn, 13 NMAC 14.3.11, 5-15-00; A, 10-1-12; Repealed, 3-1-16]

**13.14.2.12 MAINTENANCE ASSESSMENTS AND FEES:**

The maintenance fee assessment authorized by NMSA 1978 Section 59A-30-12 on policies written during the preceding calendar year insuring property or interests in property in New Mexico shall be established for each fiscal year commencing on July 1 and ending on June 30 by directive of the superintendent. The directive shall be issued at least thirty (30) days before it is to become effective, and shall contain or be accompanied by a brief statement as to how the maintenance fee was determined. Title insurers shall correctly calculate their assessments

based upon their New Mexico gross premiums for the most recent preceding full calendar year and shall remit the same to the superintendent of insurance on or before May 1 or such other date as may be specified in the superintendent's directive. Any person aggrieved by the superintendent's directive may appeal to the superintendent in accordance with NMSA 1978 Section 59A-4-15 within thirty (30) days after the date of the directive. Title insurers assessments may be rounded to the nearest dollar after computation has been performed. Fifty cents or more may be rounded up; forty-nine cents or less may be rounded down. [2-16-87...4-3-95; 13.14.2.12 NMAC - Rn, 13 NMAC 14.3.12, 5-15-00; A, 3-1-16]

**SUPERINTENDENT OF INSURANCE**

**This is an amendment to 13.14.3 NMAC, Sections 8 and 12, effective 03-01-2016**

**13.14.3.8 ASSUMPTION OF RISKS BY AGENTS:** On and after October 7, 1985, no agency [~~contract, agency~~] agreement or other contract between a licensed New Mexico title insurance agent and an insurer admitted to write title insurance in New Mexico shall directly or indirectly require said agent to assume either partial or total liability for a risk insured pursuant to these regulations and in accordance with the underwriting standards of the Insurer, except as follows:

**A.** Gross negligence of agent. If the agent, or any person employed by the agent on his behalf, is grossly negligent by error or omission in the title search or examination, or in preparation or issuance of the policy, binder or commitment, or in the determination that the insured estate has been created, conveyed or modified as insured, or in the recording of the instruments creating, modifying or conveying the insured estate and such error or omission causes a loss to the insurer under the terms of the policy issued by the agent, said agent may be liable to the insurer for all or part of any payment made by the insurer to an insured under a claim or claims arising from said error or omission. The laws of New Mexico determine the current standards and definition of gross negligence (from time to time).

**B.** Disregard of written instructions. If the agent, or any person

employed by the agent on his behalf, shall disregard the written instructions of the insurer (including, but not limited to, specific underwriting standards or instructions, risk determinations, liability limitations or prior approval requirements) or of an insured or other party to a transaction resulting in the issuance of a title insurance policy, and such written instructions are not contrary to, or in contravention of, these regulations or the laws of New Mexico and/or the United States of America, and the failure to follow said written instructions results in a loss to the insurer under the terms of the policy issued by the agent, said agent may be liable to the insurer for all or part of any payment made by the insurer to an insured under a claim or claims arising from said disregard of written instructions.

**C.** Fraud, deceit, theft, etc. If the agent, or any person employed by the agent on his behalf, shall be guilty of fraud, deceit, theft or any similar intentional act for which a person may be prosecuted criminally or sued (but not negligence) and such act results in a loss to the insurer under the terms of the policy issued by the agent, said agent may be liable to the insurer for all or part of any payment made by the insurer to an insured under a claim or claims arising from said intentional act of the agent or his employee.

**D.** Matters covered by New Mexico closing protection letter. If the agent, or any person employed by the agent on his behalf, shall do or fail to do any act which results in the Insurer paying a claim (based upon said act or failure to act) to any person pursuant to a New Mexico closing protection letter issued by the insured, said agent may be liable to the insurer for all or part of any claim payment made by the insurer to a person protected by said closing protection letter. [6-16-86, 5-1-88; 13.14.3.8 NMAC - Rn, 13 NMAC 14.4.8, 5-15-00; A, 3-1-16]

**13.14.3.12 [AGENCY-CONTRACTS] AGENCY AGREEMENTS:** [~~All insurers shall amend existing agency contracts with each of their respective licensed New Mexico agents after March 1, 1988 but before May 1, 1988 to conform with the provisions of these regulations as last amended, and shall file the same with the superintendent on or before May 1, 1988. Such amendment may be in the form of an Addendum to the existing agreement, attached to and made a part thereof. All such contracts entered into henceforth shall conform with the provisions of~~

~~these regulations as last amended, and shall be filed with the superintendent promptly upon execution.] All insurers shall amend existing agency agreements with each of their respective licensed New Mexico agents after March 1, 1988 but before May 1, 1988 to conform with the provisions of these regulations as last amended, and shall file the same with the superintendent on or before May 1, 1988. Such amendment may be in the form of an addendum to the existing agreement, attached to and made a part thereof. All such agreements entered into henceforth shall conform with the provisions of these regulations as last amended, and shall be filed with the superintendent promptly upon execution.~~

[6-16-86, 5-1-88; 13.14.3.12 NMAC - Rn, 13 NMAC 14.4.12, 5-15-00; A, 3-1-16]

**SUPERINTENDENT OF INSURANCE**

**This is an amendment to 13.14.4 NMAC, Sections 1, 9, 10, 11, 12 and 13, effective 03-01-2016.**

**13.14.4.1 ISSUING AGENCY:** [~~New Mexico Public Regulation Commission, Insurance Division;~~] Office of Superintendent of Insurance, Title Insurance Bureau. [13.14.4.1 NMAC - Rp, 13.14.4.1 NMAC, 7-1-05; A, 3-1-16]

**13.14.4.9 BOOKS AND RECORDS:** In addition to the requirements of 13.14.16 NMAC, agent's statistical report, and 13.14.17 NMAC, underwriter's statistical report, a title insurer or title insurance agent shall, on a current basis and in accordance with accounting principles generally accepted in the United States of America:

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

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

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

**D.** maintain for each

escrow file and record which meets the requirements of 1.13.70 NMAC, performance guidelines for the legal acceptance of public records produced by information technology systems and 1.12.7 NMAC, electronic authentication, copies of all receipts for escrowed funds and items, deposit slips, checks, and closing or settlement statements signed by the parties; and

**E.** ~~[preserve for at least six (6) years all escrow account bank statements and all books and records required by this section]~~ preserve for at least fifteen years, all escrow account bank statements and all books and records required by this section and 13.14.4.10 NMAC including copies of cancelled checks and wire transfer verifications, as evidence of insurability of title pursuant to Section 59A-30-11(B) NMSA 1978 (collectively "escrow records"). This fifteen year requirement for escrow records shall apply with respect to title policies issued on or after June 1, 2010. [13.14.4.9 NMAC - Rp, 13.14.4.9 NMAC, 7-1-05; A, 3-1-16]

#### **13.14.4.10 ACCOUNTING PROCEDURES AND INTERNAL CONTROLS:**

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

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

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

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

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

**E.** thoroughly investigate escrow accounts open for longer than six months and only allow disbursements

from these accounts with management approval;

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

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

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

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

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

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

**L.** ~~[require reimbursement of all escrow receivables and other shortages by the appropriate party or from the title insurer's or title agent's operating account within forty-five (45) days from the closing date of the bank statement of the account that reflects the transaction creating the escrow receivable or shortage;]~~ require reimbursement of all escrow receivables and other shortages by the appropriate party or from the title insurer's or title agent's operating account within thirty (30) days from the closing date of the bank statement of the account that reflects the transaction creating the escrow receivable or shortage;

**M.** if a settlement statement requires changes, prepare a new statement or have all parties affected by the changes initial pen and ink changes, or

maintain sufficient evidence to support the changes in the escrow file;

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

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

(1) copies of checks must be clearly legible;

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

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

[13.14.4.10 NMAC - N, 7-1-05; A, 3-1-16]

#### **13.14.4.11 INDEPENDENT ACCOUNTANT'S ANNUAL ESCROW COMPLIANCE PROCEDURES:**

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

##### **A. Minimum standards.**

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

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

(3) The accountant shall confirm individual escrow funds, accounts where funds have



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

**B. Instructions.** The accountant shall:

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

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

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

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

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

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

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

(4) itemize and thoroughly explain all escrow receivables in excess of two-hundred dollars (\$200.00) on schedule C and thoroughly explain any irregularities such as bank overdrafts on schedule D in light of the requirements of NMSA 1978, Sections 59A-12-22 and 59A-30-4;

(5) determine that support for each disbursement is in the escrow file and that disbursements

were made to logical payees;

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

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

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

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

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

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

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

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

(b) if a file is inactive or has been dormant

for more than three (3) years, the insurer or agent should consider clearing the file pursuant to the Unclaimed Property Act or through interpleader with the court;

(c) individual escrow files with dormant balances of two-hundred dollars (\$200.00) or less may be reported in the aggregate for each specific reason the balances remain in the files;

(3) schedule C: (a)

the accountant shall provide a detailed explanation of every debit balance or receivable in excess of two-hundred dollars (\$200.00) occurring throughout the year, even if cleared before the year's end; the explanation should include the date the shortages were created, the cause of the shortages, the date the shortages were cleared, and the method of clearance;

(b) schedule C provides columns for debit balances to be carried forward under each month they remained open; debit balances up to and including two-hundred dollars (\$200.00) should be included as a lump sum, without separate explanations;

(4) schedule D: (a)

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

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

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

**E. Filing reports.** [The accountant shall provide the title insurer or title agent with an adequate number of reports in sufficient time to allow the insurer or agent to review them and mail copies with cover letters to the New Mexico insurance division, by certified mail, within 180 days of the fiscal year end. In addition, each agent shall simultaneously mail, by certified mail, a copy of the report to each insurer that the agent represents. The insurance-

~~division will not grant filing extensions.] The accountant shall provide the title insurer or title agent with an adequate number of reports in sufficient time to allow the insurer or agent to review them and mail copies with cover letters to the title insurance bureau, by certified mail, within 180 days of the fiscal year end. In addition, each agent shall simultaneously mail, by certified mail, a copy of the report to each insurer that the agent represents. The title insurance bureau will not grant filing extensions.~~  
[13.14.4.11 NMAC - Rp, 13.14.4.10 NMAC, 7-1-05; A, 3-1-16]

### 13.14.4.12 NOTICE TO THE SUPERINTENDENT:

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

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

(2) the entry of a judgment in any civil action against an owner, officer, director, partner, or employee of the title insurer or title insurance agent involving the misconduct or liability of the owner, officer, director, partner, or employee concerning an escrow handled by the title insurer or title insurance agent;

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

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

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

brief description of the escrow, and a copy of the judgment entered or disciplinary action taken.

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

D. [If a title insurer or title insurance agent detects a defalcation regarding its escrow funds, the insurer or agent must file the following notice with the superintendent within forty-five (45) days of the end of the month in which the defalcation is detected: "We have detected circumstances regarding our escrow funds that may warrant an investigation by the insurance division. The amount of funds involved is believed to be \$ \_\_\_\_\_." ] If a title insurer or title insurance agent detects a defalcation regarding its escrow funds, the insurer or agent must file the following notice with the superintendent within forty-five (45) days of the end of the month in which the defalcation is detected: "We have detected circumstances regarding our escrow funds that may warrant an investigation by the title insurance bureau. The amount of funds involved is believed to be \$ \_\_\_\_\_." ]  
[13.14.4.12 NMAC - Rp, 13.14.4.11 NMAC, 7-1-05; A, 3-1-16]

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

*[Print on CPA firm letterhead]*

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

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

[We have performed the procedures required by 13.14.4.11 NMAC, which were agreed to by the Insurance Division of the New Mexico Public Regulation Commission, solely to assist the Insurance Division in evaluating *[name of agent]*'s compliance with the provisions of Sections 59A-12-22 and 59A-30-4 NMSA 1978 and 13.14.4 NMAC relating to escrow services provided during the period of January 1, 20\_\_ through December 31, 20\_\_. Management is responsible for *[name of agent]*'s

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

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

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

[Name of CPA firm]

[Date of Accountant's Report]

[13.14.4.13 NMAC - N, 7-1-05; A, 3-1-16]

**SUPERINTENDENT OF INSURANCE**

This is an amendment to 13.14.5 NMAC, Sections 8, 9, 12 and 13, effective 03-01-2016.

**13.14.5.8 ISSUANCE UPON REQUEST AND RECEIPT OF BONA FIDE ORDER:**

A. Upon receipt of a bona fide order for any type of title insurance policy or policies to be issued pursuant to 13.14.6 NMAC, an insurer or title insurance agent must deliver to the proposed insured, its authorized agent, other person in a fiduciary relationship with the proposed insured, or the proposed insured's attorney, and if none of the aforementioned persons are available after using the insurer's or title insurance agent's best efforts, then to the person designated by the person opening the order for insurance, a commitment showing the exceptions which will appear in the proposed policy as of the date of the commitment and requirements to be met to insure the title in accordance with the order for insurance. Such commitment shall be delivered as soon as practicable, using the insurer's or title insurance agent's best efforts, allowing reasonably sufficient time for review prior to the completion of closing of the transaction. No commitment may be issued except upon receipt by the insurer or title insurance agent of a bona fide order for title insurance as set out above.

B. ~~[The term "binder" is defined in Subsection B of 13.14.1.8 NMAC as "a commitment for title insurance" and the use of the terms "binder" and "commitment" shall refer to the same thing. The term "commitment" includes the NM form 6.1 plain language commitment. This regulation shall not apply if the bona fide order is placed after the transaction has been closed. A commitment or binder shall not be issued for the purpose of determining the state of the title of property subject to or to be subject in the future to a foreclosure action, quiet title suit or other litigation.]~~ The term "binder" is defined in Subsection B of 13.14.1.8 NMAC as "a commitment for title insurance" and the use of the

terms "binder" and "commitment" shall refer to the same thing. The term "commitment" includes the NM form 6.1 plain language commitment. This regulation shall not apply if the bona fide order is placed after the transaction has been closed. A commitment or binder shall not be issued for the purpose of determining the state of the title of property subject to or to be subject in the future to a foreclosure action, quiet title suit or other litigation.

C. When a commitment or binder for one to four family residential property is required to be produced and delivered in accordance with this regulation it shall be delivered with a notice to purchaser/insured NM form 35, 13.14.18.48 NMAC, as the cover page. However, the purchaser(s) need not be identified nor sign the notice until closing. The notice, when required, shall be signed by purchaser(s) at or before the time of closing and retained in the closing file. The notice to purchaser/insured is not required if, prior to the delivery of the commitment or binder, the proposed insured(s) sign 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.

D. When requested by a proposed insured lender the following language may be added to a title commitment "note: according to the public records, there have been no deeds conveying the property in this commitment within a period of (six to twenty-four) months prior to the date of this commitment, except as follows:"

E. ~~When a to-be-determined title commitment is issued, an additional requirement to the commitment must be added as follows: "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."~~ [6-16-86..4-3-95; 13.14.5.8 NMAC - Rn, 13 NMAC 14.5.8, 5-15-00; A, 9-1-07; A, 8-17-09; A, 3-1-16]

**13.14.5.9 STANDARD EXCEPTIONS IN SCHEDULE B:**

~~[A. All commitments issued on New Mexico property will contain each of the following numbered exceptions verbatim and in the same order stated herein:~~

~~(1) Rights or claims of parties in possession not shown~~

~~by the public records:~~

~~(2) Easements, or claims of easements, not shown by the public records:~~

~~(3)~~

~~Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises:~~

~~(4) Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records:~~

~~(5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy):~~

~~(6)~~

~~[RESERVED]~~

~~(7) Water rights, claims or title to water:~~

~~(8)~~

~~[RESERVED]~~

~~(9) Taxes for the year \_\_\_\_\_, and thereafter. (See 13.14.5.12 NMAC)]~~

~~(10) Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing 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 used to commit for both an owner's policy and a loan policy or a loan policy only:~~

~~"Exceptions numbered \_\_\_\_\_ will not appear in the loan policy but will appear in the owner's policy, if any." If the commitment is for a construction policy or a loan policy containing a two-year (2) claims made limitation, the following statement must be added: "The construction loan policy or a loan policy containing a two-year (2) claims made limitation will contain an exception limiting its coverage to two (2) years duration pursuant to 13.14.7.18 NMAC."~~

~~C. Each commitment shall contain the following statement: Standard exceptions 1, 2, 3, and or 4, may be deleted from any policy upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting~~

standards for each such deletion.—  
 Standard exception 5 may be deleted from the policy if the named insured in the case of an owner’s policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. Except for the issuance of a U.S. policy form (NM 7 or NM 34), any policy to be issued pursuant to this commitment will be endorsed or modified in schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to schedule B of the policy shall read: “In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured.”] **A.** All commitments issued on New Mexico property will contain each of the following numbered exceptions verbatim and in the same order stated herein.

**(1)** Rights or claims of parties in possession not shown by the public records.

**(2)** Easements, or claims of easements, not shown by the public records.

**(3)** Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises.

**(4)** Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.

**(5)** Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).

**(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.

**(9)**  
 [RESERVED]

**(10)**  
 [RESERVED]

**B.** Additionally, each commitment may contain the following statement when said commitment is used to commit for both an owner’s policy and a loan policy or a loan policy only: “Exceptions numbered \_\_\_\_\_ will not appear in the loan policy but will appear in the owner’s policy, if any.” If the commitment is for a construction policy or a loan policy containing a two-year (2) claims made limitation, the following statement must be added: “The construction loan policy or a loan policy containing a two-year (2) claims made limitation will contain an exception limiting its coverage to two (2) years duration pursuant to 13.14.7.18 NMAC.”

**C.** Each commitment shall contain the following statement: Standard exceptions 1, 2, 3, and or 4, may be deleted from any policy upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company’s underwriting standards for each such deletion. Standard exception 5 may be deleted from the policy if the named insured in the case of an owner’s policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. Except for the issuance of a U.S. policy form (NM form 7 or NM form 34), any policy to be issued pursuant to this commitment will be endorsed or modified in schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to schedule B of the policy shall read: “In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured.”

[6-16-86, 3-1-90, 6-1-97, 6-1-98; 13.14.5.9 NMAC - Rn, 13 NMAC 14.5.9, 5-15-00; A, 8-29-03; A, 7-1-05; A, 8-17-09; A, 9-15-09; A, 09-15-10; A, 10-1-12; A, 7-31-14; A, 3-1-16]

**13.14.5.12** [TAXES—  
~~STANDARD EXCEPTION 9~~] TAXES - STANDARD EXCEPTION 7:

[Allowable modifications of standard exception 9.—No change is required in the printed policy forms. These amendments to standard exception 9 may be made by substituting the authorized changes as appropriate. Each insurer, in the exercise of this option, shall provide its agent(s) written authority to so amend standard exception 9.

**A.** Standard exception 9 in 13.14.5.9 NMAC may be modified in commitments and policies so as to except to taxes for the second half of an ad valorem tax year. Such amendment 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 issuing agent or underwriter in an escrow account established for a closing occurring concurrently with such issuance.

**B.** Standard exception 9 may also be amended in policies, at the option of the insurer, to read: “Taxes for the year \_\_\_\_\_, and thereafter, not yet due or payable.”

**C.** 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 9 may be amended, at the option of the insurer, by changing the period to a comma, and adding the phrase: “not yet delinquent.”] Allowable modifications of standard exception 7. No change is required in the printed policy forms. These amendments to standard exception 7 may be made by substituting the authorized changes as appropriate. Each insurer, in the exercise of this option, shall provide its agent(s) written authority to so amend standard exception 7.

**A.** Standard exception 7 in 13.14.5.9 NMAC may be modified in commitments and policies so as to except to taxes for the second half of an ad valorem tax year. Such amendment 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 issuing agent or underwriter in an escrow account established for a closing occurring concurrently with such issuance.

**B.** Standard exception 7 may also be amended in policies, at the option of the insurer, to read: “Taxes for the year \_\_\_\_\_, and thereafter, not yet due or payable.”

C. 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 amended, at the option of the insurer, by changing the period to a comma, and adding the phrase: “not yet delinquent.” [4-1-96; 13.14.5.12 NMAC - Rn, 13 NMAC 14.5.12, 5-15-00; A, 3-1-16]

**13.14.5.13 PRO FORMA**

**POLICIES:** For purposes of this rule, a “pro forma policy” is a sample of an owner or loan policy prepared prior to payment for issuance and delivery of the policy, with completed schedules A and B and endorsements, showing the proposed insured, the exceptions that are proposed to be placed in the final policy to be issued, and the name of the title insurance company and title insurance agent. A pro forma policy may be issued only if (a) the land is not one to four family residential property; (b) the proposed amount of insurance is \$500,000.00 or more; (c) each page of the completed schedules A and B and all endorsements 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.” and (d) the title agent receives a written request for the pro forma policy from a proposed insured. A pro forma policy shall not be issued or used in lieu of a title insurance commitment. [13.14.5.13 NMAC - N, 3-1-16]

**SUPERINTENDENT OF INSURANCE**

This is an amendment to 13.14.6 NMAC, Sections 8, 9, 10, 11 and 22, effective 3-1-2016.

**13.14.6.8 OWNER’S POLICIES:**

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

the cost of improvements immediately contemplated to be erected thereupon.

B. If no sale is being made, at time of issuance of policy, all owner’s policies shall be issued for an amount equal to the value of the land and any existing improvements appurtenant thereto, with the same option concerning immediately contemplated improvements.

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

D. An owner’s policy may be endorsed to reflect the current value of the estate insured (upon payment of the current basic premium according to the schedule less the amount previously paid for said policy) if the insurer’s underwriting standards are met; provided, however, that the effective date of the policy shall remain unchanged and no affirmative coverages or down dates shall be added to the policy. Owner’s policies may insure multiple tracts acquired from different parties at the same or different times.

E. [NM form 55, named insured endorsement, shall be provided to all insureds requesting the endorsement on owner’s policies or leasehold owner’s policies previously issued prior to August 1, 2008 without the endorsement.] NM form 55, named insured endorsement, shall be provided to all insureds requesting the endorsement on owner’s policies previously issued prior to August 1, 2008 without the endorsement. [6-16-86...3-1-91; 13.14.6.8 NMAC - Rn, 13 NMAC 14.6.8, 5-15-00; 13.14.6.8 NMAC - A, 8-1-01; A, 3-1-02; A, 8-17-09; A, 3-1-16]

**13.14.6.9 LEASEHOLD OWNER’S POLICIES:**

A. Leasehold owner’s policies shall be issued to insure leasehold estates and in the amount, at the option of the Insured, of either (1) the total amount of the rentals payable under the lease contract, or (2) the value of the land and any existing improvements, or (3) the value of the land and any existing improvements and the cost of the

improvements immediately contemplated to be erected thereupon. In the latter case, the leasehold policy must contain a pending improvements clause or endorsement.

B. Unless otherwise specifically stated, a leasehold owner’s policy shall contain the same standard exceptions, be subject to the same premium rates and be subject to deletion of the same standard exceptions in the same manner as an owner’s policy.

C. A leasehold owner’s endorsement shall be attached to an owner’s policy to create a leasehold owner’s policy. A leasehold owner’s policy may be converted to a standard owner’s policy by the issuance of an owner’s leasehold conversion endorsement NM form 31 if the owner of the leasehold interest acquires the fee title interest within three (3) years of the effective date of the leasehold owner’s policy.

D. In addition to the owner’s leasehold conversion endorsement NM form, the issuing insurer or title insurance agent shall issue a multipurpose endorsement, NM form 11, reflecting the change of the estate insured and adding or deleting exceptions, and otherwise modifying the policy to accurately reflect the condition of title of the estate insured. The premium for such conversion shall be as prescribed by 13.14.9.38 NMAC, and no additional premium shall be charged for either endorsement.

E. NM Form 55, named insured endorsement, shall be attached to all leasehold owner’s policies issued after August 15, 2001 and shall be provided to all insureds requesting the endorsement on leasehold owner’s policies previously issued without the endorsement.] A.

Leasehold owner’s policies shall be issued to insure leasehold estates and 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, or (3) the value of the land and any existing improvements and the cost of the improvements immediately contemplated to be erected thereupon. In the latter case, the leasehold policy must contain a pending improvements clause or endorsement.

B. Unless otherwise specifically stated, a leasehold owner’s policy shall contain the same standard exceptions, be subject to the same premium rates and be subject to deletion of the same standard exceptions in the

same manner as an owner's policy.

**C.** A leasehold owner's endorsement shall be attached to an owner's policy to create a leasehold owner's policy. A leasehold owner's policy may be converted to a standard owner's policy by the issuance of an owner's leasehold conversion endorsement NM form 31.

**D.** The premium for such conversion shall be as prescribed by 13.14.9.38 NMAC, and no additional premium shall be charged for the owner's leasehold conversion and endorsement. NM form 31.

**E.** NM form 55, named insured endorsement, shall be provided to all insureds requesting the endorsement on leasehold owner's policies previously issued prior to August 1, 2008 without the endorsement.

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

**13.14.6.10 CONTRACT PURCHASER'S POLICIES:** [Contract purchaser's policies, utilizing NM form 1, owner's policy, shall be written to insure the estate or interest in land upon which the insured holds a contractual interest by virtue of a recorded real estate contract or agreement, or a sufficient recorded memorandum thereof. Unless otherwise specifically provided, contract purchaser's policies shall be subject to all rules and regulations applicable to owner's policies, and in the same manner. Each insurer shall establish written instructions and specific underwriting standards concerning the issuance of contract purchaser's policies.] **A.** Contract purchaser's policies, utilizing NM form 1, owner's policy, shall be written to insure the estate or interest in land upon which the insured holds a contractual interest by virtue of a recorded real estate contract or agreement, or a sufficient recorded memorandum thereof. Unless otherwise specifically provided, contract purchaser's policies shall be subject to all rules and regulations applicable to owner's policies, and in the same manner.

**B.** The estate or interest in the land insured in schedule A under a contract purchaser's policy 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 under the recorded real estate contract or agreement, or a sufficient memorandum recorded in lieu thereof,

which transaction was previously insured. The date of policy will not be changed or down dated. No additional premium shall be charged for this conversion.

**C.** Upon request of the insured under a contract purchaser's policy, a contract purchaser's policy may be converted and down dated to a standard owner's policy by the issuance of a contract purchaser's conversion endorsement, NM form 91. The premium for such endorsement shall be as prescribed by 13.14.10.63 NMAC and no additional premium shall be charged for the contract purchaser's conversion endorsement, NM form 91.

**D.** Each insurer shall establish written instructions and specific underwriting standards concerning the issuance of contract purchaser's policies and the contract purchaser's conversion endorsement, NM form 91.

[3-1-89; 13.14.6.10 NMAC - Rn, 13 NMAC 14.6.10, 5-15-00; A, 3-1-16]

**13.14.6.11 STANDARD EXCEPTIONS:** [All owners' policies insuring New Mexico property shall contain in schedule B the standard exceptions numbered 1 through 9 in 13 NMAC 14.5.9 except as otherwise provided by these rules. Said standard exceptions may be preprinted in schedule B and, when specifically authorized, may be deleted by crossing out the words as specifically indicated in the rules immediately following, or by notation in schedule B or endorsement stating, "Exception numbered \_\_\_\_\_ are hereby deleted" and/or "Exception numbered 3 is hereby amended to read, "shortages in area"". Standard exception number 5 shall refer to "spouse of the vestee" in all leasehold owners' policies and in all situations where the vestee and insured are not the same.] All owners' policies insuring New Mexico property shall contain in schedule B the standard exceptions numbered 1 through 8 in 13.14.5.9. NMAC except as otherwise provided by these rules. Said standard exceptions may be preprinted in schedule B and, when specifically authorized, may be deleted by crossing out the words as specifically indicated in the rules immediately following, or by notation in schedule B or endorsement stating, "exceptions numbered \_\_\_\_\_ are hereby deleted" or "exception numbered 3 is hereby amended to read, "shortages in area"". Standard exception number 5 shall refer to "spouse of the vestee" in all owners' policies and in all situations where the vestee and insured are

not the same.

[6-16-86, 2-6-87; 13.14.6.11 NMAC - Rn, 13 NMAC 14.6.11, 5-15-00; A, 3-1-16]

**13.14.6.22 ISSUANCE OF REPLACEMENT OWNER'S POLICY:**

**A.** When an authorized insurer is placed in permanent or temporary receivership for purpose of liquidation with a finding of insolvency by a court of competent jurisdiction, (insolvent insurer), a replacement policy of title insurance can be purchased by an insured covered under an owner's policy issued pursuant to 13.14.6 NMAC.

**B.** The insured shall surrender the existing policies of said insolvent insurer to the company when placing the order for a replacement policy. A copy of the existing policies obtained from the issuing agent can be surrendered in lieu of the existing original policy. If a copy of the existing policies is obtained from the original [agency] agent that issued it, an additional charge can be made to the insured in an amount that is reasonable considering the nature and extent of the services rendered. The date of policy for the replacement policy shall be the same date of policy as the existing policy.

**C.** No replacement policy shall be issued 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 or other insured and claims reported under existing policies or claims that have been made against the receiver for the insolvent insurer or agent who represented the insolvent insurer. All replacement policies shall contain the following exception on schedule B: Defects, liens, encumbrances, adverse claims or other matters not known to the issuing agent and/or insurer at the issue date of this replacement policy, but known to any owner or other insured claimant and not disclosed in writing to the agent and/or insurer by the insured claimant prior to the date the insured claimant became insured under this policy.

**D.** The replacement owner's policy shall be issued in the amount of insurance shown on the existing owner's policy. Agents and/or insurers must issue a replacement policy when request therefore is made by an insured who has satisfied the requirements of this regulation and those of 13.14.9.26 NMAC. No search or

examination of title or evidence thereof is required of the agent or insurer issuing a replacement policy pursuant to this regulation. However, agents and insurers may conduct a search and examination at no additional expense to the insured other than as set forth in 13.14.9.26 NMAC.

**E.** All replacement policies shall be marked as such by adding 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. Subsequent to the words "replacement policy; NO SEARCH REQUIRED," the date the replacement policy was issued shall be indicated after the word "issued" is typed.

**F.** When an insured submits as evidence either a replacement owner's policy or an owner's policy of an insolvent insurer or a copy of the same, they will qualify for credit afforded in 13.14.9.12.1 NMAC, reissue owner's or leasehold rates and also 13.14.9.36 NMAC, substitution loans, second mortgages and subsequent issues. No other regulations affording credits, discounts, reduction in premium shall apply to replacement policies other than as stated herein and in 13.14.9.26 NMAC. [6-15-91; 13.14.6.22 NMAC - Rn, 13 NMAC 14.6.22, 5-15-00; A, 3-1-16]

**SUPERINTENDENT OF INSURANCE**

This is an amendment to 13.14.7 NMAC, Sections 10, 14, 17, 18, 19, 20 and 26, with a new Section 27 added, effective 03-01-2016.

**13.14.7.10 STANDARD EXCEPTIONS:** [All loan policies insuring New Mexico property shall contain in Schedule B the standard exceptions listed in 13.14.5.9 NMAC and numbered 1 through 9 inclusively except as otherwise provided by these regulations. Said standard exceptions may be preprinted in Schedule B and, when specifically authorized, may be deleted by crossing out the words as specifically indicated in the regulations immediately following, or by notation in Schedule B or endorsement stating, "exceptions numbered \_\_\_ are hereby deleted" or "exception numbered 3 is hereby amended to read, 'shortages in area.'" Standard exception numbered 5 shall refer to "spouse of the vestee" in all

loan policies.] All loan policies insuring New Mexico property shall contain in schedule B the standard exceptions listed in 13.14.5.9 NMAC and numbered 1 through 8 inclusively except as otherwise provided by these regulations. Said standard exceptions may be preprinted in schedule B and, when specifically authorized, may be deleted by crossing out the words as specifically indicated in the regulations immediately following, or by notation in schedule B or endorsement stating, "exceptions numbered \_\_\_ are hereby deleted" or "exception numbered 3 is hereby amended to read, 'shortages in area.'" Standard exception numbered 5 shall refer to "spouse of the vestee" in all loan policies.

[6-16-86, 2-6-87; 13.14.7.10 NMAC - Rn, 13 NMAC 14.7.10, 5-15-00; A, 10-1-12; A, 3-1-16]

**13.14.7.14 MECHANICS' AND MATERIALMEN'S LIEN COVERAGE - STANDARD EXCEPTION 4:**

**A.** The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy under the two circumstances described in Subsections B and C below:

**B.** If the insurer's underwriting requirements for evidence of priority have been met, the exception may be deleted from a loan policy upon payment of the additional premium required in Subsection E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes, an NM 83 \_\_\_ construction loan endorsement, an NM 83.1 \_\_\_ construction loan direct payment endorsement, or an NM 83.2 construction loan insured's direct payment endorsement may be issued with the loan policy and NM 84 disbursement endorsement may be issued thereafter.

**C.** If the insurer's underwriting requirements for evidence of priority have not been met but the insurer's underwriting requirements of the risk incurred by reason of the lack of priority have been met, the exception may be deleted from a loan policy upon receipt of the additional extra-hazard risk premium specified in Subsection E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes an NM 83 \_\_\_ construction loan endorsement, an NM 83.1 \_\_\_ construction loan direct payment endorsement, or an NM 83.2 construction loan insured's direct payment endorsement

may be issued with the loan policy and a NM 84 disbursement endorsement may be issued thereafter.

**D.** Each insurer shall establish written underwriting requirements concerning minimum evidence of priority and requirements of the risk incurred by reason of the lack of priority.] **A.** The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy under the two circumstances described in Subsections B and C below.

**B.** If the insurer's underwriting requirements for evidence of priority have been met, the exception may be deleted from any loan policy upon payment of the additional premium required in Subsection E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes, a NM form 83 construction loan endorsement, a NM form 83.1 construction loan direct payment endorsement, or a NM form 83.2 construction loan insured's direct payment endorsement may be issued with the loan policy and a NM form 84 disbursement endorsement may be issued thereafter.

**C.** If the insurer's underwriting requirements for evidence of priority have not been met but the insurer's underwriting requirements of the risk incurred by reason of the lack of priority have been met, the exception may be deleted from any loan policy upon receipt of the additional extra-hazard risk premium specified in Subsection E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes a NM form 83 construction loan endorsement, a NM form 83.1 construction loan direct payment endorsement, or a NM form 83.2 construction loan insured's direct payment endorsement may be issued with the loan policy and a NM form 84 disbursement endorsement may be issued thereafter.

**D.** Each insurer shall establish written underwriting requirements concerning minimum evidence of priority and requirements of the risk incurred by reason of the lack of priority. [6-16-86, 2-6-87; 13.14.7.14 NMAC - Rn, 13 NMAC 14.7.14, 5-15-00; A, 10-1-12; A, 7-31-14; A, 3-1-16]

**13.14.7.17 ADDITIONAL "A" ENDORSEMENTS TO CONSTRUCTION LOAN POLICY:** [When a construction loan policy has been issued and an "A" endorsement

has been attached thereto at the time of its issue, upon a date down of the title having been made to the date thereof and upon a subsequent disbursement of the loan insured, an additional endorsement "A" may be issued by the insuring company changing the effective date of the construction loan policy to the date of the most recent disbursement and down date upon payment of the additional charge as provided in Subsection D of 13.14.9.40 NMAC. In no event shall any endorsement "A" be used to extend the term of the construction loan policy beyond its expiration date. If the date down of the title made in connection with the issuance of such additional endorsement "A" reveals any change in the condition of title or if the insured requires that the amount of the aggregate disbursements to the date of the endorsement "A" be shown, such matters must be shown by separate endorsement issued contemporaneously with such additional endorsement "A".] When a construction loan policy has been issued and an "A" endorsement has been attached thereto at the time of its issue, upon a date down of the title having been made to the date thereof and upon a subsequent disbursement of the loan insured, an additional endorsement "A" may be issued by the insuring company changing the effective date of the construction loan policy to the date of the most recent disbursement and down date upon payment of the additional charge as provided in Subsection D of 13.14.9.40 NMAC. In no event shall any endorsement "A" be used to extend the term of the construction loan policy beyond its expiration date. If the date down of the title made in connection with the issuance of such additional endorsement "A" reveals any change in the condition of title or if the insured requires that the amount of the aggregate disbursements to the date of the endorsement "A" be shown, such matters must be shown by separate endorsement issued contemporaneously with such additional endorsement "A". No endorsement "A" may be issued after August 14, 2018.

[6-16-86; 13.14.7.17 NMAC - Rn, 13 NMAC 14.7.17, 5-15-00; A, 10-1-12; A, 7-31-14; A, 3-1-16]

**13.14.7.18 LOAN POLICIES INSURING CONSTRUCTION LOAN [POLICIES]:**

[A. Construction loan policies may not be issued after the effective date of this rule \_\_\_\_\_]

\_\_\_\_\_.  
 B. Upon written request of the insured, acceptance of the risk by the title insurer and receipt of the additional premium required by Subsection B of 13.14.9.40 NMAC, a construction loan policy or loan policy containing a two-year (2) claims made limitation may be extended by issuance of no more than four (4) extension endorsements of six (6) months each. In no event may the coverage provided by a construction loan policy if extended to its maximum, exceed four years from the date of issue unless it is converted to a loan policy by payment of the full premium due for said loan policy without credit for any premium paid for the construction loan policy.] A. Construction loan policies (NM form 3) may not be issued after August 14, 2014.

B. Upon written request of the insured, acceptance of the risk by the title insurer and receipt of the additional premium required by Subsection B of 13.14.9.40 NMAC, a construction loan policy issued prior to August 15, 2014 or a standard loan policy with a two-year claims made limitation may be extended by issuance of no more than four extension endorsements of six months each. In no event may the coverage provided by a construction loan policy or a standard loan policy with a two-year claims made limitation, if extended to its maximum, exceed four years from the date of issue unless it is converted to a loan policy by payment of the full premium due for said loan policy without credit for any premium paid for the construction loan policy or a standard loan policy with a two-year claims made limitation. [6-16-86, 2-16-87; 13.14.7.18 NMAC - Rn, 13 NMAC 14.7.18, 5-15-00; A, 10-1-12; A, 7-31-14; A, 3-1-16]

**13.14.7.19 [RESERVED] CONSTRUCTION LOAN MORTGAGE - PENDING DISBURSEMENT CLAUSE**

A. When a lender is issued a loan policy insuring the lien of a construction loan mortgage, the insurer may require a specific pending disbursement clause. Such clause may be in the form directed by the 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 proceeds of the loan, the title must be continued down to such time for possible liens or objections intervening between the date hereof and the date of such disbursement."

B. At the time of each disbursement, with respect to an insured construction loan, a NM form 22, pending disbursement down date endorsement, may be issued by the insuring company, showing any changes in title to the security property and stating the total amount of the proceeds of the construction loan advanced by the lender at the date the endorsement is issued. The insurer or its agent shall collect the endorsement premium required by 13.14.10.18 NMAC within fifteen days of issuing the endorsement.

[6-16-86, 3-1-88; 13.14.7.19 NMAC - Rn, 13 NMAC 14.7.19, 5-15-00; A, 10-1-12; Repealed, 7-31-14; N, 3-1-16]

**13.14.7.20 ISSUANCE OF REPLACEMENT MORTGAGEE'S POLICY:**

A. When an authorized insurer is placed in permanent or temporary receivership for purpose of liquidation with a finding of insolvency by a court of competent jurisdiction (insolvent insurer), a replacement policy of title insurance can be purchased by an insured covered by a mortgagee's policy issued pursuant to 13.14.7.20 NMAC.

B. The insured shall surrender the existing policy of said insolvent insurer to the company when placing the order for a replacement policy. A copy of the existing policy obtained from the issuing agent can be surrendered in lieu of the existing original policy. If a copy of the existing policy is obtained from the original agency that issued it, an additional charge can be made to the insured in an amount that is reasonable considering the nature and extent of the services rendered. The date of policy for the replacement policy shall be the same date of policy as the existing policy.

C. No replacement policy shall be issued 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 or other insured and claims reported under existing policies or claims that have been made against the receiver for the insolvent insurer or agent(s) who



represented the insolvent insurer. All replacement policies shall contain the following exception on schedule B: Defects, liens, encumbrances, adverse claims or other matters not known to the issuing agent and/or insurer at the issue date of this replacement policy, but known to any owner or other insured claimant and not disclosed in writing to the agent and/or insurer by the insured claimant prior to the date the insured claimant became insured under this policy.

**D.** A replacement policy may be issued on a lien covered by an existing mortgage policy but not on a lien to take up, renew, or extend or satisfy the existing lien. The replacement policy amount for a mortgage policy shall be the amount of the current unpaid balance of the indebtedness. Agents and/or insurers must issue a replacement policy when request therefore is made by an insured that has satisfied the requirements of this regulation. [and those of 13 NMAC 14.9.10.7.]

**E.** No search or examination of title or evidence thereof is required of the agent or insurer issuing a replacement policy pursuant to this regulation. However, agents and insurers may conduct a search and examination at no additional expense to the insured other than as set forth in 13.14.9.26 NMAC.

**F.** All replacement policies shall be marked as such by adding 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. Subsequent to the words "Replacement Policy; NO SEARCH REQUIRED," the date the replacement policy was issued shall be indicated after the word "Issued" is typed. No other regulations affording credits, discounts, reduction in premium shall apply to replacement policies other than stated herein and in 13.14.9.10.7 NMAC. [6-15-91; 13.14.7.20 NMAC - Rn, 13 NMAC 14.7.20, 5-15-00; A, 3-1-16]

**13.14.7.26 CLOSING PROTECTION LETTERS:** [The closing protection letter (NM form 81), closing protection letter - limitations (NM form 81.1), and closing protection letter - single transaction limited liability (NM form 81.2)] may be issued with the approval of the underwriter, in addition to issuance of any policy. Unless requested by a party and approved by the underwriter, the closing protection letter (NM form 81) shall be issued. Each

~~insurer shall establish written instructions and underwriting standards preceding the use of these forms.] The closing protection letter - single transaction (NM form 81) and the closing protection letter multiple transactions (NM form 81.1) may be issued with the approval of the underwriter, in addition to issuance of any policy. Unless specifically requested by a party and approved by the underwriter, the closing protection letter- single transaction (NM form 81) shall be issued. Each insurer shall establish written instructions and underwriting standards preceding the use of these forms.~~  
[13.14.7.26 NMAC - N, 09-15-10; A, 10-1-12; A, 3-1-16]

**13.14.7.27 RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY:**

**A.** Upon payment of the premium provided for in 13.14.9.42 NMAC, a residential limited coverage mortgage modification policy as described in NM form 90 may be issued.

**B.** This policy shall only be issued on properties that are defined as "one to four family residential property."

**C.** In order to issue a residential limited coverage modification policy, proof of the previous policy shall be in the possession of the company issuing the policy prior to the commencement of the title search for said policy. Proof, as used in this context, shall mean a copy of the previous policy, which shall include the following information: issuing company/underwriter, policy number, date of issue, policy amount, legal description of insured property, name of insured, as well as complete copies of schedules A and B (and C, if applicable), and any attached endorsements.  
[13.14.7.27 NMAC - N, 3-1-16]

**SUPERINTENDENT OF INSURANCE**

**This is an amendment to 13.14.8 NMAC, Sections 8, 17, 18, 25, 26, 27 and 32, with new Sections 39 and 40 added, effective 03-01-2016.**

**13.14.8.8 USE OF CORRECTION/MULTIPURPOSE ENDORSEMENT:** The New Mexico correction/multipurpose endorsement may be used as follows:

**A.** As any of the other endorsement forms promulgated by the superintendent and specifically listed in 13.14.18.13 NMAC. In such case the

exact language contained in the said promulgated endorsement form shall be typed or otherwise printed on the correction/multipurpose endorsement form; all language (if any) not contained in the said promulgated endorsement form but preprinted on the correction/multipurpose form shall be deleted by striking out or lining through; and, the appropriate form designation required by 13.14.18.12 NMAC shall be typed or otherwise printed on the correction/multipurpose endorsement in order that its use as another form is clearly evident. This regulation grants the option to each insurer to print specific promulgated endorsement forms or to use the correction/multipurpose endorsement form for any or all of the other promulgated endorsement forms and also grants the option to an agent to use this form for this purpose either upon instructions from the insurer or if the preprinted promulgated form is not available.

**B.** To insert, delete or add to a commitment, binder, policy or endorsement, language required or authorized by any of these regulations when appropriate to do so.

**C.** To correct errors in the information inserted in the appropriate spaces of any preprinted commitment, binder, policy or endorsement (but not to change, alter or waive the promulgated terms) in the manner following: "This endorsement amends (commitment, policy or endorsement) numbered \_\_\_\_\_, dated \_\_\_\_\_ to read as follows: (here insert language identifying the specific item being corrected and the specific correction information such as, "the name of the insured is John Smith rather than James Smith." or "the lot number in the legal description is "3" rather than "30." or "item 3" of schedule A is ABC corporation rather than ABC, inc.'). No other amendments are made by this endorsement."

**D.** [To endorse a loan policy by issuing the NM form 80, the mortgage modification endorsement. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.] To endorse a loan policy by issuing the NM form 80, the mortgage modification endorsement, or the NM form 80.1, the mortgage modification with subordination endorsement, or the NM form 80.2, the mortgage modification endorsement with additional amount of insurance. Each insurer shall establish written instructions and underwriting standards concerning the use of these endorsements.

E. To endorse a loan policy in the manner following: “As to the above numbered loan policy, the company will not claim that its liability for the payment of any loss or damage, under the terms and provisions of the policy, has been waived or surrendered by the insured, or has been reduced by the company, solely by reason of the execution of: ([Her] Here state whether renewal, extension, reinstatement, or partial release, release of additional collateral or release from personal liability, and then fully describe giving recording information.) The assurance given by this endorsement is subject to the following (None unless specifically set out here.)”

[6-16-86, 3-1-89; 13.14.8.8 NMAC - Rn, 13 NMAC 14.8.8, 5-15-00; A, 9-15-10; A, 10-1-12; A, 3-1-16]

**13.14.8.17 LAND ABUTS STREET ENDORSEMENT:** The “land abuts street” endorsement, NM form 51, may be attached to owner’s policies and loan policies provided the premium in 13.14.10.36 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement. [13.14.8.17 NMAC - N, 5-15-00; A, 3-1-16]

**13.14.8.18 LOCATION ENDORSEMENT:** The “location” endorsement, NM form 52, may be attached to owner’s policies and loan policies provided a recent survey is furnished and the premium in 13.14.10.37 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement. [13.14.8.18 NMAC - N, 5-15-00; A, 5-31-00; A, 9-15-09; A, 3-1-16]

**13.14.8.25 [ASSIGNMENT OF RENTS/LEASES ENDORSEMENT:** The assignment of rents/leases endorsement, NM form 62, may be attached to a New Mexico loan policy or leasehold loan policy, provided the premium in 13.14.10.45 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written

instructions and underwriting standards concerning the use of this endorsement.] **ASSIGNMENT OF RENTS OR LEASES ENDORSEMENT:** The assignment of rents or leases endorsement, NM form 62, may be attached to a New Mexico loan policy or leasehold loan policy, provided the premium in 13.14.10.45 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement. [13.14.8.25 NMAC - N, 7-1-04; A, 3-1-16]

**13.14.8.26 [ZONING ENDORSEMENT, UNIMPROVED LAND:** Upon payment of the premium provided for in 13.14.10.47 NMAC, and where the underwriter determines the risk to be acceptable, the “zoning endorsement, unimproved land” may be attached to a loan policy or owner’s policy. This endorsement shall not be issued on properties that are defined as “one-to-four family residential.” Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two (2) years following issuance of the endorsement.] **ZONING UNIMPROVED LAND ENDORSEMENTS:** Upon payment of the premium provided for in 13.14.10.47 NMAC, and where the underwriter determines the risk to be acceptable, the zoning - unimproved land endorsement, NM form 64, or zoning - unimproved land - no applicable zoning ordinances endorsement, NM form 64.1, may be attached to a loan policy or owner’s policy. This endorsement shall not be issued on properties that are defined as “one-to-four family residential.” Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two years following issuance of the endorsement. [13.14.8.26 NMAC - N, 7-1-05; A, 3-1-16]

**13.14.8.27 [ZONING ENDORSEMENT, COMPLETED STRUCTURE:** Upon being furnished with a satisfactory survey, payment of the premium provided for in 13.14.10.48 NMAC, and where the underwriter determines the risk to be acceptable;

the “zoning endorsement, completed structure” may be attached to a loan policy or owner’s policy. This endorsement shall not be issued on properties that are defined as “one-to-four family residential.” Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two (2) years following issuance of the endorsement.] **ZONING - COMPLETED STRUCTURE ENDORSEMENT, ZONING - LAND UNDER DEVELOPMENT ENDORSEMENT, AND ZONING - COMPLETED STRUCTURE - NO APPLICABLE ZONING ORDINANCES ENDORSEMENT:** Upon being furnished with a satisfactory survey, payment of the premium provided for in 13.14.10.48 NMAC, and where the underwriter determines the risk to be acceptable;

**A.** NM form 65 “the zoning - completed structure endorsement;” NM form 65.1 the “zoning - land under development endorsement;” and NM form 65.2 the “zoning - completed structure - no applicable zoning ordinances endorsement” may be attached to a loan policy or owner’s policy. These endorsements shall not be issued on properties that are defined as “one-to-four family residential.”

**B.** The coverage provided by any part of each endorsement may not be increased but may be deleted by:

- (1) crossing out the part on the form of endorsement;
- (2) retyping the form leaving out the part; or
- (3) special endorsement.

**C.** Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two (2) years following issuance of the endorsement. [13.14.8.27 NMAC - N, 7-1-05; A, 3-1-16]

**13.14.8.32 REVERSE MORTGAGE ENDORSEMENT:** The “reverse mortgage” endorsement, NM form 71, may be attached to a loan policy (NM form 2) provided the premium in 13.14.10.53 NMAC is paid and provided that (1) the mortgage being insured is a reverse annuity mortgage (“reverse mortgage”) securing future

advances under the HUD HECM (home equity conversion mortgage) program, Fannie Mae home keeper® program or other similar or private lender program approved by the insurer, (2) proof that each mortgagor is at least 62 years of age and, (3) proof that the mortgagor(s) are residing on the insured property as their principal residence or homestead. This endorsement shall only be issued on properties that are defined as “one-to-four family residential”. The loan policy (NM form 2) issued on a “reverse mortgage” may be issued in either the total amount of advances or 150% of the total amount of advances as requested by the lender. Schedule B of the loan policy (NM form 2) issued on a “reverse mortgage” shall contain the following special exception: pending disbursement of the full proceeds of the loan secured by the mortgage or deed of trust set forth under schedule A hereof, this policy insures only to the extent of the amount actually disbursed but increases as each disbursement is made, in good faith, and without knowledge of any defect in or objections to, the title, up to the full amount of the policy. The two mortgages or deeds of trust filed on a HUD HECM reverse mortgage loan may be insured on one loan policy if the priority of the mortgages or deeds of trust are disclosed when describing the mortgages or deeds of trust being insured in schedule A. The bracketed language in Paragraph (4)(f) of NM form 71 may be deleted from the endorsement with the approval of the underwriter if: (1) the risk is deemed acceptable; and, (2) standard exception No. 4 from schedule B of the underlying loan policy has been deleted, at no extra premium. Otherwise, the brackets themselves shall be removed and the language of Paragraph (4)(f) of NM form 71 shall be included in the endorsement. Each insurer shall establish written instructions with underwriting standards concerning the use of this endorsement. [13.14.8.32 NMAC - N, 09-15-10, A, 3-1-16]

**13.14.8.39 ENERGY PROJECT ENDORSEMENTS:** Upon payment of the premium provided for in 13.14.10.60 NMAC, and where the underwriter determines the risk to be acceptable, an “energy project endorsement” may be attached to a loan policy or owner’s policy, as applicable. These endorsements shall not be issued on properties that are defined as “one-to-four family residential.” Each endorsement may be issued only upon the written authorization

of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two years following issuance of the endorsement. [13.14.8.39 NMAC - N, 3-1-16]

**13.14.8.40 MEZZANINE FINANCING ENDORSEMENT:** Upon payment of the premium provided for in 13.14.10.62 NMAC, a “mezzanine financing endorsement” may be attached to an owner’s policy. This endorsement shall not be issued on properties that are one to four family residential property. This endorsement shall only be issued where the underwriter considers the risk acceptable. [13.14.8.40 NMAC - N, 3-1-16]

**SUPERINTENDENT OF INSURANCE**

This is an amendment to 13.14.9 NMAC, Sections, 11, 13, 19, 40 and 41, with a new Section 42 added, effective 03-01-2016

**13.14.9.11 PAYMENTS OF PREMIUM TO OTHERS:** No portion, split or percentage of any premium shall be paid either directly or indirectly to any person, firm or organization for title insurance, title examination, or determining status of title as set forth above, except a division of premium between an insurer admitted to do title insurance business in New Mexico and its licensed New Mexico agent pursuant to their agency agreement, or between licensed New Mexico agents (or companies admitted or licensed in New Mexico who do not have agency agreements in a county where some of the property is located) who are cooperating to close a transaction involving New Mexico property situated in more than one county to be insured in a single policy when each licensed agent or admitted company is rendering part of the services included in the premiums as set forth in 13.14.9.10 NMAC. Any agent which has cancelled its agency [contract] agreement or had its agency [contract] 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. Said endorsements shall be signed by an officer of the underwriter. The premium for such endorsement shall be collected by the cancelled agent and divided according to the

controlling promulgated rates at the time of issuance of said endorsement(s). The payment or receipt of referral fees by or between licensed agents and/or admitted companies is prohibited. [6-16-86; 13.14.9.11 NMAC - Rn, 13 NMAC 14.9.10, 5-15-00; A, 09-15-10; A, 3-1-16]

**13.14.9.13 ROUNDING TO THE NEAREST DOLLAR:** All premiums charged for title insurance policies, endorsements, binders or commitments shall be rounded to the nearest dollar after all computations necessary have been performed. Fifty cents or more shall be rounded up; forty-nine cents or less shall be rounded down. [6-16-86; 13.14.9.13 NMAC - Rn, 13 NMAC 14.9.8.6, 5-15-00; A, 3-1-16]

**13.14.9.19 NON-POLICY RATES:**

~~**A. Commitments to insure.** The premium for any commitment to insure (or an interim title insurance binder) is one hundred dollars (\$100.00) for the initial six (6) months, and an additional one hundred dollars (\$100.00) for each additional six month (or portion thereof) renewal or extension.~~

~~**B. Cancellation fee.** If the transaction fails to close and no policy is issued by the company issuing its commitment (or binder), the company may charge a cancellation fee that it determines reasonable and appropriate considering the nature and extent of the services rendered by it.~~

**A. Commitments to insure.** The premium for any commitment to insure (or an interim title insurance binder) is one hundred dollars (\$100.00) for the initial six months, and an additional one hundred dollars (\$100.00) for each additional six month (or portion thereof) renewal or extension.

**B. Cancellation fee.** If the transaction fails to close and no policy is issued by the company issuing its commitment (or binder), the company may charge a cancellation fee that it determines reasonable and appropriate considering the nature and extent of the services rendered by it.

**C. Pro Forma Policies.** The premium for the issuance of any form of owner’s or loan pro forma policy is one hundred dollars (\$100.00) for each pro forma policy, including all revisions thereto, issued pursuant to 13.14.5.13 NMAC. [6-16-86...3-1-89; 6-1-97, 6-1-98; 13.14.9.19 NMAC - Rn, 13 NMAC 14.9.9, 5-15-00; A, 10-1-12; A, 3-1-16]

**13.14.9.40 INSURING CONSTRUCTION LOANS AND DELETING STANDARD EXCEPTION 4 IN [STANDARD] LOAN POLICIES:**

**A.** ~~Loan policy with two-year (2) claims made limitation.~~ A loan policy may be issued to insure a construction loan mortgage [or deed of trust] for a premium of thirty dollars (\$30.00) plus one (\$1) dollar per thousand calculated upon the face amount of the construction mortgage if the loan policy contains the following two-year (2) 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 (2) 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.** ~~Extension endorsement rates.~~ A construction loan policy or a loan policy containing the two-year (2) claims made limitations pursuant to Subsection A of 13.14.9.40 NMAC may be extended beyond its initial two (2) year term pursuant to 13.14.7.18 NMAC for an additional premium of twenty-five dollars (\$25.00) per six (6) month endorsement.

**C.** ~~No subsequent credit on substitution loan.~~ The issuance of a construction loan policy may not be used as a basis for claiming a credit or discount on a statutory refinanced property premium pursuant to Section 59A-30-6.1 NMSA 1978, subsequent issue loan pursuant to 13.14.9.36 NMAC or substitution issue loan pursuant to 13.14.9.39 NMAC.

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

**E.** ~~Mechanics' and materialmen's lien coverage in [standard] a loan policy.~~ The standard exception numbered 4 in 13.14.5.9

NMAC may be deleted from a loan policy pursuant to 13.14.7.14 NMAC. The premium for deletion of the exception shall be twenty-five dollars (\$25.00) when the insurer's underwriting requirements for evidence of priority have been met or five dollars (\$5.00) per thousand of the face amount of the policy if said requirements have not been met as provided in 13.14.7.14 NMAC.] **A.**

**Loan policy with two-year claims made limitation.** A loan policy may be issued to insure a construction loan mortgage for a premium of thirty dollars (\$30.00) plus one dollar (\$1.00) per thousand calculated upon the face amount of the construction 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.** ~~Extension endorsement rates.~~ A construction loan policy or a loan policy containing the two-year claims made limitations pursuant to Subsection A of 13.14.9.40 NMAC may be extended beyond its initial two-year term pursuant to 13.14.7.18 NMAC for an additional premium of twenty-five dollars (\$25.00) per six-month endorsement.

**C.** ~~No subsequent credit on substitution loan.~~ 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 loan pursuant to 13.14.9.36 NMAC; or a substitution issue loan pursuant to 13.14.9.39 NMAC.

**D.** ~~Endorsement "A" rates.~~ An "A" endorsement may be issued at the same time and attached to a construction loan policy pursuant to 13.14.7.14 NMAC for an additional extra hazard risk premium of five dollars (\$5.00) per thousand of the face amount of the policy. At the time of each subsequent disbursement and upon a date down of the title having been made to the date thereof, an additional endorsement "A" may be issued pursuant to 13.14.7.17 NMAC

at an additional premium of twenty-five dollars (\$25.00) per endorsement.

**E.** ~~Mechanics' and materialmen's lien coverage in a loan policy.~~ The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted from any loan policy pursuant to 13.14.7.14 NMAC. The premium for deletion of the exception shall be twenty-five dollars (\$25.00) when the insurer's underwriting requirements for evidence of priority have been met or five dollars (\$5.00) per thousand of the face amount of the policy if said requirements have not been met as provided in 13.14.7.14 NMAC.

[6-16-86...4-1-94; 6-1-97; 6-1-98; 13.14.9.40 NMAC - Rn, 13 NMAC 14.9.13, 5-15-00; A, 3-1-02; A, 9-1-07; A, 10-1-12; A, 8-15-14; A, 3-1-16]

**13.14.9.41 SINGLE POLICY MULTIPLE COUNTIES:** In the event a proposed insured requests that a single policy be issued insuring multiple New Mexico properties that may be located in more than one county, the amount of insurance shall be allocated to each county based upon a supported amount as provided in writing by the proposed insured. The premium shall be calculated as if a policy was being issued separately in each county and the aggregated gross premiums shall be combined to determine the gross premium for the single policy. A New Mexico licensed agent ("agent") or admitted company that maintains an [agency] agent or direct operation in one of the counties in which the property is located ("direct operation") (collectively "issuing company") must issue the policy and disburse, or direct the payee to disburse, the gross premium attributable to each county to the agent or direct operation in such county for such policy to be remitted to the insurer in accordance with the division of premium rule in effect at the time of issuance. The policy schedules applicable to the land located in each county shall be countersigned by the agent or direct operation and provided to the issuing company. The issuing company shall provide each agent or direct operation with a complete copy of the final policy which shall be maintained in accordance with underwriter and regulations requirements. Each [agency] agent or direct operation shall report the policy utilizing the combined policy number but only the gross premium it received attributable to the property within its county shall be reported. Issuance of a single policy shall not be used when the transaction involves property outside

of New Mexico. This rule shall not be interpreted to allow title insurance underwriters to issue what is commonly referred to as home office issued policies. [13.14.9.41 NMAC - N, 10-1-12; A, 3-1-16]

### **13.14.9.42 RESIDENTIAL LIMITED COVERAGE MORTGAGE**

**MODIFICATION POLICY:** When a residential limited coverage mortgage modification policy (NM form 90) is issued, the premium shall be one-hundred twenty-five dollars (\$125.00) for each policy issued in an amount of \$0-\$1,000,000.00 and an additional one hundred twenty-five dollars (\$125.00) for each \$500,000.00 of policy amount above \$1,000,000.00 or part thereof up to \$20,000,000.00. [13.14.9.42 NMAC - N, 3-1-16]

## **SUPERINTENDENT OF INSURANCE**

This is an amendment to 13.14.10 NMAC, Sections 8, 13, 14, 15, 18, 20, 24, 32, 33, 45, 47 and 48 with Sections 60, 61, 62 and 63 added, effective 3-1-2016.

### **13.14.10.8 ASSIGNMENTS OF MORTGAGES:**

When a mortgage upon which a loan policy has been issued is assigned, each successive assignee may obtain an assignment endorsement, NM form 24, or an assignment and date down endorsement, NM form 24.1 from the insuring company certifying the title to include the date of recording the assignment, for a premium of twenty-five dollars (\$25.00) if issued within six [(6)] months of the date of the policy or date of the last endorsement reflecting an earlier assignment, or a premium of sixty-five dollars (\$65.00) if issued more than six [(6)] months from the date of the policy or last endorsement reflecting an earlier assignment, if any, whichever is later. [6-16-86, 2-16-87, 6-1-98; 13.14.10.8 NMAC - Rn, 13 NMAC 14.10.8, 5-15-00; A, 5-31-00; A, 8-17-09; A, 10-1-12; A, 7-31-14; A, 8-15-14; A, 3-1-16]

### **13.14.10.13 MANUFACTURED HOUSING ENDORSEMENT:**

When a manufactured housing endorsement, NM form 16, a manufactured housing unit (conversion - loan), NM form 16.1, or a manufactured housing unit (conversion - owner) NM form 16.2 is issued the premium for each endorsement shall be seventy-five dollars (\$75.00) in addition to the premium charged for

the policy whether the endorsement is attached at issuance of the policy or thereafter.] When a manufactured housing endorsement, NM form 16, a manufactured housing unit - conversion (loan), NM form 16.1, or a manufactured housing unit - conversion owner's NM form 16.2 is issued the premium for each endorsement shall be seventy-five dollars (\$75.00) in addition to the premium charged for the policy whether the endorsement is attached at issuance of the policy or thereafter. [6-16-86, 2-16-87, 6-1-98; 13.14.10.13 NMAC - Rn, 13 NMAC 14.10.13, 5-15-00; A, 5-31-00; A, 7-1-04; A, 7-1-06; A, 8-17-09; A, 3-1-16]

### **13.14.10.14 CONDOMINIUM**

**ENDORSEMENT:** [A condominium endorsement may be issued at the same time as and attached to an owner's or a loan policy for a premium of twenty-five dollars (\$25.00). Paragraph 3 of NM form 30 may be deleted at the option of the insurer. Each insurer shall establish its written underwriting requirements for such deletion and shall furnish its agent(s) written instructions relating thereto.] A condominium endorsement unpaid assessments, NM form 30, may be issued at the same time as and attached to an owner's or a loan policy for a premium of twenty-five dollars (\$25.00). Paragraph (3) of unpaid assessments NM form 30 may be deleted at the option of the insurer. Each insurer shall establish its written underwriting requirements for such deletion and shall furnish its agent(s) written instructions relating thereto. [6-16-86, 2-16-87, 6-1-98; 13.14.10.14 NMAC - Rn, 13 NMAC 14.10.14, 5-15-00; A, 5-31-00; A, 8-17-09; A, 7-31-14; A, 8-15-14; A, 3-1-16]

### **13.14.10.15 PLANNED UNIT DEVELOPMENT (PUD)**

**ENDORSEMENT:** [A planned unit development endorsement, NM form 13, and the planned unit development, NM form 13.1 may be issued at the same time and attached to a policy for a premium of twenty-five dollars (\$25.00).] A planned unit development endorsement, all assessments NM form 13, and the planned unit development endorsement unpaid assessments, NM form 13.1 may be issued at the same time and attached to a policy for a premium of twenty-five dollars (\$25.00). [6-16-86, 2-16-87, 6-1-98; 13.14.10.15 NMAC - Rn, 13 NMAC 14.10.15, 5-15-00; A, 5-31-00; A, 8-17-09; A, 7-31-14; A, 8-15-14; A, 3-1-16]

### **13.14.10.18 DOWN DATE**

**ENDORSEMENT:** [Any down date (or date down) endorsement, to a standard loan policy containing a two-year (2) claims made limitation to a construction loan policy, or to a foreclosure title insurance policy including the NM 84 disbursement endorsement, shall be issued for a premium of twenty-five dollars (\$25.00).] Any down date (or date down) endorsement, including the NM form 22 pending disbursement down date endorsement, and the NM form 84 disbursement endorsement, to a loan policy containing a two-year claims made limitation or to a construction loan policy, shall be issued for a premium of twenty-five dollars (\$25.00).

[6-16-86...4-3-95; 6-1-98; 13.14.10.18 NMAC - Rn, 13 NMAC 14.10.18, 5-15-00; A, 5-31-00; A, 09-15-10; A, 7-31-14; A, 8-15-14; A, 3-1-16]

### **13.14.10.20 RENEWAL, EXTENSION AND PARTIAL RELEASE ENDORSEMENT:**

[Upon request of the named insured and the proper recording of all necessary documents at the expense of the insured, the insuring company or its agent may endorse its loan policy to reflect the renewal, extension, reinstatement, modification, partial release, release of additional collateral or release from personal liability of an insured lien in the manner prescribed by Subsection D of 13.14.8.8 NMAC for a premium of twenty-five dollars (\$25.00) if issued within six (6) months from the date of the policy or date of the last endorsement reflecting an earlier assignment, renewal, etc., or a premium of sixty-five dollars (\$65.00) if issued more than six (6) months from the date of the policy or last such endorsement, if any, whichever is later.] Upon request of the named insured and the proper recording of all necessary documents at the expense of the insured, the insuring company or its agent may endorse its loan policy to reflect the renewal, extension, reinstatement, modification, partial release, release of additional collateral or release from personal liability of an insured lien in the manner prescribed by Subsection E of 13.14.8.8 NMAC for a premium of twenty-five dollars (\$25.00) if issued within six months from the date of the policy or date of the last endorsement reflecting an earlier assignment, renewal, etc., or a premium of sixty-five dollars (\$65.00) if issued more than six months from the date of the policy or last such endorsement, if any, whichever is later.

[6-16-86, 2-16-87, 6-1-98; 13.14.10.20 NMAC - Rn, 13 NMAC 14.10.20, 5-15-00; A, 5-31-00; A, 10-1-12; A, 7-31-14; A, 8-15-1; A, 3-1-16]

**13.14.10.24 CONDOMINIUM ENDORSEMENT TO OWNER'S POLICY:**

[Upon request, the insuring company or its agent may issue a condominium endorsement to owner's policy, NM form 30 for a premium of twenty-five dollars (\$25.00). Paragraph 3 of NM form 30 may be deleted at the option of the insurer. Each insurer shall establish its written underwriting requirements for such deletion and shall furnish its agent(s) written instructions relating thereto.] Upon request, the insuring company or its agent may issue a condominium endorsement unpaid assessments to owner's policy, NM form 30 for a premium of twenty-five dollars (\$25.00). Paragraph (3) of NM form 30 may be deleted at the option of the insurer. Each insurer shall establish its written underwriting requirements for such deletion and shall furnish its agent(s) written instructions relating thereto. [3-1-89, 6-1-98; 13.14.10.24 NMAC - Rn, 13 NMAC 14.10.24, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14; A, 3-1-16]

**13.14.10.32 DOWN DATE ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY:**

**A.** The down date endorsement to residential limited coverage junior loan policy JR1, NM form 46, may be issued one or more times after issuance of an ALTA residential limited coverage junior loan policy (NM form 45). The premium for the issuance of each NM form 46 endorsement is twenty-five dollars (\$25.00). NM form 46 may not be issued more than one year after the date of policy stated in the ALTA residential limited coverage junior loan policy (NM form 45).

**B.** Paragraph B of NM form 46 shall describe the insured mortgage setting forth the date of recording of the insured's mortgage. This endorsement may also be issued solely for update purposes, prior to recordation of the insured mortgage by inserting the word "None" at the end of Paragraph B and by deleting the phrase "date of endorsement is the date shown above or the date of recording of the insured's mortgage, whichever is later" (if it appears on the NM form 46 endorsement after "date of endorsement").

**C.** Upon request of the named insured and the proper recording of

all necessary documents meeting insurer's underwriting standards, the amount of the loan secured by the insured's mortgage insurance previously stated in the ALTA residential limited coverage junior loan policy (NM form 45) may be increased by adding a Paragraph D. It 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. The additional premium (in addition to the premium for the NM form 46) shall be the difference between the premium from the amount of insurance stated in the ALTA residential limited coverage junior loan policy (NM form 45) and the amount of insurance stated in Paragraph D of NM form 46, calculated pursuant to 13.14.9.29 NMAC. [6-1-98; 13.14.10.32 NMAC - Rn, 13 NMAC 14.10.32, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14; A, 3-1-16]

**13.14.10.33 REVOLVING CREDIT/VARIABLE RATE ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY:**

The revolving credit/variable rate endorsement to residential limited coverage junior loan policy JR2 (future advance), NM form 47, may be issued when NM form 46 is issued. It may also be issued when it is incorporated in NM form 46 by describing the insured's mortgage in Paragraph B and checking the appropriate box in Paragraph C. The premium for the issuance of NM form 47, or its incorporation into NM form 46, is twenty-five dollars (\$25.00). [6-1-98; 13.14.10.33 NMAC - Rn, 13 NMAC 14.10.33, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14; A, 3-1-16]

**13.14.10.45 ASSIGNMENT OF RENTS<sup>[f]</sup> OR LEASES**

**ENDORSEMENT:** When an assignment of rents<sup>[f]</sup> or leases endorsement, NM form 62, is issued pursuant to 13.14.8.25 NMAC, the premium for each endorsement shall be one hundred dollars (\$100.00) in addition to the premium charged for the policy. [13.14.10.45 NMAC - N, 7-1-04; A, 3-1-16]

**13.14.10.47 [ZONING-ENDORSEMENT, UNIMPROVED LAND:] ZONING, UNIMPROVED LAND ENDORSEMENT**

[When a zoning unimproved land (NM form 64), is issued pursuant to 13.14.8.26 NMAC, the premium shall be 15% of the full basic premium rate. Agents shall receive commissions pursuant

to 13.14.3.11 NMAC for liabilities up to \$27,000,000.00; agents' retention shall be zero for liabilities greater than \$27,000,000.00. In no case shall the premium charge for the issuance of NM form 64 be less than \$250.00. When issuing multiple zoning endorsements simultaneously on an owner's policy and a loan policy or loan policies in a single transaction, only one premium shall be charged calculated on the policy with the highest amount of insurance.] When a zoning - unimproved land endorsement (NM form 64) or a zoning - unimproved land - no applicable zoning ordinances endorsement (NM form 64.1) is issued pursuant to 13.14.8.26 NMAC, the premium shall be 15% of the full basic premium rate. Agents shall receive commissions pursuant to 13.14.3.11 NMAC for liabilities up to \$27,000,000.00; agents' retention shall be zero for liabilities greater than \$27,000,000.00. In no case shall the premium charge for the issuance of NM form 64 or NM form 64.1 be less than \$250.00. When issuing multiple zoning endorsements simultaneously on an owner's policy and a loan policy or loan policies in a single transaction, only one premium shall be charged calculated on the policy with the highest amount of insurance. [13.14.10.47 NMAC - N, 7-1-05; A, 3-1-16]

**13.14.10.48 [ZONING-ENDORSEMENT, COMPLETED STRUCTURE/ZONING-ENDORSEMENT LAND UNDER DEVELOPMENT] ZONING-COMPLETED STRUCTURE ENDORSEMENT, ZONING - LAND UNDER DEVELOPMENT ENDORSEMENT, AND ZONING COMPLETED STRUCTURE - NO APPLICABLE ZONING ORDINANCES ENDORSEMENT:**

[When a zoning endorsement, completed structure (NM form 65), or a zoning endorsement, land under development (NM 65.1) is issued pursuant to 13.14.8.27 NMAC, the premium shall be 23% of the full basic premium rate. Agents shall receive commissions pursuant to 13.14.3.11 NMAC for liabilities up to \$27,000,000.00; agents' retention shall be zero for liabilities greater than \$27,000,000.00. In no case shall the premium charge for the issuance of NM form 65, be less than \$250.00. When issuing multiple zoning endorsements simultaneously on an owner's policy and a loan policy in a single transaction, only one premium

shall be charged calculated on the policy with the highest amount of insurance.] When a zoning - completed structure endorsement (NM form 65), a zoning - land under development endorsement (NM form 65.1) or a zoning - completed structure - no applicable zoning ordinances endorsement (NM form 65.2) is issued pursuant to 13.14.8.27 NMAC, the premium shall be 23% of the full basic premium rate. Agents shall receive commissions pursuant to 13.14.3.11 NMAC for liabilities up to \$27,000,000.00; agents' retention shall be zero for liabilities greater than \$27,000,000.00. In no case shall the premium charge for the issuance of NM form 65, NM form 65.1 or NM form 65.2, be less than \$250.00. When issuing multiple zoning endorsements simultaneously on an owner's policy and a loan policy in a single transaction, only one premium shall be charged calculated on the policy with the highest amount of insurance.

[13.14.10.48 NMAC - N, 7-1-05; A, 7-31-14; A, 3-1-16]

**13.14.10.60 ENERGY PROJECT ENDORSEMENTS:** When any one or more of the energy project endorsements (NM forms 88 through 88.8) is issued, the premium shall be 10% of the full basic premium rate for all endorsements issued with respect to each owner's policy and 10% of the full basic premium rate for all endorsements issued with respect to each loan policy issued in a single transaction. Agents shall receive commissions for liabilities up to \$27,000,000.00; agents' retention shall be zero for liabilities greater than \$27,000,000.00. In no case shall the premium charge for the issuance of any one of the NM forms 88 through 88.8 be less than \$250.00.

[13.14.10.60 NMAC - N, 3-1-16]

**13.14.10.61 MORTGAGE MODIFICATION ENDORSEMENTS:**

**A.** When a mortgage modification endorsement (NM form 80) or a modification with subordination endorsement (NM form 80.1) is issued, the premium shall be sixty-five dollars (\$65.00) for each endorsement issued.

**B.** When a mortgage with additional amount of insurance endorsement (NM form 80.2) is issued, the premium shall be sixty-five dollars (\$65.00) plus an additional premium calculated by determining the difference between the charge for a loan policy in the amount of the current amount of insurance before the amount of insurance is

increased, and the charge for a loan policy in the amount of the increased insurance utilizing the appropriate brackets in the schedule of basic premium rates in effect as of the date of the endorsement. The minimum combined charge for the NM form 80.2 endorsement is ninety dollars (\$90.00) for each endorsement issued.

[13.14.10.61 NMAC - N, 3-1-16]

**13.14.10.62 MEZZANINE FINANCING ENDORSEMENT:** When a mezzanine financing endorsement (NM form 89) is issued, the premium shall be one hundred dollars (\$100.00) for each endorsement issued.

[13.14.10.62 NMAC - N, 3-1-16]

**13.14.10.63 OWNER'S CONTRACT PURCHASER'S CONVERSION ENDORSEMENT:** When a contract purchaser's policy is converted to a fee simple owner's policy by use of the contract purchaser's conversion endorsement, NM form 91, pursuant to 13.14.6.10 NMAC, the premium for such endorsement shall be fifty percent (50%) of the basic premium rate in effect at the time of issuance of such endorsement, up to the face amount of the contract purchaser's policy. If more insurance is desired or required under the endorsement than was written in the contract purchaser'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 in 13.14.9.30 NMAC.

[13.14.10.63 NMAC - N, 3-1-16]

**SUPERINTENDENT OF INSURANCE**

This is an amendment to 13.14.16 NMAC, Sections, 1, 9, 10, 15 and 17 effective 03-01-2016.

**13.14.16.1 ISSUING AGENCY:** [New Mexico Public Regulation Commission, Insurance Division] Office of Superintendent of Insurance, Title Insurance Bureau.

[13.14.16.1 NMAC - Rp, 13.14.16.1 NMAC, 7-1-06; A, 3-1-16]

**13.14.16.9 SCHEDULE A - STATEMENT OF INCOME AND EXPENSES:**

Continued on Next Page

**NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT**  
**SCHEDULE A - STATEMENT OF INCOME AND EXPENSES**  
 For the Calendar Year Ending December 31, 20\_\_.

|                            |  |
|----------------------------|--|
| <b>[AGENCY] AGENT NAME</b> |  |
| <b>FEDERAL I.D. NUMBER</b> |  |
| <b>ADDRESS</b>             |  |
| <b>CONTACT NAME</b>        |  |

**Check one:**

|   |   |
|---|---|
| <input type="checkbox"/> INDEPENDENT (NON-AFFILIATED) | Title insurance [agencies] agents that are independently owned and write title insurance business for one or more title insurance underwriters.       |
| <input type="checkbox"/> AFFILIATED                   | Title insurance [agencies] agents with 10% or greater ownership by a title insurance underwriter, including wholly-owned agencies.                    |
| <input type="checkbox"/> DIRECT                       | Agency-type operations performed by the home or branch office of a title insurance underwriter. This does NOT include wholly-owned [agencies] agents. |

**Part A: Revenue**

|    |   |   |
|----|---|---|
| 1. | Title insurance written premiums (from Schedule B)        | 0 |
| 2. | Less: Remitted title insurance premiums (from Schedule B) | 0 |
| 3. | Retained title insurance premiums (from Schedule B)       | 0 |
| 4. | Other income (from Schedule C)                            | 0 |
| 5. | Total Revenue   | 0 |

**Part B: Expenses**

|     |  |   |
|-----|--|---|
| 1.  | Employees' salaries and wages                      |   |
| 2.  | Owners' and partners' salaries and wages           |   |
| 3.  | Employee benefits                                  |   |
| 4.  | Rent   |   |
| 5.  | Insurance  |   |
| 6.  | Legal expense                                      |   |
| 7.  | Licenses, taxes and fees                           |   |
| 8.  | Title plant expense and maintenance                |   |
| 9.  | Office supplies                                    |   |
| 10. | Depreciation                                       |   |
| 11. | Automobile expense                                 |   |
| 12. | Communication expense                              |   |
| 13. | Education expense                                  |   |
| 14. | Bad debts  |   |
| 15. | Interest expense                                   |   |
| 16. | Employee travel and lodging                        |   |
| 17. | Loss and loss adjustment expense (from Schedule D) | 0 |
| 18. | Accounting and auditing expense                    |   |
| 19. | Public relations expense                           |   |
| 20. | Other expenses (from Schedule E)                   | 0 |





|                                       |   |   |   |
|---------------------------------------|---|---|---|
|                                       |   |   |   |
|                                       |   |   |   |
| <b>Total</b>                          |   |   |   |
|                                       | (Carry total forward to Schedule A, line A-1) | (Carry total forward to Schedule A, line A-2) | (Carry total forward to Schedule A, line A-3) |
| Percentage of premiums remitted: 0.0% |   |   |   |

[13.14.16.10 NMAC - Rp, 13.14.16.10 NMAC, 7-1-06; A, 09-15-10; A, 3-1-16]

**13.14.16.15 SCHEDULE F - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATED ENTITIES:**

| NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT<br>SCHEDULE F - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATED ENTITIES<br>For the Calendar Year Ending December 31, 20___. |   |        |                  |                                    |
|---|---|--------|------------------|------------------------------------|
| 1   | 2   | 3      | 4                | 5                                  |
| Name and Address of Affiliated <del>[Agency]</del> <u>Agent</u>   | Relation to Your <del>[Agency]</del> <u>Agent</u> | Amount | Description Code | Reported Elsewhere in this Report? |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
|   |   |        |                  |                                    |
| <b>Total</b>  |   | 0      |                  |                                    |

|                    |      |
|--------------------|------|
| Description        | Code |
| Income             | I    |
| Expense Allocation | E    |

[13.14.16.15 NMAC - Rp, 13.14.16.14 NMAC, 7-1-06; A, 09-15-10; A, 3-1-16]

**13.14.16.17 SCHEDULE H - IDENTIFICATION OF OWNERS:**

| NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT<br>SCHEDULE H - IDENTIFICATION OF OWNERS<br>For the Calendar Year Ending December 31, 20___. |  |                              |
|--|--|------------------------------|
| 1  | 2  | 3                            |
| Name of Each Individual or Entity  | Percentage of <del>[Agency]</del> <u>agent</u> Owned | Description Code (see below) |
|  |  |                              |



|   |   |   |   |   |   |
|---|---|---|---|---|---|
| 3 | Direct written premiums remitted to underwriter | 0 | 0 | 0 | 0 |
| 4 | Escrow and settlement service charges           |   |   |   | 0 |
| 5 | Other title fees and service charges            |   |   |   | 0 |
| 6 | Total other income                              | 0 | 0 | 0 | 0 |
| 7 | <b>Total revenue</b>                            | 0 | 0 | 0 | 0 |

0

For underwriters that charge rates below the promulgated rates:

From Form 3

Difference

|   |  |  |  |  |   |
|---|--|--|--|--|---|
| 8 | Direct premiums as if they had been written at promulgated rates |  |  |  | 0 |
|---|--|--|--|--|---|

0

0

**Part B - Corporate Expenses**

Line 1 as defined per NAIC annual statement, STATEMENT OF INCOME exhibit.

Lines 2 through 22 as defined per NAIC annual statement, EXPENSES exhibit.

All entries should show NEW MEXICO expenses only and should NOT include direct charges from direct operations.

|    |  |  |  |  |   |
|----|--|--|--|--|---|
| 1  | Losses and loss adjustment expenses incurred       |  |  |  | 0 |
| 2  | Total personnel costs                              |  |  |  | 0 |
| 3  | Total production services purchased outside        |  |  |  | 0 |
| 4  | Advertising  |  |  |  | 0 |
| 5  | Boards, bureaus, and associations                  |  |  |  | 0 |
| 6  | Title plant rent and maintenance                   |  |  |  | 0 |
| 7  | Claim adjustment services                          |  |  |  | 0 |
| 8  | Amounts charged off, net of recoveries             |  |  |  | 0 |
| 9  | Marketing and promotional expenses                 |  |  |  | 0 |
| 10 | Insurance  |  |  |  | 0 |
| 11 | Directors' fees                                    |  |  |  | 0 |
| 12 | Travel and travel items                            |  |  |  | 0 |
| 13 | Rent and rent items                                |  |  |  | 0 |
| 14 | Equipment  |  |  |  | 0 |
| 15 | Cost or depreciation of EDP equipment and software |  |  |  | 0 |
| 16 | Printing, stationery, books, and periodicals       |  |  |  | 0 |
| 17 | Postage, telephone, messenger, and express         |  |  |  | 0 |
| 18 | Legal and auditing                                 |  |  |  | 0 |
| 19 | Total taxes, licenses, and fees                    |  |  |  | 0 |
| 20 | Real estate expenses                               |  |  |  | 0 |
| 21 | Real estate taxes                                  |  |  |  | 0 |

|                            |  |   |   |   |   |
|----------------------------|--|---|---|---|---|
| 22                         | Aggregate write-ins for miscellaneous expenses |   |   |   | 0 |
| 23                         | Total Corporate Expenses                       | 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, 7-1-06; A, 09-15-10; A, 3-1-16]

13.14.17.12 FORM 3 - TRANSACTION REPORT:

| <b>NEW MEXICO TITLE INSURERS STATISTICAL REPORT</b><br><b>FORM 3 - TRANSACTION REPORT</b><br>For the Calendar Year Ending December 31, 20__<br><b>NEW MEXICO EXPERIENCE ONLY</b> |                  |   |                     |                     |                         |                                  |  |
|--|------------------|---|---------------------|---------------------|-------------------------|----------------------------------|--|
| Insurance Company  |                  |   |                     |                     |                         |                                  |  |
|  |                  |   |                     |                     |                         |                                  | For Underwriters That Charge Rates Below the Promulgated Rates   |
| NM Form No.  | Transaction Code | Transaction Type  | NMAC Rate Provision | No. of Transactions | Direct Premiums Written | Dependent on Basic Premium Rate? | Direct Premiums As If They Had Been Written at Promulgated Rates |
| none   | 0001             | Charge for Additional Chain of Title                                  | 13.14.9.16          |                     |                         | No                               |  |
| none   | 0002             | Charge for Unplatted Tract of Unusual Complexity                      | 13.14.9.16          |                     |                         | Yes                              |  |
| none   | 0003             | Abstract Retirement Credit  | 13.14.9.24          |                     |                         | Yes                              |  |
| none   | 0004             | Loan Policy - Mechanic's Lien Coverage With Evidence of Priority      | 13.14.9.40 E        |                     |                         | No                               |  |
| none   | 0005             | Loan Policy - Mechanic's Lien Coverage Without Evidence of Priority   | 13.14.9.40 E        |                     |                         | Yes                              |  |
| none   | 0006             | Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired     | 13.14.10.9A         |                     |                         | No                               |  |
| none   | 0007             | Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired | 13.14.10.9B         |                     |                         | Yes                              |  |
| none   | 0008             | Survey Coverage Endorsement   | 13.14.10.10         |                     |                         | Yes                              |  |
| none   | 0009             | Duplicate Original Policy   | 13.14.9.33          |                     |                         | No                               |  |
| none   | 0013             | Cancellation Fee  | 13.14.9.19B         |                     |                         | No                               |  |
| †  | 0101             | Owner's Policy  | 13.14.9.20          |                     |                         | Yes                              |  |
| †  | 0102             | Owner's Policy - With Bulk Rate                                       | 13.14.9.23          |                     |                         | Yes                              |  |

|     |      |   |             |  |  |     |  |
|-----|------|---|-------------|--|--|-----|--|
| 1   | 0103 | Multiple Owners on Same Land - Simultaneous Issue                       | 13.14.9.32  |  |  | Yes |  |
| 1   | 0104 | Replacement Owner's Policy  | 13.14.9.26  |  |  | Yes |  |
| 1   | 0110 | Owner's Policy - Reissue (10% Discount)                                 | 13.14.9.35  |  |  | Yes |  |
| 1   | 0115 | Owner's Policy - Reissue (15% Discount)                                 | 13.14.9.35  |  |  | Yes |  |
| 1   | 0120 | Owner's Policy - Reissue (20% Discount)                                 | 13.14.9.35  |  |  | Yes |  |
| 1   | 0125 | Owner's Policy - Reissue (25% Discount)                                 | 13.14.9.35  |  |  | Yes |  |
| 2   | 0201 | Loan Policy - Single Issue  | 13.14.9.22  |  |  | Yes |  |
| 2   | 0202 | Loan Policy - Simultaneous Issue with Owner's Policy                    | 13.14.9.30  |  |  | No  |  |
| 2   | 0203 | Loan Policy - Second Mortgage or Subsequent Issue                       | 13.14.9.36  |  |  | Yes |  |
| 2   | 0204 | Replacement Loan Policy   | 13.14.9.26  |  |  | Yes |  |
| 2   | 0205 | Loan Policy Insuring Construction Loan                                  | 13.14.9.40A |  |  | No  |  |
| 2   | 0206 | Loan Policy Insuring Construction Loan Extension                        | 13.14.9.40B |  |  | No  |  |
| 2   | 0240 | Loan Policy - Substitution Rate (less than 2 years - 40%)               | 13.14.9.39  |  |  | Yes |  |
| 2   | 0245 | Loan Policy - Substitution Rate (more than 2 years, less than 3 - 45%)  | 13.14.9.39  |  |  | Yes |  |
| 2   | 0250 | Loan Policy - Substitution Rate (more than 3 years, less than 4 - 50%)  | 13.14.9.39  |  |  | Yes |  |
| 2   | 0255 | Loan Policy - Substitution Rate (more than 4 years, less than 5 - 55%)  | 13.14.9.39  |  |  | Yes |  |
| 2   | 0260 | Loan Policy - Substitution Rate (more than 5 years, less than 6 - 60%)  | 13.14.9.39  |  |  | Yes |  |
| 2   | 0265 | Loan Policy - Substitution Rate (more than 6 years, less than 7 - 65%)  | 13.14.9.39  |  |  | Yes |  |
| 2   | 0270 | Loan Policy - Substitution Rate (more than 7 years, less than 8 - 70%)  | 13.14.9.39  |  |  | Yes |  |
| 2   | 0275 | Loan Policy - Substitution Rate (more than 8 years, less than 9 - 75%)  | 13.14.9.39  |  |  | Yes |  |
| 2   | 0280 | Loan Policy - Substitution Rate (more than 9 years, less than 10 - 80%) | 13.14.9.39  |  |  | Yes |  |
| 6   | 0600 | Commitment for Title Insurance  | 13.14.9.19A |  |  | No  |  |
| 6.1 | 0601 | Plain Language Commitment for Title Insurance                           | 13.14.9.19A |  |  | No  |  |
| 9   | 0900 | Notice of Availability of Owner's Title Insurance                       | None        |  |  | No  |  |

|      |      |  |             |  |  |     |  |
|------|------|--|-------------|--|--|-----|--|
| 10   | 1000 | Facultative Reinsurance Agreement  | None        |  |  | No  |  |
| 11   | 1104 | Correction/Multipurpose-Endorsement  | 13.14.8.8   |  |  | No  |  |
| 11   | 1105 | Renewal, Extension & Partial-Release Endorsement                           | 13.14.10.20 |  |  | No  |  |
| 11   | 1106 | Extension of Commitment for-title Insurance                                | 13.14.9.19A |  |  | No  |  |
| 11   | 1108 | Increase in Coverage   | 13.14.6.8D  |  |  | Yes |  |
| 12   | 1200 | Condominium Endorsement – All Assessments (ALTA 4-06)                      | 13.14.10.14 |  |  | No  |  |
| 13   | 1300 | Planned Unit Development-Endorsement – All Assessments (ALTA 5-06)         | 13.14.10.15 |  |  | No  |  |
| 13.1 | 1301 | Planned Unit Development-Endorsement – Unpaid Assessments (ALTA 5.1-06)    | 13.14.10.15 |  |  | No  |  |
| 14   | 1400 | Variable Rate Mortgage-Endorsement (ALTA 6-06)                             | 13.14.10.12 |  |  | No  |  |
| 15   | 1500 | Variable Rate Mortgage-Endorsement – Negative Amortization (ALTA 6.2-06)   | 13.14.10.12 |  |  | No  |  |
| 16   | 1600 | Manufactured Housing Unit-Endorsement (ALTA 7-06)                          | 13.14.10.13 |  |  | No  |  |
| 16.1 | 1601 | Manufactured Housing-Unit (Conversion Loan)-Endorsement (ALTA 7.1-06)      | 13.14.10.13 |  |  | No  |  |
| 16.2 | 1602 | Manufactured Housing Unit (Conversion Owner’s)-Endorsement (ALTA 7.2-06)   | 13.14.10.13 |  |  | No  |  |
| 17   | 1700 | Revolving Credit-Endorsement   | 13.14.10.12 |  |  | No  |  |
| 18   | 1800 | Construction Loan Policy-Endorsement A                                     | 13.14.9.40D |  |  | Yes |  |
| 20   | 2000 | Leasehold – Owner’s-Endorsement (to create policy) (ALTA 13-06), 04-02-12) | 13.14.10.19 |  |  | No  |  |
| 20   | 2003 | Leasehold Owners Policy – Simultaneous Issue with Owner’s Policy           | 13.14.9.31  |  |  | Yes |  |
| 20   | 2010 | Leasehold Owner’s Policy – Reissue (10% Discount)                          | 13.14.9.35  |  |  | Yes |  |
| 20   | 2015 | Leasehold Owner’s Policy – Reissue (15% Discount)                          | 13.14.9.35  |  |  | Yes |  |
| 20   | 2020 | Leasehold Owner’s Policy – Reissue (20% Discount)                          | 13.14.9.35  |  |  | Yes |  |
| 20   | 2025 | Leasehold Owner’s Policy – Reissue (25% Discount)                          | 13.14.9.35  |  |  | Yes |  |
| 21   | 2100 | Leasehold Loan Endorsement (to create policy) (ALTA 13.1-06), 04-02-12)    | 13.14.10.19 |  |  | No  |  |

|      |      |   |             |  |  |     |  |
|------|------|---|-------------|--|--|-----|--|
| 21.1 | 2101 | Leasehold Loan Policy—<br>Simultaneous Issue with<br>Leasehold Owner's Policy                           | 13.14.9.30  |  |  | No  |  |
| 22   | 2200 | Pending Disbursement Down-<br>Date Endorsement  | 13.14.10.18 |  |  | No  |  |
| 23   | 2300 | Pending Improvements-<br>Endorsement  | 13.14.10.23 |  |  | No  |  |
| 24   | 2400 | Assignment Endorsement<br>(ALTA 10-06)  | 13.14.10.8  |  |  | No  |  |
| 24.1 | 2401 | Assignment and Down Date-<br>Endorsement (ALTA 10.1-06)   | 13.14.10.8  |  |  | No  |  |
| 25   | 2500 | Additional Advance-<br>Endorsement  | 13.14.10.11 |  |  | No  |  |
| 26   | 2600 | Partial Coverage Endorsement  | None        |  |  | No  |  |
| 28   | 2800 | Non-Imputation - Full Equity-<br>Transfer Endorsement (ALTA-<br>15-06)                                  | 13.14.10.21 |  |  | Yes |  |
| 28.1 | 2801 | Non-Imputation—Additional-<br>Interest Endorsement (ALTA-<br>15.1-06)                                   | 13.14.10.21 |  |  | Yes |  |
| 28.2 | 2802 | Non-Imputation—Partial-<br>Equity Transfer Endorsement<br>(ALTA 15.2-06)                                | 13.14.10.21 |  |  | Yes |  |
| 29   | 2900 | Environmental Protection-<br>Lien Endorsement (ALTA-<br>8.1-06)   | 13.14.10.22 |  |  | No  |  |
| 30   | 3000 | Condominium Endorsement—<br>Unpaid Assessments (ALTA-<br>4.1-06)  | 13.14.10.24 |  |  | No  |  |
| 31   | 3100 | Owner's Leasehold-<br>Conversion Endorsement (to-<br>create policy)                                     | 13.14.9.38  |  |  | Yes |  |
| 33   | 3300 | Change of Name Endorsement  | None        |  |  | No  |  |
| 34   | 3400 | U.S. Policy, ALTA (12-03-12)  | 13.14.9.25  |  |  | Yes |  |
| 41   | 4100 | Limited Pre-Foreclosure Title-<br>Insurance Policy<br>ALTA (12-03-12)                                   | 13.14.9.28  |  |  | Yes |  |
| 42   | 4200 | Limited Pre-Foreclosure Title-<br>Insurance Policy Down Date-<br>Endorsement<br>ALTA (12-03-12)         | 13.14.10.18 |  |  | No  |  |
| 43   | 4300 | Insuring Around Endorsement   | 13.14.8.13  |  |  | No  |  |
| 44   | 4400 | Revolving Credit, Increased-<br>Credit Limit Endorsement  | 13.14.10.30 |  |  | No  |  |
| 45   | 4500 | Residential Limited Coverage-<br>Junior Loan Policy ALTA-<br>(Rev. 08-01-12)                            | 13.14.9.29  |  |  | No  |  |
| 46   | 4600 | Down Date Endorsement to-<br>Residential Limited Coverage-<br>Junior Loan Policy ALTA JR1-<br>(8-01-12) | 13.14.10.32 |  |  | No  |  |



|      |      |  |             |  |  |     |  |
|------|------|--|-------------|--|--|-----|--|
| 47   | 4700 | Endorsement to Residential-Limited Coverage Junior-Loan Policy ALTA JR2 Future Advances (08-01-12)   | 13.14.10.33 |  |  | No  |  |
| 48   | 4800 | Truth-in-Lending-Endorsement (ALTA 2-06)   | 13.14.10.31 |  |  | Yes |  |
| 50   | 5000 | Restrictions, Eneroachments-and Minerals Endorsement - Loan Policy (ALTA 9-06)                       | 13.14.10.34 |  |  | Yes |  |
| 50.1 | 5001 | Restrictions Encroachments, Minerals - Loan Policy-Endorsement (ALTA 9.3-06)                         | 13.14.10.34 |  |  | Yes |  |
| 51   | 5100 | Land Abuts Street-Endorsement  | 13.14.10.36 |  |  | No  |  |
| 52   | 5200 | Location Endorsement   | 13.14.10.37 |  |  | No  |  |
| 54   | 5400 | Contiguity Single Parcel-Endorsement   | 13.14.10.39 |  |  | No  |  |
| 55   | 5500 | Named Insured Endorsement  | 13.14.10.40 |  |  | No  |  |
| 56   | 5600 | Restrictions, Eneroachments,-Minerals - Owner's Policy-(Unimproved Land)-Endorsement (ALTA 9.1-06)   | 13.14.10.34 |  |  | Yes |  |
| 56.1 | 5601 | Restrictions, Eneroachments,-Minerals - Owner's Policy-(Unimproved Land)-Endorsement (ALTA 9.4-06)   | 13.14.10.34 |  |  | Yes |  |
| 57   | 5700 | Restrictions, Eneroachments,-Minerals - Owner's Policy (Improved Land)-Endorsement (ALTA 9.2-06)     | 13.14.10.34 |  |  | Yes |  |
| 57.1 | 5701 | Restrictions, Eneroachments,-and Minerals (Owner's Policy -(Improved Land)-Endorsement (ALTA 9.5-06) | 13.14.10.34 |  |  | Yes |  |
| 58   | 5800 | First Loss - Multiple Parcel-Transactions Endorsement (ALTA 20-06)                                   | 13.14.10.41 |  |  | No  |  |
| 60   | 6000 | Aggregation Endorsement (ALTA 12-06)   | 13.14.10.43 |  |  | No  |  |
| 60.1 | 6001 | Aggregation Endorsement (ALTA 12.1-06)   | 13.14.10.43 |  |  | No  |  |
| 61   | 6100 | Foundation Endorsement   | 13.14.10.44 |  |  | No  |  |
| 62   | 6200 | Assignment of Rents/Leases-Endorsement   | 13.14.10.45 |  |  | No  |  |
| 63   | 6300 | Short Form Residential Loan Policy (ALTA form revised-12-03-12)                                      | 13.14.9.22  |  |  | Yes |  |
| 64   | 6400 | Zoning - Unimproved Land-Endorsement (ALTA 3-06)   | 13.14.10.47 |  |  | Yes |  |
| 65   | 6500 | Zoning - Completed Structure-Endorsement (ALTA 3.1-06)   | 13.14.10.48 |  |  | Yes |  |
| 66   | 6600 | Contiguity - Multiple Parcels-Endorsement (ALTA 19-06)   | 13.14.10.39 |  |  | No  |  |

|      |      |  |                          |  |  |     |  |
|------|------|--|--------------------------|--|--|-----|--|
| 67   | 6700 | Access and Entry-<br>Endorsement (ALTA 17)   | 13.14.10.49              |  |  | No  |  |
| 68   | 6800 | Indirect Access and Entry-<br>Endorsement (ALTA 17.1-06)                               | 13.14.10.50              |  |  | No  |  |
| 69   | 6900 | Utility Access Endorsement-<br>(ALTA 17.2-06)  | 13.14.10.51              |  |  | No  |  |
| 70   | 7000 | Commercial Environmental-<br>Protection Lien Endorsement-<br>(ALTA 8.2-06)             | 13.14.10.52              |  |  | No  |  |
| 71   | 7100 | Reverse Mortgage-<br>Endorsement (ALTA 14.3-06)  | 13.14.10.53              |  |  | No  |  |
| 72   | 7200 | Single Tax Parcel-<br>Endorsement (ALTA 18-06)   | 13.14.10.54              |  |  | No  |  |
| 73   | 7300 | Multiple Tax Parcel-<br>Endorsement (ALTA 18.1-06)                                     | 13.14.10.55              |  |  | No  |  |
| 74   | 7400 | Doing Business Endorsement-<br>(ALTA 24-06)  | 13.14.10.56              |  |  | No  |  |
| 75   | 7500 | Subdivision Endorsement-<br>(ALTA 26-06)   | 13.14.10.57              |  |  | No  |  |
| 76   | 7600 | Easement - Damage-<br>or Enforced Removal-<br>Endorsement (ALTA 28-06)                 | 13.14.10.58              |  |  | No  |  |
| 77   | 7700 | Co-Insurance - Single Policy-<br>Endorsement (ALTA 23-06)                              | 13.14.10.59              |  |  | No  |  |
| 78   | 7800 | Same as Survey Endorsement-<br>(ALTA 25-06)  | 13.14.10.38              |  |  | No  |  |
| 79   | 7900 | Same as Portion of Survey-<br>Endorsement (ALTA 25.1-06)                               | 13.14.10.38              |  |  | No  |  |
| 80   | 8000 | Mortgage Modification-<br>Endorsement (ALTA 11-06)                                     | 13.14.10.20              |  |  | No  |  |
| 83   | 8300 | Construction Loan –<br>Endorsement (ALTA 32.0-06,<br>2-3-11)                           | None                     |  |  | Yes |  |
| 83.1 | 8301 | Construction Loan – Direct<br>Payment Endorsement (ALTA<br>32.1-06, 4-2-13)            | None                     |  |  | No  |  |
| 83.2 | 8302 | Construction Loan – Insured’s<br>Direct Payment Endorsement-<br>(ALTA 32.2-06, 4-2-13) | None                     |  |  | No  |  |
| 84   | 8400 | Disbursement Endorsement-<br>(ALTA 33-06, 2-3-11)                                      | 13.14.10.18              |  |  | No  |  |
| 85   | 8500 | Identified Risk Coverage-<br>Endorsement   | None                     |  |  | No  |  |
| 86   | 8600 | Policy Authentication-<br>Endorsement (ALTA 39-06,<br>04-02-12)                        | 13.14.18.111             |  |  | No  |  |
| 87   | 8700 | Zoning – Land Under-<br>Development Endorsement-<br>(ALTA 3.2-06)                      | 13.14.10.48              |  |  | Yes |  |
| 2    | 9240 | Loan Policy - Statutory Rate-<br>(less than 3 years - 40%)                             | 59A-30-6.1-<br>NMSA 1978 |  |  | Yes |  |
| 2    | 9250 | Loan Policy - Statutory Rate-<br>(more than 3 years, less than<br>5 - 50%)             | 59A-30-6.1-<br>NMSA 1978 |  |  | Yes |  |

|   |      |   |                      |  |     |  |
|---|------|---|----------------------|--|-----|--|
| 2 | 9260 | Loan Policy - Statutory Rate - (more than 5 years, less than 10 - 60%)  | 59A-30-6.1-NMSA 1978 |  | Yes |  |
| 2 | 9280 | Loan Policy - Statutory Rate - (more than 10 years, less than 20 - 80%) | 59A-30-6.1-NMSA 1978 |  | Yes |  |

|               |  |  |  |  |
|---------------|--|--|--|--|
| <b>TOTAL:</b> |  |  |  |  |
|---------------|--|--|--|--|

|                         |       |
|-------------------------|-------|
| Crosscheck with Form 1: | _____ |
| Difference:             | _____ |

Explanation for Difference (if any):  
 \_\_\_\_\_  
 \_\_\_\_\_

**NEW MEXICO TITLE INSURERS STATISTICAL REPORT**  
**FORM 3 - TRANSACTION REPORT**  
 For the Calendar Year Ending December 31, 20\_\_\_\_  
**NEW MEXICO EXPERIENCE ONLY**

| <u>Insurance Company</u> |                         |   |                            |                            |                                |   |   | <u>For Underwriters That Charge Rates Below the Promulgated Rates</u> |
|--------------------------|-------------------------|---|----------------------------|----------------------------|--------------------------------|---|---|---|
| <u>NM Form No.</u>       | <u>Transaction Code</u> | <u>Transaction Type</u>   | <u>NMAC Rate Provision</u> | <u>No. of Transactions</u> | <u>Direct Premiums Written</u> | <u>Dependent on Basic Premium Rate?</u> | <u>Direct Premiums As If They Had Been Written at Promulgated Rates</u> |   |
| none                     | 0001                    | Charge for Additional Chain of Title                                  | 13.14.9.16                 |                            |                                | No                                      |   |   |
| none                     | 0002                    | Charge for Unplatted Tract of Unusual Complexity                      | 13.14.9.16                 |                            |                                | Yes                                     |   |   |
| none                     | 0003                    | Abstract Retirement Credit  | 13.14.9.24                 |                            |                                | Yes                                     |   |   |
| none                     | 0004                    | Loan Policy - Mechanic's Lien Coverage With Evidence of Priority      | 13.14.9.40 E               |                            |                                | No                                      |   |   |
| none                     | 0005                    | Loan Policy - Mechanic's Lien Coverage Without Evidence of Priority   | 13.14.9.40 E               |                            |                                | Yes                                     |   |   |
| none                     | 0006                    | Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired     | 13.14.10.9A                |                            |                                | No                                      |   |   |
| none                     | 0007                    | Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired | 13.14.10.9B                |                            |                                | Yes                                     |   |   |
| none                     | 0008                    | Survey Coverage Endorsement   | 13.14.10.10                |                            |                                | Yes                                     |   |   |
| none                     | 0009                    | Duplicate Original Policy   | 13.14.9.33                 |                            |                                | No                                      |   |   |

|      |      |  |             |  |  |     |  |
|------|------|--|-------------|--|--|-----|--|
| none | 0013 | Cancellation Fee   | 13.14.9.19B |  |  | No  |  |
| 1    | 0101 | Owner's Policy   | 13.14.9.20  |  |  | Yes |  |
| 1    | 0102 | Owner's Policy - With Bulk Rate  | 13.14.9.23  |  |  | Yes |  |
| 1    | 0103 | Multiple Owners on Same Land - Simultaneous Issue                              | 13.14.9.32  |  |  | Yes |  |
| 1    | 0104 | Replacement Owner's Policy   | 13.14.9.26  |  |  | Yes |  |
| 1    | 0105 | Owner's Policy After Foreclosure -Completed Foreclosure                        | 13.14.9.28  |  |  | Yes |  |
| 1    | 0106 | Owner's Policy After Foreclosure -Terminated Foreclosure                       | 13.14.9.28  |  |  | Yes |  |
| 1    | 0110 | Owner's Policy - Reissue (10% Discount)  | 13.14.9.35  |  |  | Yes |  |
| 1    | 0115 | Owner's Policy - Reissue (15% Discount)  | 13.14.9.35  |  |  | Yes |  |
| 1    | 0120 | Owner's Policy - Reissue (20% Discount)  | 13.14.9.35  |  |  | Yes |  |
| 1    | 0125 | Owner's Policy - Reissue (25% Discount)  | 13.14.9.35  |  |  | Yes |  |
| 2    | 0201 | Loan Policy - Single Issue   | 13.14.9.22  |  |  | Yes |  |
| 2    | 0202 | Loan Policy - Simultaneous Issue with Owner's Policy                           | 13.14.9.30  |  |  | No  |  |
| 2    | 0203 | Loan Policy - Second Mortgage or Subsequent Issue                              | 13.14.9.36  |  |  | Yes |  |
| 2    | 0204 | Replacement Loan Policy  | 13.14.9.26  |  |  | Yes |  |
| 2    | 0205 | Loan Policy Insuring Construction Loan   | 13.14.9.40A |  |  | No  |  |
| 2    | 0206 | Loan Policy Insuring Construction Loan Extension                               | 13.14.9.40B |  |  | No  |  |
| 2    | 0240 | Loan Policy - Substitution Rate (within 3 years - 40%)                         | 13.14.9.39  |  |  | Yes |  |
| 2    | 0250 | Loan Policy - Substitution Rate (more than 3 years, less than 5 years - 50%)   | 13.14.9.39  |  |  | Yes |  |
| 2    | 0260 | Loan Policy - Substitution Rate (more than 5 years, less than 10 years - 60%)  | 13.14.9.39  |  |  | Yes |  |
| 2    | 0280 | Loan Policy - Substitution Rate (more than 10 years, less than 20 years - 80%) | 13.14.9.39  |  |  | Yes |  |
| 6    | 0600 | Commitment for Title Insurance   | 13.14.9.19A |  |  | No  |  |
| 6.1  | 0601 | Plain Language Commitment for Title Insurance                                  | 13.14.9.19A |  |  | No  |  |
| 9    | 0900 | Notice of Availability of Owner's Title Insurance                              | None        |  |  | No  |  |
| 10   | 1000 | Facultative Reinsurance Agreement  | None        |  |  | No  |  |
| 11   | 1104 | Correction/Multipurpose Endorsement  | 13.14.8.8   |  |  | No  |  |

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|             |             |   |                    |  |            |  |
|-------------|-------------|---|--------------------|--|------------|--|
| <u>11</u>   | <u>1105</u> | <u>Renewal, Extension &amp; Partial Release Endorsement</u>                     | <u>13.14.10.20</u> |  | <u>No</u>  |  |
| <u>11</u>   | <u>1106</u> | <u>Extension of Commitment for Title Insurance</u>                              | <u>13.14.9.19A</u> |  | <u>No</u>  |  |
| <u>11</u>   | <u>1108</u> | <u>Increase in Coverage</u>   | <u>13.14.6.8D</u>  |  | <u>Yes</u> |  |
| <u>12</u>   | <u>1200</u> | <u>Condominium Endorsement – All Assessments (ALTA 4-06)</u>                    | <u>13.14.10.14</u> |  | <u>No</u>  |  |
| <u>13</u>   | <u>1300</u> | <u>Planned Unit Development Endorsement – All Assessments (ALTA 5-06)</u>       | <u>13.14.10.15</u> |  | <u>No</u>  |  |
| <u>13.1</u> | <u>1301</u> | <u>Planned Unit Development Endorsement – Unpaid Assessments (ALTA 5.1-06)</u>  | <u>13.14.10.15</u> |  | <u>No</u>  |  |
| <u>14</u>   | <u>1400</u> | <u>Variable Rate Mortgage Endorsement (ALTA 6-06)</u>                           | <u>13.14.10.12</u> |  | <u>No</u>  |  |
| <u>15</u>   | <u>1500</u> | <u>Variable Rate Mortgage Endorsement - Negative Amortization (ALTA 6.2-06)</u> | <u>13.14.10.12</u> |  | <u>No</u>  |  |
| <u>16</u>   | <u>1600</u> | <u>Manufactured Housing Unit Endorsement (ALTA 7-06)</u>                        | <u>13.14.10.13</u> |  | <u>No</u>  |  |
| <u>16.1</u> | <u>1601</u> | <u>Manufactured Housing Unit (Conversion Loan) Endorsement (ALTA 7.1-06)</u>    | <u>13.14.10.13</u> |  | <u>No</u>  |  |
| <u>16.2</u> | <u>1602</u> | <u>Manufactured Housing Unit (Conversion Owner's) Endorsement (ALTA 7.2-06)</u> | <u>13.14.10.13</u> |  | <u>No</u>  |  |
| <u>17</u>   | <u>1700</u> | <u>Revolving Credit Endorsement</u>   | <u>13.14.10.12</u> |  | <u>No</u>  |  |
| <u>18</u>   | <u>1800</u> | <u>Construction Loan Policy Endorsement A</u>                                   | <u>13.14.9.40D</u> |  | <u>Yes</u> |  |
| <u>20</u>   | <u>2000</u> | <u>Leasehold - Owner's Endorsement (ALTA 13-06)</u>                             | <u>13.14.10.19</u> |  | <u>No</u>  |  |
| <u>20</u>   | <u>2003</u> | <u>Leasehold Owners Policy - Simultaneous Issue with Owner's Policy</u>         | <u>13.14.9.31</u>  |  | <u>Yes</u> |  |
| <u>20</u>   | <u>2010</u> | <u>Leasehold Owner's Policy - Reissue (10% Discount)</u>                        | <u>13.14.9.35</u>  |  | <u>Yes</u> |  |
| <u>20</u>   | <u>2015</u> | <u>Leasehold Owner's Policy - Reissue (15% Discount)</u>                        | <u>13.14.9.35</u>  |  | <u>Yes</u> |  |
| <u>20</u>   | <u>2020</u> | <u>Leasehold Owner's Policy - Reissue (20% Discount)</u>                        | <u>13.14.9.35</u>  |  | <u>Yes</u> |  |
| <u>20</u>   | <u>2025</u> | <u>Leasehold Owner's Policy - Reissue (25% Discount)</u>                        | <u>13.14.9.35</u>  |  | <u>Yes</u> |  |
| <u>21</u>   | <u>2100</u> | <u>Leasehold - Loan Endorsement (ALTA 13.1-06)</u>                              | <u>13.14.10.19</u> |  | <u>No</u>  |  |
| <u>21.1</u> | <u>2101</u> | <u>Leasehold Loan Policy – Simultaneous Issue with Leasehold Owner's Policy</u> | <u>13.14.9.30</u>  |  | <u>No</u>  |  |
| <u>22</u>   | <u>2200</u> | <u>Pending Disbursement Down Date Endorsement</u>                               | <u>13.14.10.18</u> |  | <u>No</u>  |  |
| <u>23</u>   | <u>2300</u> | <u>Pending Improvements Endorsement</u>   | <u>13.14.10.23</u> |  | <u>No</u>  |  |

|             |             |   |                    |  |  |            |  |
|-------------|-------------|---|--------------------|--|--|------------|--|
| <u>24</u>   | <u>2400</u> | <u>Assignment Endorsement (ALTA 10-06)</u>  | <u>13.14.10.8</u>  |  |  | <u>No</u>  |  |
| <u>24.1</u> | <u>2401</u> | <u>Assignment and Down Date Endorsement (ALTA 10.1-06)</u>  | <u>13.14.10.8</u>  |  |  | <u>No</u>  |  |
| <u>25</u>   | <u>2500</u> | <u>Additional Advance Endorsement</u>   | <u>13.14.10.11</u> |  |  | <u>No</u>  |  |
| <u>26</u>   | <u>2600</u> | <u>Partial Coverage Endorsement</u>   | <u>None</u>        |  |  | <u>No</u>  |  |
| <u>28</u>   | <u>2800</u> | <u>Non-Imputation - Full Equity Transfer Endorsement (ALTA 15-06)</u>                               | <u>13.14.10.21</u> |  |  | <u>Yes</u> |  |
| <u>28.1</u> | <u>2801</u> | <u>Non-Imputation – Additional Interest Endorsement (ALTA 15.1-06)</u>                              | <u>13.14.10.21</u> |  |  | <u>Yes</u> |  |
| <u>28.2</u> | <u>2802</u> | <u>Non-Imputation – Partial Equity Transfer Endorsement (ALTA 15.2-06)</u>                          | <u>13.14.10.21</u> |  |  | <u>Yes</u> |  |
| <u>29</u>   | <u>2900</u> | <u>Environmental Protection Lien Endorsement (ALTA 8.1-06)</u>                                      | <u>13.14.10.22</u> |  |  | <u>No</u>  |  |
| <u>30</u>   | <u>3000</u> | <u>Condominium Endorsement Unpaid Assessments (ALTA 4.1-06)</u>                                     | <u>13.14.10.24</u> |  |  | <u>No</u>  |  |
| <u>31</u>   | <u>3100</u> | <u>Owner’s Leasehold Conversion Endorsement</u>   | <u>13.14.9.38</u>  |  |  | <u>Yes</u> |  |
| <u>33</u>   | <u>3300</u> | <u>Change of Name Endorsement</u>   | <u>None</u>        |  |  | <u>No</u>  |  |
| <u>34</u>   | <u>3400</u> | <u>U.S. Policy (ALTA 12-03-12)</u>  | <u>13.14.9.25</u>  |  |  | <u>Yes</u> |  |
| <u>41</u>   | <u>4100</u> | <u>Limited Pre-Foreclosure Title Insurance Policy (ALTA 12-03-12)</u>                               | <u>13.14.9.28</u>  |  |  | <u>Yes</u> |  |
| <u>42</u>   | <u>4200</u> | <u>Limited Pre-Foreclosure Title Insurance Policy Down Date Endorsement (ALTA 12-03-12)</u>         | <u>13.14.10.18</u> |  |  | <u>No</u>  |  |
| <u>43</u>   | <u>4300</u> | <u>Insuring Around Endorsement</u>  | <u>None</u>        |  |  | <u>No</u>  |  |
| <u>44</u>   | <u>4400</u> | <u>Revolving Credit -Increased Credit Limit Endorsement</u>   | <u>13.14.10.30</u> |  |  | <u>No</u>  |  |
| <u>45</u>   | <u>4500</u> | <u>Residential Limited Coverage Junior Loan Policy ALTA (Rev. 08-01-12)</u>                         | <u>13.14.9.29</u>  |  |  | <u>No</u>  |  |
| <u>46</u>   | <u>4600</u> | <u>Down Date Endorsement to Residential Limited Coverage Junior Loan Policy JR1 (ALTA 08-01-12)</u> | <u>13.14.10.32</u> |  |  | <u>No</u>  |  |
| <u>47</u>   | <u>4700</u> | <u>Endorsement to Residential Limited Coverage Junior Loan Policy JR2 (ALTA 08-01-12)</u>           | <u>13.14.10.33</u> |  |  | <u>No</u>  |  |
| <u>48</u>   | <u>4800</u> | <u>Truth-in-Lending Endorsement (ALTA 2-06)</u>   | <u>13.14.10.31</u> |  |  | <u>Yes</u> |  |
| <u>50</u>   | <u>5000</u> | <u>Restrictions, Encroachments and Minerals Endorsement - Loan Policy (ALTA 9-06)</u>               | <u>13.14.10.34</u> |  |  | <u>Yes</u> |  |
| <u>50.1</u> | <u>5001</u> | <u>Restrictions Encroachments, Minerals – Loan Policy Endorsement (ALTA 9.3-06)</u>                 | <u>13.14.10.34</u> |  |  | <u>Yes</u> |  |

|             |             |  |                    |  |  |            |  |
|-------------|-------------|--|--------------------|--|--|------------|--|
| <u>51</u>   | <u>5100</u> | <u>Land Abuts Street Endorsement</u>   | <u>13.14.10.36</u> |  |  | <u>No</u>  |  |
| <u>52</u>   | <u>5200</u> | <u>Location Endorsement (ALTA 22-06)</u>   | <u>13.14.10.37</u> |  |  | <u>No</u>  |  |
| <u>54</u>   | <u>5400</u> | <u>Contiguity Single Parcel Endorsement (ALTA 19.1-06)</u>   | <u>13.14.10.39</u> |  |  | <u>No</u>  |  |
| <u>55</u>   | <u>5500</u> | <u>Named Insured Endorsement</u>   | <u>13.14.10.40</u> |  |  | <u>No</u>  |  |
| <u>56</u>   | <u>5600</u> | <u>Restrictions, Encroachments, Minerals– Owner’s Policy (Unimproved Land) Endorsement (ALTA 9.1-06)</u>   | <u>13.14.10.34</u> |  |  | <u>Yes</u> |  |
| <u>56.1</u> | <u>5601</u> | <u>Restrictions, Encroachments, Minerals – Owner’s Policy –(Unimproved Land) Endorsement (ALTA 9.4-06)</u> | <u>13.14.10.34</u> |  |  | <u>Yes</u> |  |
| <u>57</u>   | <u>5700</u> | <u>Restrictions, Encroachments, Minerals – Owner’s Policy (Improved Land) Endorsement (ALTA 9.2-06)</u>    | <u>13.14.10.34</u> |  |  | <u>Yes</u> |  |
| <u>57.1</u> | <u>5701</u> | <u>Restrictions, Encroachments, and Minerals (Owner’s Policy -Improved Land) Endorsement (ALTA 9.5-06)</u> | <u>13.14.10.34</u> |  |  | <u>Yes</u> |  |
| <u>58</u>   | <u>5800</u> | <u>First Loss - Multiple Parcel Transactions Endorsement (ALTA 20-06)</u>                                  | <u>13.14.10.41</u> |  |  | <u>No</u>  |  |
| <u>60</u>   | <u>6000</u> | <u>Aggregation Endorsement (ALTA 12-06)</u>  | <u>13.14.10.43</u> |  |  | <u>No</u>  |  |
| <u>60.1</u> | <u>6001</u> | <u>Aggregation Endorsement (ALTA 12.1-06)</u>  | <u>13.14.10.43</u> |  |  | <u>No</u>  |  |
| <u>61</u>   | <u>6100</u> | <u>Foundation Endorsement</u>  | <u>13.14.10.44</u> |  |  | <u>No</u>  |  |
| <u>62</u>   | <u>6200</u> | <u>Assignment of Rents or Leases Endorsement (ALTA 37-06)</u>  | <u>13.14.10.45</u> |  |  | <u>No</u>  |  |
| <u>63</u>   | <u>6300</u> | <u>Short Form Residential Loan Policy</u>  | <u>13.14.9.22</u>  |  |  | <u>Yes</u> |  |
| <u>64</u>   | <u>6400</u> | <u>Zoning - Unimproved Land Endorsement (ALTA 3-06)</u>  | <u>13.14.10.47</u> |  |  | <u>Yes</u> |  |
| <u>64.1</u> | <u>6401</u> | <u>Zoning – Unimproved Land - No Applicable Zoning Ordinances Endorsement</u>                              | <u>13.14.10.47</u> |  |  | <u>Yes</u> |  |
| <u>65</u>   | <u>6500</u> | <u>Zoning - Completed Structure Endorsement (ALTA 3.1-06)</u>  | <u>13.14.10.48</u> |  |  | <u>Yes</u> |  |
| <u>65.1</u> | <u>6501</u> | <u>Zoning – Land Under Development Endorsement (ALTA 3.2-06)</u>   | <u>13.14.10.48</u> |  |  | <u>Yes</u> |  |
| <u>65.2</u> | <u>6502</u> | <u>Zoning- Completed Structure - No Applicable Zoning Ordinances Endorsement</u>                           | <u>13.14.10.48</u> |  |  | <u>Yes</u> |  |
| <u>66</u>   | <u>6600</u> | <u>Contiguity - Multiple Parcels Endorsement (ALTA 19-06)</u>  | <u>13.14.10.39</u> |  |  | <u>No</u>  |  |
| <u>67</u>   | <u>6700</u> | <u>Access and Entry Endorsement (ALTA 17 - 06)</u>   | <u>13.14.10.49</u> |  |  | <u>No</u>  |  |
| <u>68</u>   | <u>6800</u> | <u>Indirect Access and Entry Endorsement (ALTA 17.1-06)</u>  | <u>13.14.10.50</u> |  |  | <u>No</u>  |  |

|      |      |   |              |  |  |     |  |
|------|------|---|--------------|--|--|-----|--|
| 69   | 6900 | Utility Access Endorsement<br>(ALTA 17.2-06)  | 13.14.10.51  |  |  | No  |  |
| 70   | 7000 | Commercial Environmental<br>Protection Lien Endorsement<br>(ALTA 8.2-06)                            | 13.14.10.52  |  |  | No  |  |
| 71   | 7100 | Reverse Mortgage<br>Endorsement (ALTA 14.3-06)  | 13.14.10.53  |  |  | No  |  |
| 72   | 7200 | Single Tax Parcel<br>Endorsement (ALTA 18-06)   | 13.14.10.54  |  |  | No  |  |
| 73   | 7300 | Multiple Tax Parcel<br>Endorsement (ALTA 18.1-06)   | 13.14.10.55  |  |  | No  |  |
| 74   | 7400 | Doing Business Endorsement<br>(ALTA 24-06)  | 13.14.10.56  |  |  | No  |  |
| 75   | 7500 | Subdivision Endorsement<br>(ALTA 26-06)   | 13.14.10.57  |  |  | No  |  |
| 76   | 7600 | Easement - Damage<br>or Enforced Removal<br>Endorsement (ALTA 28-06)                                | 13.14.10.58  |  |  | No  |  |
| 77   | 7700 | Co-Insurance - Single Policy<br>Endorsement (ALTA 23-06)  | 13.14.10.59  |  |  | No  |  |
| 78   | 7800 | Same as Survey Endorsement<br>(ALTA 25-06)  | 13.14.10.38  |  |  | No  |  |
| 79   | 7900 | Same as Portion of Survey<br>Endorsement (ALTA 25.1-06)   | 13.14.10.38  |  |  | No  |  |
| 80   | 8000 | Mortgage Modification<br>Endorsement (ALTA 11-06)   | 13.14.10.20  |  |  | No  |  |
| 80.1 | 8001 | Mortgage Modification With<br>Subordination Endorsement<br>(ALTA 11.1-06)                           | 13.14.10.61  |  |  | No  |  |
| 80.2 | 8002 | Mortgage Modification With<br>Additional Amount of Title<br>Insurance Endorsement<br>(ALTA 11.2-06) | 13.14.10.61  |  |  | Yes |  |
| 83   | 8300 | Construction Loan –<br>Endorsement (ALTA 32.0-06)   | None         |  |  | No  |  |
| 83.1 | 8301 | Construction Loan – Direct<br>Payment Endorsement (ALTA<br>32.1-06)                                 | None         |  |  | No  |  |
| 83.2 | 8302 | Construction Loan – Insured’s<br>Direct Payment Endorsement<br>(ALTA 32.2-06)                       | None         |  |  | No  |  |
| 84   | 8400 | Disbursement Endorsement<br>(ALTA 33-06)  | 13.14.10.18  |  |  | No  |  |
| 85   | 8500 | Identified Risk Coverage<br>Endorsement   | None         |  |  | No  |  |
| 86   | 8600 | Policy Authentication<br>Endorsement (ALTA 39-06)   | 13.14.18.111 |  |  | No  |  |
| 88   | 8800 | Energy Project Leasehold/<br>Easement - Owner’s<br>Endorsement (ALTA 36-06)                         | 13.14.10.60  |  |  | Yes |  |
| 88.1 | 8801 | Energy Project Leasehold/<br>Easement - Loan Endorsement<br>(ALTA 36.1-06)                          | 13.14.10.60  |  |  | Yes |  |



|      |      |   |                         |  |  |     |  |
|------|------|---|-------------------------|--|--|-----|--|
| 88.2 | 8802 | Energy Project - Leasehold - Owner's Endorsement (ALTA 36.2-06)   | 13.14.10.60             |  |  | Yes |  |
| 88.3 | 8803 | Energy Project - Leasehold - Loan Endorsement (ALTA 36.3-06)  | 13.14.10.60             |  |  | Yes |  |
| 88.4 | 8804 | Energy Project Covenants, Conditions & Restrictions - Land under Development - Owner's Endorsement (ALTA 36.4-06) | 13.14.10.60             |  |  | Yes |  |
| 88.5 | 8805 | Energy Project Covenants, Conditions & Restrictions - Land Under Development - Loan Endorsement (ALTA 36.5-06)    | 13.14.10.60             |  |  | Yes |  |
| 88.6 | 8806 | Energy Project - Encroachments Endorsement (ALTA 36.6-06)   | 13.14.10.60             |  |  | Yes |  |
| 88.7 | 8807 | Energy Project - Fee Estate - Owner's Policy Endorsement (ALTA 36.7-06)   | 13.14.10.60             |  |  | Yes |  |
| 88.8 | 8808 | Energy Project - Fee Estate - Loan Policy Endorsement (ALTA 36.8-06)  | 13.14.10.60             |  |  | Yes |  |
| 89   | 8900 | Mezzanine Financing Endorsement (ALTA 16-06)  | 13.14.10.62             |  |  | No  |  |
| 90   | 9000 | Residential Limited Coverage Modification of Mortgage Policy  | 13.14.9.42              |  |  | Yes |  |
| 91   | 9100 | Contract Purchaser Conversion Endorsement   | 13.14.6.10              |  |  | Yes |  |
| 2    | 9240 | Loan Policy - Statutory Rate (within 3 years - 40%)   | 59A-30-6.1<br>NMSA 1978 |  |  | Yes |  |
| 2    | 9250 | Loan Policy - Statutory Rate (more than 3 years, less than 5 years - 50%)   | 59A-30-6.1<br>NMSA 1978 |  |  | Yes |  |
| 2    | 9260 | Loan Policy - Statutory Rate (more than 5 years, less than 10 years - 60%)  | 59A-30-6.1<br>NMSA 1978 |  |  | Yes |  |
| 2    | 9280 | Loan Policy - Statutory Rate (more than 10 years, less than 20 years - 80%)                                       | 59A-30-6.1<br>NMSA 1978 |  |  | Yes |  |

|               |  |  |  |  |
|---------------|--|--|--|--|
| <b>TOTAL:</b> |  |  |  |  |
|---------------|--|--|--|--|

|                         |       |
|-------------------------|-------|
| Crosscheck with Form 1: | _____ |
| Difference:             | _____ |

Explanation for Difference (if any):

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**SUPERINTENDENT OF  
INSURANCE**

**This is an amendment to 13.14.19  
NMAC, Section 1, effective 3-1-2016.**

**13.14.19.1 ISSUING AGENCY:**  
[Public Regulation Commission, Insurance  
Division] Office of Superintendent of  
Insurance, Title Insurance Bureau.  
[13.14.19.1 NMAC - N, 12-30-10; A, 3-1-  
16]

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**End of Adopted Rules**

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## Other Material Related to Administrative Law

### OFFICE OF THE ATTORNEY GENERAL

#### NOTICE OF PROPOSED AMENDED RULE

The Attorney General is proposing to amend 12.2.14 NMAC, regarding the misrepresentation of the age and condition of motor vehicles. The rule is being amended by the authority vested in the Attorney General pursuant to the New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-13 (1967). The notice and proposed amendment will be published in Volume XXVI, Issue #24, of the New Mexico Register.

The proposed amended rule is available at the Office of the Attorney General located in the Paul Bardacke Attorney General Complex in Santa Fe located at 408 Galisteo Street, Consumer Protection Division; at the Attorney General's Office located in Albuquerque at 111 Lomas Blvd. NW, Suite 120; and in Las Cruces at 201 North Church Street, Suite 315.

The proposed amended rule is also posted on the Office of the Attorney General's website and may be accessed, free of charge, from the following website: [www.nmag.gov](http://www.nmag.gov).

To request that a copy of the proposed amended rule be mailed to you, please submit your request in writing to:

**Office of the Attorney General  
Consumer Protection Division  
Attention: Lori Chavez  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508**

You may also request a copy of the proposed amended rule by calling the following telephone number: 1-800-678-1508. There is a \$.25 copying charge per page for written and telephone requests for copies of the proposed amended rule.

You may also request a copy of the proposed amended rule by emailing: [lchavez@nmag.gov](mailto:lchavez@nmag.gov), subject line: "12.2.14 Amended Rule."

Any person who is or may be affected by this proposed amended rule may submit written comments.

Written comments concerning the proposed amended rule may be submitted by mail to:

**Office of the Attorney General  
Consumer Protection Division  
Attention: Lori Chavez  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508**

The Office of the New Mexico Attorney General will accept written comments for consideration provided on or before January 29, 2016.

If you are an individual with a disability who is need of special assistance or accommodations, please contact Daniel Rios by telephone at 505-827-6000. The Office of the Attorney General requests at least ten (10) days advance notice to provide requested special accommodations.

**This is an amendment to 12.2.14.1 NMAC, Sections 6 through 11, effective xx/xx/xxxx.**

**12.2.14.5 EFFECTIVE DATE:**  
April 1, 2014, unless a later date is cited at the end of a section.  
[12.2.14.5 NMAC - N, 4/1/2014]

**12.2.14.6 OBJECTIVE:**

A. [The purpose of this rule is to:

(1) deter the misrepresentation of the age or condition of a motor vehicle in motor vehicle sale transactions;

(2) protect retail buyers from unfair and deceptive practices involving the misrepresentation of the age or condition of a motor vehicle in motor vehicle sale transactions through uniform disclosure of material information concerning the age or condition of a motor vehicle. NMSA 1978, Section 57-12-2(D) (14); and

(3) provide

to sellers clear legal standards as to what constitutes "to the best of seller's knowledge" when selling motor vehicles to retail buyers. NMSA 1978, Section 57-12-6(B);

B. The attorney general's office has long been concerned about unfair and deceptive practices involving the sale of motor vehicles to retail buyers. The attorney general's consumer protection division receives numerous written complaints and telephone calls

alleging failure by sellers to (1) disclose material information concerning the age or condition of motor vehicles or (2) provide the mandatory affidavit. Sellers of motor vehicles have continually complained to the attorney general's office about the ambiguity of the affidavit requirement and over the years have been subject to litigation by retail buyers concerning the interpretation of "to the best of the seller's knowledge".

C. This rule interprets and clarifies unfair and deceptive trade practices involving the sale of motor vehicles as provided under the Unfair Practices Act. The attorney general has concluded that this rule is in the best interest of the health, safety and general welfare of the citizens of New Mexico.]  
The purpose of this rule is to:

(1) deter misrepresentation of the age or condition of used motor vehicles in retail motor vehicle sale transactions;

(2) protect retail buyers in motor vehicle sale transactions through uniform disclosure of material information concerning the age or condition of used motor vehicles; Section 57-12-6(A) NMSA 1978;

(3) provide sellers clear legal standards as to what constitutes "to the best of seller's knowledge" when selling used motor vehicles to retail buyers. Paragraph (2) of Subsection B of Section 57-12-6 NMSA 1978;

(4) establish standards for used motor vehicle damage inspections; and

(5) establish standards for disclosure of used motor vehicle alteration or damage inspection results to motor vehicle buyers.

B. This rule is not intended to restrict or limit claims to Section 57-12-6 NMSA 1978 that may be alleged under other provisions of the Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq.

C. The alteration or damage inspection and disclosure standards in this rule for used motor vehicles are not intended to negate or limit obligations of sellers to disclose damage to new motor vehicles. See *Hale v. Basin Motor Co.*, 110 N.M. 314 (N.M. 1990).

D. Nothing in this rule is intended to increase, decrease or otherwise in any way affect the rights or responsibilities of motor vehicle manufacturers or sellers under federal

motor vehicle safety laws or regulations, or under New Mexico or other state products liability laws, principles or case law.

**E.** The attorney general has concluded that this rule is in the best interest of the health, safety and general welfare of the citizens of New Mexico. [12.2.14.6 NMAC - N, 4/1/2014; A, xx/xx/xxxx]

**12.2.14.7 DEFINITIONS:**

- A.** [“Alteration” shall mean:
- (1) the act or procedure of changing, modifying or repairing a motor vehicle’s cab, chassis or body;
  - (2) the condition resulting from changing, modifying or repairing a motor vehicle’s cab, chassis or body; or
  - (3) the modification to a motor vehicle’s cab, chassis, or body; the alteration may, but need not necessarily, be the result of wreck damage. Goods are altered if, as measured against the reasonable expectations of the consumer, the characteristics or value of the motor vehicle are affected in a meaningful way by the changes, modifications or repairs. See *Hale v. Basin Motor Co.*, 110 N.M. 314, 317-318 (N.M. 1990).
- B.** “Body” shall mean the external structure of the motor vehicle, exclusive of the cab and chassis.
- C.** “Cab” shall mean the compartment of a motor vehicle where the driver and passengers sit.
- D.** “Calculation of cost for alteration or repair” shall mean calculating the cost of repair based upon industry accepted reverse engineering protocols and original equipment manufacturer “OEM” replacement parts.
- E.** “Chassis” shall mean frame and working parts of the motor vehicle, including standard factory equipment.
- F.** “Flat rate manual cost” shall mean the estimated cost of repair as indicated by a nationally recognized manual commonly used in the industry of auto repair.
- G.** “Inspection” shall mean inspection of the motor vehicle for any type of alteration or repair not consistent with I-CAR repair standards or equivalent industry standards for alteration or repair. Inspections shall be conducted with reasonable care.
- H.** “Inspection report” shall mean the inspection report provided

- for in 12.2.14.11 NMAC of this rule or equivalent form. The inspection form shall include:
- (1) the name of the seller and contact information;
  - (2) a description of the vehicle, including year, make, model, stock number and vehicle identification number;
  - (3) the vehicle condition report required by 12.2.14.9 NMAC of this rule;
  - (4) the odometer reading of the motor vehicle;
  - (5) a statement of the calculation and total cost for alteration or repair;
  - (6) a statement as to whether or not the alteration or repair causes safety issues;
  - (7) a statement as to whether or not the motor vehicle has frame damage;
  - (8) the identification and contact information of the qualified person who performed the inspection;
  - (9) the inspection date and the calculation and total cost for the motor vehicle inspection.
- I.** “Motor vehicle” shall mean every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails. This includes, but is not limited to, automobiles, trucks of all varieties, motor cycles, recreational vehicles, reconstructed motor vehicles, specially constructed motor vehicles, and road tractors, all of which may be for personal, household, or commercial use.
- J.** “Qualified person” shall mean either:
- (1) a person who is ASE, I-CAR level II or qualified by any other equivalent industry recognized certification program, and has adequate experience with performing vehicle repairs in the areas of:
    - (a) painting and refinishing;
    - (b) structural and non-structural analysis and repair;
    - (c) mechanical and electrical components analysis and repair of motor vehicle cab, chassis, and body;
    - (d) inspection of vehicles for previous alteration or repair; or
  - (2) a person who possesses equivalent or similar

- knowledge, skills and experience as defined in this subsection.
- K.** “Repair or repairing” shall mean to restore or attempt to restore to I-CAR standards or equivalent industry standards a motor vehicle’s cab, chassis, or body whether or not the damage resulted from a collision.
- L.** “Sales price” shall mean the actual stated price on the contract before the deduction of the value of any trade-in and shall not include such charges as taxes, registration fees, extended warranties, service contracts, credit of disability insurance, or any other charges incidental to the sale.
- M.** “Seller” shall mean natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates which include either:
- (1) any person who sells, solicits or advertises the sale of new or used motor vehicles to retail buyers and who is licensed pursuant to the Motor Vehicle Code, NMSA 1978, Section 66-4-1(A); or
  - (2) any person who sells four or more motor vehicles to retail buyers in a calendar year whether licensed to do so or not pursuant to NMSA 1978, Section 66-4-1(A).
- N.** “Seller’s knowledge” shall mean “to the best of the seller’s knowledge” pursuant to NMSA 1978, Section 57-12-6(B)(2) and does not necessarily mean actual knowledge, but shall mean knowledge that a prudent person would have if the person had exercised reasonable care or diligence. One who intentionally remains ignorant is chargeable in law with knowledge. See *Stevenson v. Louis Dreyfus Corp.*, 112 N.M. 97, 100 (N.M. 1991).
- O.** “Unibody” shall mean a motor vehicle construction technique in which the body is integrated into a single unit with the chassis rather than having a separate body-on-frame.] “Alteration” shall mean damage to or modification of a motor vehicle’s cab, chassis, or body which materially diminishes the value of the motor vehicle; the alteration may but need not necessarily be the result of wreck damage; goods are altered if, as measured against reasonable expectations of a consumer, the characteristics or value of a motor vehicle are diminished in a meaningful way; repairs must be more than just substituting one standardized part with a new one. See *Hale v. Basin Motor Co.*, 1990 -NMSC- 068, 110 N.M. 314.

**B.** “Body” shall mean the external structure of the motor vehicle, exclusive of the cab and chassis.

**C.** “Cab” shall mean the compartment of a motor vehicle where the driver and passengers sit.

**D.** “Good faith estimate of cost” for alteration or repair shall mean a good faith estimate of the flat rate manual cost of prior alteration or repair discovered in the used motor vehicle alteration or damage inspection contemplated by this rule, and disclosed in substantially the manner shown in the model inspection report which accompanies this rule, but “good faith estimate of cost” shall not be interpreted as a warranty as to actual cost which is unknown to the seller, nor is “good faith estimate of cost” intended to be a substitute for disclosure of actual cost if known to the seller.

**E.** “Chassis” shall mean the frame and structural components of the motor vehicle.

**F.** “Flat rate manual cost” shall mean estimated cost of repair as indicated by a nationally recognized manual commonly used in the industry.

**G.** “Inspection” or “reasonable inspection” shall mean an investigation of the age and condition of a motor vehicle for visible evidence of prior alteration or prior repair due to alteration or wreck damage. Inspections shall be consistent with 12.2.14.9 NMAC.

**H.** “Inspection report” shall mean the inspection report provided for in 12.2.14.10 NMAC of this rule, or equivalent form, including the model inspection report form which accompanies this rule.

**I.** “Qualified person” shall mean a person who possesses the requisite knowledge, skill or experience to perform the used motor vehicle inspection required by this rule and by the accompanying model inspection form, in order to find evidence of:

(1) painting and refinishing;

(2) structural and non-structural damage repair;

(3) repair of motor vehicle, cab, chassis and body; or

(4) previous alteration.

**J.** “Repair or repairing” shall mean to restore or attempt to restore a motor vehicle’s cab, chassis, or body to industry standards.

**K.** “Retail buyer” or “buyer” shall mean a person who is not in the business of buying and selling motor

vehicles and who buys or agrees to buy a motor vehicle from a retail seller;

**L.** “Retail seller” or “seller” shall mean natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates who regularly and principally engage in the business of selling motor vehicles to retail buyers for profit, but does not include selling motor vehicles to other motor vehicle dealers licensed with the New Mexico Motor Taxation and Revenue Department-Motor Vehicle Division pursuant to Section 66-4-1(A) NMSA 1978.

**M.** “Sales price” shall mean the actual stated price on the contract before the deduction of the value of any trade-in and shall not include such charges as taxes, registration fees, extended warranties, service contracts, credit of disability insurance, or any other charges incidental to the sale.

**N.** “Unibody” shall mean a motor vehicle construction technique in which the body is integrated into a single unit with the chassis rather than having a separate body-on-frame.

**O.** “Used” motor vehicle shall mean a used motor vehicle as defined in 12.2.4.7 NMAC.

[12.2.14.7 NMAC - N, 4/1/2014; A, xx/xx/xxxx]

**12.2.14.8 [AFFIDAVIT REQUIRED]:** It is an unfair or deceptive trade practice for a seller of a motor vehicle to fail to provide the purchaser with an affidavit at the time of sale if it has been determined that the alterations or repairs to any part of the motor vehicle for which the fixed flat rate manual costs in the aggregate amounts to or exceeds six percent or of the sale price of the vehicle. The affidavit must:

**A.** describe the vehicle; and

**B.** state, to the best of the seller’s knowledge, what specific alterations or repairs have been done to the motor vehicle, including whether the motor vehicle title should have been branded salvage or has been branded salvaged.] **TO THE BEST OF THE SELLER’S KNOWLEDGE:**

**A.** A seller of a motor vehicle shall furnish at the time of sale of a motor vehicle an affidavit that states to the best of the seller’s knowledge whether there has been an alteration or chassis repair due to wreck damage, except where not required. Section 57-12-6(B) NMSA 1978.

**B.** A seller of a motor vehicle shall be deemed to meet the obligation of “to the best of the seller’s knowledge” as set forth in Section 57-12-6(B)(2) NMSA 1978, when the seller in good faith

(1) conducts a motor vehicle inspection that substantially complies with 12.2.14.9 NMAC, and;

(2) completes an inspection report pursuant to 12.2.14.10 NMAC. The seller shall maintain the inspection report for three years and make the inspection report available to the buyer upon request.

**C.** When a seller determines that an affidavit is required pursuant to Section 57-12-6(B) NMSA 1978, the seller shall attach a report which substantially complies with 12.2.14.10 NMAC to the affidavit to disclose the prior alteration or repair.

**D.** When visible unsafe alterations or repairs are identified by an inspector during the inspection, the unsafe alterations or repairs shall be disclosed in the inspection report provided for in 12.2.14.10 NMAC, and a copy of the inspection report shall be provided to the buyer.

**E.** A seller shall not represent to the buyer that the absence of any information or condition of the motor vehicle on a Carfax, Autocheck or other motor vehicle history report is proof that the motor vehicle has never been altered or repaired.

**F.** When a seller determines that an affidavit is required pursuant to Section 57-12-6(B) NMSA 1978, a copy of the affidavit shall also be maintained by the seller for three years. [12.2.14.8 NMAC - N, 4/1/2014; A, xx/xx/xxxx]

**12.2.14.9 [UNFAIR AND DECEPTIVE TRADE PRACTICE]:** It is an unfair or deceptive trade practice for a seller of a motor vehicle to:

**A.** fail to obtain a reasonable inspection of the motor vehicle performed by a qualified person, prior to offering the motor vehicle for retail sale, in order to comply with the affidavit requirements of the Unfair Practices Act NMSA, 1978, Section 57-12-6 (B);

**B.** fail to obtain an inspection report;

**C.** fail to provide to the retail buyer, prior to the sale, with a copy of the inspection report and any other reports obtained by the seller in connection to the inspection of the motor vehicle;

**D.** omit any information required to be disclosed on the inspection report;

**E.** state that the absence of any indication of an accident on a carfax, autocheck or other vehicle history report is proof that the vehicle has never been altered or repaired;

**F.** fail to disclose in writing the specific alteration(s) or repair(s) performed to the motor vehicle if the alteration(s) or repair(s) to any part of the motor vehicle amounts to six percent or more of the sales price of the motor vehicle, based on the flat rate manual costs in the aggregate;

**G.** fail to disclose in writing, if to the best of the seller's knowledge, the motor vehicle title should have been branded salvage or has been branded salvaged, if the motor vehicle is defined by law as salvaged pursuant to NMSA 1978, Section 66-1-4.16(C) or 18.19.3.50 NMAC through 18.19.3.52 NMAC;

**H.** fail to include the itemized cost for the inspection on the sales agreement as required by this rule;

**I.** charge the retail buyer for the inspection an amount above the actual amount paid by the seller for the inspection; or

**J.** fail to retain a copy of any and all motor vehicle reports and inspection reports for three years after the sale of the motor vehicle.] [RESERVED] [12.2.14.9 NMAC - N, 4/1/2014; Repealed, xx/xx/xxxx]

**12.2.14.10 REASONABLE INSPECTION:** [The following motor vehicle inspection shall be deemed reasonable pursuant to NMSA 1978, Section 57-12-6(B):

**A.** obtaining publically available reports on the age or condition of the motor vehicle such as the national motor vehicle title information system report, carfax, or auto check;

**B.** inspecting the motor vehicle for evidence of repainting such as:  
 (1) differences in paint color or texture;  
 (2) mismatched sizes of metallic sparkle in the paint;  
 (3) embedded dirt or deep scratches in the top coat of the paint; and  
 (4) uneven paint thickness;

**C.** inspecting the motor vehicle body and cab for evidence of any repair or alteration, with the inspection involving only minimal disassembly, for:  
 (1) uneven gaps

between sheet metal panels;  
 (2) differences between the headlamps;  
 (3) paint overspray on moldings and trim;  
 (4) paint tape edges in the jams;  
 (5) paint chipped off of bolt heads;  
 (6) paint missing around bolt heads or bolts not centered in the bolt hole;  
 (7) hammer damage;

(8) holes drilled and plugged in jams or shell of the motor vehicle;  
 (9) damage inside the trunk or under the spare tire; and  
 (10) signs of corrosion or lack of corrosion protection;

**D.** inspecting the motor vehicle chassis for evidence of such things as:

(1) pinched weld flange underneath the motor vehicle;  
 (2) weld sites;  
 (3) signs of repair to unibody structural parts;  
 (4) signs of buckles or non-OEM welding repair to unibody structural parts;  
 (5) signs of corrosion or lack of corrosion protection;

(6) any other alteration or repair that may have been performed to the chassis; and  
 (7) odometer alteration or repair;

**E.** inspecting the motor vehicle's caulking and seam sealer for differences and inconsistencies;

**F.** inspecting the motor vehicle's identification number tags;

**G.** inspecting the motor vehicle parts for labels that say "R-DOT";

**H.** inspecting the motor vehicle for any type of repairs not consistent with I-CAR repair standards or equivalent;

**I.** based upon any information or evidence obtained during the vehicle inspection performed pursuant to Subsections A-H of this section, perform any additional inquiry or inspection into the motor vehicle's age or condition appropriate to assure compliance with this rule.] The following motor vehicle inspection shall be conducted by qualified persons and shall be deemed reasonable pursuant to Section 57-12-6(B) NMSA 1978 by:

**A.** inspecting the motor

vehicle for evidence of repainting such as:  
 (1) differences in paint color or texture;  
 (2) mismatched sizes of metallic sparkle in the paint;  
 (3) embedded dirt or deep scratches in the top coat of the paint; and  
 (4) uneven paint thickness;

**B.** inspecting the motor vehicle for evidence of any repair or alteration, with the inspection involving only minimal disassembly, for:

(1) uneven gaps between sheet metal panels;  
 (2) differences between the headlamps due to impact replacement;  
 (3) paint overspray on moldings and trim;  
 (4) paint tape edges in the jams;

(5) hammer damage;

(6) replaced body panels due to impact;

(7) holes drilled and plugged in jams or shell of the motor vehicle;

(8) damage visible inside the trunk; and  
 (9) signs of corrosion or lack of corrosion protection;

**C.** inspecting the motor vehicle chassis for evidence of such things as:

(1) pinched weld flange underneath the motor vehicle;  
 (2) weld sites;  
 (3) signs of repair to unibody structural parts;

(4) signs of buckles or non-original equipment manufacturer ("OEM") welding repair to unibody structural parts;

(5) signs of corrosion, or lack of corrosion protection; and

(6) other non-OEM alteration or repair that may have been performed to the chassis;

**D.** inspecting the motor vehicle's caulking and seam sealer for differences and inconsistencies;

**E.** inspecting the motor vehicle's identification number tags;

**F.** inspecting the motor vehicle parts for labels that say "R-DOT" (replacement department of transportation);

**G.** inspecting the motor vehicle for repairs not consistent with repair industry standards; and

H. performing reasonable additional inspection or inquiry into the age and condition of the motor vehicle when reasonably necessary to assure compliance with this rule. [12.2.14.9 NMAC - N, 4/1/2014; A, xx/xx/xxxx]

**12.2.14.11 PREVIOUS WRECK DAMAGE OR ALTERATION INSPECTION REPORT:**

[The following information is an example of what should be contained within an inspection report form:

- A. seller's name;
- B. dealer license number;
- C. address, including city, state, and zip code;
- D. the year, make, model, and stock number of the motor vehicle;
- E. the motor vehicle identification number;
- F. the exterior and interior color of the motor vehicle;
- G. an odometer reading of the motor vehicle, including actual miles, and not actual miles;
- H. a calculation of the total cost for alteration or repair;
- I. a "yes" and "no" check box should be used to indicate any inspection revealed safety issues; if "yes" is checked, then the inspection report shall identify the safety issues with particularity;
- J. a "yes" and "no" check box should be used to indicate any inspection revealed frame damage; if "yes" is checked, then the inspection report shall identify the frame damage with particularity;
- K. the remainder of the inspection report form should be captioned "AGE AND CONDITION OF MOTOR VEHICLE CERTIFICATION";
- L. for the following paragraphs and subparagraphs of this subsection, a "yes" and "no" check box should be checked for each item which is applicable; if "yes" is checked, then the report shall identify the alteration or repair with particularity and where on the vehicle the alteration or repair is located:
  - (1) inspection of the motor vehicle for evidence of repainting;
    - (a) differences in paint color or texture;
    - (b) mismatched sizes of metallic sparkle in the paint;
    - (c) embedded dirt or deep scratches in the top

- coat of the paint;
  - (d) uneven paint thickness;
  - (2) inspection of the motor vehicle body and cab;
    - (a) uneven gaps between sheet metal panels;
    - (b) differences between the headlamps;
    - (c) paint overspray on moldings and trim;
    - (d) paint tape edges in the jams;
    - (e) paint chipped off of bolt heads;
  - paint missing around bolt heads or bolts not centered in the bolt hole;
    - (g) hammer damage;
    - (h) holes drilled and plugged in jams or shell of the motor vehicle;
    - (i) damage inside the trunk or under the spare tire;
    - (j) signs of corrosion or lack of corrosion protection;
    - (3) inspection of the motor vehicle chassis;
      - (a) pinched weld flange underneath the motor vehicle;
      - (b) weld sites;
      - (c) signs of repair to unibody structural parts;
      - (d) signs of buckles or non-OEM welding repair to the unibody structural parts;
      - (e) signs of corrosion or lack of corrosion protection;
      - (f) signs of any other alteration or repair having been performed to the chassis;
      - (g) odometer alteration or repair;
      - (4) signs of differences and inconsistencies with the motor vehicle's caulking and seam sealer;
      - (5) signs of tampering with motor vehicle's identification tags;
      - (6) signs of motor vehicle parts labeled "R-DOT";
      - (7) signs of any type of repairs not consistent with I-CAR collision repair standards or equivalent;
    - M. date of inspection;
    - N. calculation and total cost for inspection;
    - O. the name of the

- business or individual who conducted the inspection;
  - P. the name, and address of the business or individual who conducted the inspection, including city, state, and zip code;
  - Q. the telephone number of the business or individual who conducted the inspection;
  - R. the printed or typed name of the technician who conducted the inspection; and
  - S. the signature of the technician who conducted the inspection.] The seller's inspection report shall be in substantially the form which accompanies this rule and shall include the following information:
    - A. seller's name;
    - B. address, including city, state, and zip code;
    - C. the year, make and model of the motor vehicle;
    - D. the motor vehicle identification number;
    - E. the exterior color of the motor vehicle;
    - F. an odometer reading of the motor vehicle;
    - G. a "yes" and "no" check box to indicate any visible safety issues revealed by the inspection; if "yes" is checked, the inspection report shall identify such issues with particularity;
    - H. a "yes" and "no" check box to indicate any visible chassis or structural damage revealed by the inspection; if "yes" is checked, the inspection report shall identify such damage with particularity;
    - I. a "yes" and "no" check box to indicate any visible non industry-standard repair revealed by the inspection; if "yes" is checked, the inspection report shall identify such repair with particularity;
    - J. a "yes" and "no" check box to indicate any visible unrepaired damage revealed by the inspection; if "yes" is checked, the inspection report shall identify such damage with particularity;
    - K. whether a good faith estimate of the cost of prior alteration or damage repair discovered on inspection exceeds six percent of the estimated sales price of the motor vehicle;
    - L. date of inspection;
    - M. cost for the inspection;
    - N. contact information for the business/individual who performed the inspection, including city, state, and zip code and telephone number;
    - O. the printed or



typed name of the qualified person who performed the inspection;

        P.         the signature of the qualified person who conducted the inspection; and

        O.         a statement to the effect that “prior damage/repair inspection is based on good faith observation, minimal disassembly and without use of computerized measuring system(s).” that the inspection report is not a warranty, and containing a citation to this rule, NMAC 12.2.14.1.

        R.         The seller’s inspection report may also include:

        (1)         a statement whether the motor vehicle was placed on a lift to inspect the chassis as part of the inspection;

        (2)         a statement whether a paint mil thickness gauge was used to measure paint thickness as part of the inspection; or

        (3)         reasonable additional detail about the condition of the chassis, body panels and paint of the motor vehicle which was revealed by the inspection and is believed by the inspector to be useful to a buyer.

[12.2.14.11 NMAC - N, 4/1/2014; A, xx/xx/xxxx]

**12.2.14.12 DISCLOSURE IN LIEU OF INSPECTION FOR HIGH MILEAGE/AGED MOTOR VEHICLES:**

In lieu of the used motor vehicle damage inspection contemplated by 12.2.14.9 NMAC and the used motor vehicle damage inspection report contemplated by 12.2.14.10 NMAC, the seller of a motor vehicle which either:

        A.         is 10 or more years old based on its model year, or

        B.         has more than 100,000 odometer miles, may provide the buyer of such a motor vehicle with a conspicuous written disclosure on a separate form containing a statement to the effect that “because of age in excess of 10 years or mileage in excess of 100,000 this motor vehicle has not received a used motor vehicle damage inspection pursuant to 12.2.14.1 NMAC et seq., and buyer may obtain an independent inspection of the motor vehicle at buyer’s own expense before purchase, if buyer so chooses.”

This section is not intended to prevent the seller of such a high mileage/aged motor vehicle who chooses to do so from nevertheless obtaining a damage inspection and report on such a motor vehicle, in which case the seller shall provide the inspection report and any applicable affidavit to the buyer as with

any other used motor vehicle. This section is not intended to negate or limit any obligation of a seller of such a high mileage/aged motor vehicle to disclose damage which is nevertheless actually known to the seller.

[12.2.14.12 NMAC - N, xx/xx/xxxx]

**12.2.14.13 SEVERABILITY:**

If any part of this rule is held invalid, the remainder of the rule and applications thereof shall remain unaffected.

[12.2.14.13 NMAC - N, 4/1/2014; Rn, 12.2.14.12 NMAC, xx/xx/xxxx]

**Continued on Next Page**

**12.2.14.14 USED MOTOR VEHICLE ALTERATION OR DAMAGE INSPECTION FORM:**

Seller Name and Contact Information: \_\_\_\_\_

Year \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_

VIN \_\_\_\_\_ Odometer \_\_\_\_\_

None  
Noted Yes Describe, if yes

**VISIBLE SAFETY ISSUES**

**CHASSIS OR STRUCTURAL DAMAGE**

**NON INDUSTRY-STANDARD REPAIR**

**UNREPAIRED DAMAGE**

**CHASSIS INSPECTION**

None  
Noted Yes Location – Details, if yes

**Frame/Unibody Repair/Welds**

**Frame Machine Pinch Marks**

**Other**

**BODY PANEL INSPECTION**

None  
Noted Yes Location – Details, if yes

**Replaced Body Panels**

**Damaged/Repaired Body Panels**

**Uneven Body Panel Gaps**

**Other**

**PAINT INSPECTION**

None  
Noted Yes Location – Details, if yes

**Difference in Paint Color/Texture**

**Uneven Paint Thickness**

**Aftermarket Overspray/Mask-lines**

**Other**

Was motor vehicle placed on a lift to inspect chassis? Yes No

Was a paint mil thickness gauge used to measure paint thickness? Yes No

**Good faith estimate whether discovered prior alteration/damage/repair cost exceeds 6 percent of sales price:** Yes No

**Other Inspection Comments**

Cost of Inspection: \$ \_\_\_\_\_ Date of Inspection: \_\_\_\_\_

Inspector Name: \_\_\_\_\_

Inspector Contact Information: \_\_\_\_\_

Inspector Signature: \_\_\_\_\_

**PRIOR ALTERATION/DAMAGE/REPAIR INSPECTION IS BASED ON GOOD FAITH OBSERVATION, MINIMAL DISASSEMBLY AND WITHOUT USE OF COMPUTERIZED MEASURING SYSTEM(S). See NMAC 12.2.14.1, et seq. (NOT A WARRANTY.)**

[12.2.14.14 NMAC - N, xx/xx/xxxx] \_\_\_\_\_

**End of Other Related Material Related top Administrative Law Section**

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**Submittal Deadlines and Publication Dates**  
**Volume XXVII, Issues 1-24**

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|---------------------|---------------------------|-------------------------|
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| <b>Issue 2</b>      | <b>January 19</b>         | <b>January 29</b>       |
| <b>Issue 3</b>      | <b>February 1</b>         | <b>February 12</b>      |
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