

TITLE 13 INSURANCE
CHAPTER 12 MOTOR VEHICLE INSURANCE
PART 3 UNINSURED AND UNKNOWN MOTORISTS COVERAGE

13.12.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission Insurance Division.
[7/1/97; 13.12.3.1 NMAC - Rn & A, 13 NMAC 12.3.1, 5/14/04]

13.12.3.2 SCOPE: This rule shall govern the delivery or the issuance for delivery of any motor vehicle or automobile policy in this state, insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person or for injury to or destruction of property of others arising out of the ownership, maintenance or use of a motor vehicle or automobile registered or principally garaged in this state, by providing in or supplemental to, uninsured and unknown motorist coverage in limits for bodily injury or death and for injury to or destruction of property as provided in this rule.
[7/1/97; 13.12.3.2 NMAC - Rn, 13 NMAC 12.3.2, 5/14/04]

13.12.3.3 STATUTORY AUTHORITY: Section 66-5-301 NMSA 1978.
[7/1/97; 13.12.3.3 NMAC - Rn, 13 NMAC 12.3.3, 5/14/04]

13.12.3.4 DURATION: Permanent.
[7/1/97; 13.12.3.4 NMAC - Rn, 13 NMAC 12.3.4, 5/14/04]

13.12.3.5 EFFECTIVE DATE: July 1, 1997, unless a later date is cited at the end of a section.
[7/1/97; 13.12.3.5 NMAC - Rn & A, 13 NMAC 12.3.5, 5/14/04]

13.12.3.6 OBJECTIVE: The purpose of this rule is to specify the requirements for uninsured and unknown motorists endorsements in accordance with Section 66-5-301 NMSA 1978.
[7/1/97; 13.12.3.6 NMAC - Rn, 13 NMAC 12.3.6, 5/14/04]

13.12.3.7 DEFINITIONS: For the purposes of this rule:
A. [*] (a single asterisk in brackets) means either the first named insured, named insured or principal named insured, as appropriate for the context of the rule.
B. [**] (a double asterisk in brackets) means either “notice,” “notice of accident,” or “notice of accident, occurrence or loss,” as appropriate for the context of the rule.
[7/1/97; 13.12.3.7 NMAC - Rn, 13 NMAC 12.3.7, 5/14/04]

13.12.3.8 OPTIONAL UNINSURED MOTORIST ENDORSEMENT: Nothing contained in this rule shall prohibit any insurance company from filing an endorsement providing benefits for uninsured and unknown motorists which, in the opinion of the superintendent of insurance, is more favorable to the policyholder than the provisions permitted by the endorsement prescribed in this rule.
[7/1/97; 13.12.3.8 NMAC - Rn, 13 NMAC 12.3.8, 5/14/04]

13.12.3.9 REJECTION OF UNINSURED MOTORIST COVERAGE: The rejection of the provisions covering damage caused by an uninsured or unknown motor vehicle as required in writing by the provisions of Section 66-5-301 NMSA 1978 must be endorsed, attached, stamped or otherwise made a part of the policy of bodily injury and property damage insurance.
[7/1/97; 13.12.3.9 NMAC - Rn, 13 NMAC 12.3.9, 5/14/04]

13.12.3.10 REQUIREMENTS FOR AN ENDORSEMENT FOR UNINSURED AND UNKNOWN MOTORIST COVERAGE: All forms of endorsement for uninsured and unknown motorists coverage shall contain the provisions in 13.12.3.11 through 13.12.3.17 NMAC.
[7/1/97; 13.12.3.10 NMAC - Rn, 13 NMAC 12.3.10, 5/14/04]

13.12.3.11 FIRST PAGE OF UNINSURED AND UNKNOWN MOTORIST COVERAGE ENDORSEMENT: The first page of the endorsement must contain:

A. Space for insertion of name of company or companies issuing the endorsement and other matter permitted to be stated at the head of this endorsement.

B. Space for description of insured motor vehicle or automobile, listing of rates and premiums for the basic limits coverage insured under the endorsement and for additional excess limits of coverage under the endorsement.

[7/1/97; 13.12.3.11 NMAC - Rn, 13 NMAC 12.3.11, 5/14/04]

13.12.3.12 INSURING AGREEMENTS FOR UNINSURED AND UNKNOWN MOTORISTS

COVERAGE ENDORSEMENT: In consideration of the payment of the premium for this endorsement and subject to all of the terms of this endorsement, the company agrees with the [*] as to the insuring agreements in 13.12.3.13 through 13.12.3.17 NMAC.

[7/1/97; 13.12.3.12 NMAC - Rn, 13 NMAC 12.3.12, 5/14/04]

13.12.3.13 DAMAGES FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED BY

UNINSURED MOTOR VEHICLES: To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of:

A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called “bodily injury”, sustained by the insured; or

B. injury to or destruction of:

(1) motor vehicle registered in New Mexico which is owned by the [*] or by his spouse if a resident of the same household, and to which the liability coverage of the policy applies; and

(2) property owned by the insured which is contained therein, hereinafter called “property damage”;

C. when caused by accident and arising out of the ownership, maintenance or use of the uninsured motor vehicle; provided, for the purpose of this endorsement, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, may be made by agreement between the insured or such representative and the company or, if they fail to agree, by arbitration in accordance with the arbitration provision of this endorsement.

D. No judgment against any person or organization alleged to be legally responsible for the bodily injury or property damage shall be conclusive, as between the insured and the company, of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled unless the judgment is entered pursuant to an action prosecuted by the insured with the written consent of the company.

[7/1/97; 13.12.3.13 NMAC - Rn, 13 NMAC 12.3.13, 5/14/04]

13.12.3.14 REQUIRED POLICY DEFINITIONS:

A. Insured means:

(1) the [*] as stated in the policy and, while residents of the same household, the spouse of any such [*] and relatives of either;

(2) any other person while occupying an insured motor vehicle; and

(3) any person with respect to damages he is entitled to recover because of bodily injury to which this endorsement applies sustained by an insured under Paragraphs (1) and (2) of Subsection A of 13.12.3.14 NMAC.

(4) The insurance applies separately with respect to each insured, but the application of the insurance to more than one insured shall not operate to increase the limits of the company’s liability.

B. Insured motor vehicle means a motor vehicle:

(1) described in the schedule as an insured motor vehicle to which the bodily injury and property damage liability coverages of the policy apply;

(2) while temporarily used as a substitute for an insured motor vehicle as described in Paragraph (1) of Subsection B of 13.12.3.14 NMAC], when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

(3) while being operated by the [*] or by his spouse if a resident of the same household;

(4) but the term “insured motor vehicle” shall not include:

(a) a motor vehicle while used as a public or livery conveyance;

(b) a motor vehicle while being used without the permission of the owner;

(c) under Paragraphs (2) and (3) of Subsection B of 13.12.3.14 NMAC, a motor vehicle owned by the [*] or by any resident of the same household as such insured; or

(d) under Paragraphs (2) and (3) of Subsection B of 13.12.3.14 NMAC, a motor vehicle furnished for the regular use of the [*] or any resident of the same household.

C. Uninsured motor vehicle means:

(1) a motor vehicle with respect to the ownership, maintenance or use of which there is, in at least the amounts specified by the financial responsibility law of New Mexico, no bodily injury and property damage liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of the motor vehicle, or with respect to which there is a bodily injury and property damage liability bond or insurance policy applicable at the time of the accident but the company writing the same denies coverage thereunder or is or becomes insolvent; or

(2) a hit-and-run motor vehicle as defined;

(3) but the term “uninsured motor vehicle” shall not include:

(a) an insured motor vehicle;

(b) a motor vehicle owned by or furnished for the regular use of the [*], his spouse, or a relative of either who is a resident of the same household;

(c) a motor vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or similar law;

(d) a motor vehicle which is owned by the United States of America, Canada, a state, a political subdivision of any such government or agency of any of the foregoing;

(e) a land motor vehicle or trailer if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

(f) a farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

D. Hit-and-run motor vehicle means a motor vehicle which causes bodily injury to an insured or property damage arising out of physical contact or attempted physical contact of the motor vehicle with: 1) the insured; 2) a vehicle which the insured is occupying at the time of the accident; or 3) property of the insured, provided:

(1) there cannot be ascertained the identity of either the operator or the owner of such “hit-and-run motor vehicle”;

(2) the insured or someone on his behalf shall have reported the accident within 24 hours to a police, peace or judicial officer or to the director of the motor vehicle division, and shall have filed with the company within 30 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and

(3) at the company’s request, the insured or his legal representative makes available for inspection the motor vehicle which the insured was occupying at the time of the accident.

E. Occupying means in or upon or entering into or alighting from.

F. State includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

[7/1/97; 13.12.3.14 NMAC - Rn, 13 NMAC 12.3.14, 5/14/04]

13.12.3.15 POLICY PERIOD AND TERRITORY: This endorsement applies only to accidents which occur on and after the effective date of the endorsement, during the policy period and within the United States of America, its territories or possessions, or Canada.

[7/1/97; 13.12.3.15 NMAC - Rn, 13 NMAC 12.3.15, 5/14/04]

13.12.3.16 EXCLUSIONS: This endorsement does not apply:

A. to bodily injury to an insured with respect to which such insured, his legal representative or any person entitled to payment under this endorsement shall, without written consent of the company, make any settlement with any person or organization who may be legally liable therefor;

B. to bodily injury to an insured while occupying a motor vehicle (other than an insured motor vehicle) owned by the [*] or any relative resident in the same household;

C. so as to inure directly or indirectly to the benefit of any workmen’s compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen’s compensation or disability benefits law or any similar law;

D. so as to inure directly or indirectly to the benefit of any insurer of property;

E. to the first two hundred and fifty dollars of the total amount of all property damage as the result of any one accident.
[7/1/97; 13.12.3.16 NMAC - Rn, 13 NMAC 12.3.16, 5/14/04]

13.12.3.17 CONDITIONS:

A. Policy provisions: None of the insuring agreements, exclusions or conditions of the policy shall apply to the insurance afforded by this endorsement except the conditions “[**]”, “changes”, “assignment”, “cancellation” and “declarations”.

B. Premium: If during the policy period the number of insured motor vehicles owned by the [*] or spouse or the number of dealer’s license plates issued to the [*] changes, the insured shall notify the company during the policy period of any change and the premium shall be adjusted in accordance with the manuals in use by the company. If the earned premium thus computed exceeds the advance premium paid, the insured shall pay the excess to the company; if less, the company shall return to the insured the unearned portion paid by the insured.

C. Proof of claim:

(1) As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable under the endorsement. The insured and every other person making a claim under the endorsement shall submit to examinations under oath by any person named by the company and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish the forms within 15 days after receiving notice of claim.

(2) The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require and he, or in the event of his incapacity his legal representative, or in the event of his death his legal representative or the person or persons entitled to sue on his behalf, shall upon request from the company execute authorization to enable the company to obtain medical reports and copies of records.

(3) The insured or other person making claim for damage to property shall file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement setting forth the interest of the insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, and the description and amounts of all other insurance covering such property. Upon the company’s request, the insured shall exhibit the damaged property to the company.

D. Assistance and cooperation of the insured: After notice of claim under this endorsement, the company may require the insured to take such action as may be necessary or appropriate to preserve his right to recover damages from any person or organization alleged to be legally responsible for the bodily injury or property damage; and in any action against the company, the company may require the insured to join such person or organization as a party defendant.

E. Notice of legal action: If, before the company makes payment of loss under the endorsement, the insured or his legal representative shall institute any legal action for bodily injury or property damage against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

F. Limits of liability:

(1) The company’s limit of bodily injury liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person in any one accident shall not exceed the amount specified for unknown motorist/uninsured motorist coverage as stated on the declarations page for bodily injury to one person in any one accident. Subject to this provision, the company’s limit of liability for all such damages arising out of bodily injury sustained by two or more persons in any one accident shall not exceed the amount specified for unknown motorist/uninsured motorist coverage as stated on the declarations page for bodily injury to two or more persons in any one accident.

(2) The company’s limit of property damage liability shall not exceed the amount specified for unknown motorist/uninsured motorist coverage as stated on the declarations page for all damages in excess of \$250 arising out of injury to or destruction of all property of one or more insureds as the result of any one accident.

(3) Any amount payable under this coverage because of bodily injury or property damage sustained in an accident by a person who is an insured under this coverage shall be reduced by:

(a) all sums paid on account of such bodily injury or property damage by or on behalf of the owner or operator of the uninsured motor vehicle and any other person or organization jointly or severally liable together with such owner or operator for such bodily injury or property damage including all sums paid under bodily injury liability;

(b) the amount paid and the present value of all amounts payable on account of such bodily injury under any worker's compensation law, disability benefits law or any similar law;

(c) the amount paid or payable to such an insured under any policy of property insurance.

(4) Any payment made under this endorsement to or for any insured shall be applied in reduction of the amount of damages which he may be entitled to recover from any person insured under the bodily injury liability coverage of the policy.

(5) The company shall not be obligated to pay under this coverage that part of the damages which the insured may be entitled to recover from the owner or operator of an uninsured motor vehicle which represents expenses for medical services paid or payable under the medical payments coverage of the policy.

G. Other insurance:

(1) With respect to bodily injury to an insured while occupying a motor vehicle not owned by the [*], the insurance under this endorsement shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of the other insurance.

(2) Except as provided in Paragraph (1) of Subsection G of 13.12.3.17 NMAC, if the insured has other similar bodily injury insurance available to him and applicable to the accident, the damages for bodily injury shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability under this endorsement bears to the sum of the applicable limits of liability of this insurance and the other insurance.

(3) With respect to property damage, the insurance afforded under this endorsement shall be excess insurance over any other valid and collectible insurance against the property damage.

H. Arbitration: The insured and the company may agree to arbitrate any claim or dispute arising under this endorsement. The arbitration shall comply with applicable law, including Sections 66-5-301 through -303 NMSA 1978 regarding uninsured motorist's insurance and the Uniform Arbitration Act, Sections 44-7A-1 through 44-7A-32 NMSA 1978.

I. Trust agreement: In the event of payment to any person under this endorsement:

(1) the company shall be entitled to the extent of the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any person or organization legally responsible for the bodily injury or property damage because of which the payment is made;

(2) the person shall hold in trust for the benefit of the company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of a claim made under this endorsement;

(3) the person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(4) if requested in writing by the company, the person shall take, through any representative designated by the company, action as may be necessary or appropriate to recover the payment as damages from the other person or organization, the action to be taken in the name of the person; in the event of a recovery, the company shall be reimbursed out of the recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;

(5) the person shall execute and deliver to the company instruments and papers as may be appropriate to secure the rights and obligations of the person and the company established by this provision.

J. Payment of loss by the company: A amount due under this endorsement is payable: (a) to the insured; or (b) if the insured be a minor to his parent or guardian; or (c) if the insured be deceased to his surviving spouse; otherwise (d) to a person authorized by law to receive the payment or to a person legally entitled to recover the damages which the payment represents; provided, the company may at its option pay any amount due under this endorsement in accordance with division (d).

K. Action against company. No action shall lie against the company unless, as a condition precedent thereto, the insured or his legal representative has fully complied with all the terms of this endorsement.

L. Conformity with state statutes. Any provision of this endorsement which on its effective date is in conflict with the statutes of the state of New Mexico is hereby amended to conform to the minimum requirements of the statutes.

[7/1/97; 13.12.3.17 NMAC - Rn & A, 13 NMAC 12.3.17, 5/14/04]

HISTORY OF 13.12.3 NMAC:

Pre-NMAC History: The material in this rule was previously filed with the state records center as: ID 67-1, Sections 24-1-1 through 24-1-4, New Mexico Official Administrative Rules and Regulations Code, on December 1, 1967, and as ID 67-2, Article 24, Chapter 64, Rule I, Department of Insurance Regulations Governing Insurance Against Uninsured and Unknown Motorists, on December 1, 1967.

History of Repealed Material: [RESERVED]

Other History:

Those applicable portions of ID 67-1, New Mexico Official Administrative Rules and Regulations Code (filed 12/1/67) and ID 67-2, Article 24, Chapter 64, Rule I, Department of Insurance Regulations Governing Insurance Against Uninsured and Unknown Motorists (filed 12/1/67) renumbered, reformatted and replaced by 13 NMAC 12.3, Uninsured and Unknown Motorists Coverage, effective 7/1/97.

13 NMAC 12.3, Uninsured and Unknown Motorists Coverage (filed 5/27/97) renumbered, reformatted and amended by 13.12.3 NMAC, Uninsured and Unknown Motorists Coverage, effective 5/14/2004.