

New Mexico Register

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

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The New Mexico Register

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health (Department) will hold a public hearing on proposed amendments to various rule sections of the Department's Medical Cannabis Program rules at Parts 7.34.2, 7.34.3, and 7.34.4 NMAC. The hearing will be held on July 12, 2019 at 9:00 a.m. in the auditorium of the Harold Runnels Building, located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The proposed rule amendments include:

- Revisions to nonprofit producer licensure requirements, including cannabis plant limits, licensing fee requirements, and the specification of certain quarterly reporting requirements;
- Revisions to standards concerning bases for disciplinary actions against licensed producers, and revisions to the fines applicable to licensed nonprofit producers;
- Revisions to personal production license (PPL) standards, including provisions regarding who may hold a PPL and where a PPL holder may grow cannabis plants;
- Addition of a licensing provision for school districts, public schools and charter schools, and their designated school personnel, to possess, store and administer cannabis for qualified students, in accordance with recent changes to the Public Schools Code;
- Modification of the patient enrollment period from the current one-year period to three years;
- Revision of certain hepatitis C eligibility requirements;
- Inclusion of certain annual submittal requirements for qualified patients;
- Removal of the 70% THC concentration limit for cannabis-derived products;
- Removal of the prohibition

against certifications conducted by telemedicine, and inclusion of certain requirements applicable to such certifications;

- Revisions to the Medical Cannabis Advisory Board membership requirements; and
- Various revisions and additions to definitions in all three rule parts.

The legal authority for the proposed rule amendments is at Subsection E of Section 9-7-6 NMSA 1978, and Subsection A of Section 26-2B-7 NMSA 1978.

Free copies of the full text of the proposed rule amendments can be obtained online from the New Mexico Department of Health's website at <http://nmhealth.org/about/asd/cmo/rules/> or from Andrea Sundberg using the contact information below.

The public hearing will be conducted to receive public comment on the various proposed amendments to sections of Parts 7.34.2, 7.34.3, and 7.34.4 NMAC. Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. Written public comment may also be submitted prior to the date of the hearing. Please submit any written comments regarding the proposed rule amendments to the attention of:

Andrea Sundberg
NM Department of Health
Medical Cannabis Program
P.O. Box 26110
Santa Fe, NM 87502-6110

Or at:

MCP.comment@state.nm.us

All written comments must be received by 5:00 p.m. MDT on July 11, 2019. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within 3 days of

receipt, and will be available at the New Mexico Department of Health Medical Cannabis Program for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Andrea Sundberg by telephone at (505) 827-2318. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF EMERGENCY RULEMAKING

Public Notice. The New Mexico Public Education Department (PED) gives notice that on 5/30/2019 it adopted 6.30.12 NMAC, K-5 PLUS PROGRAM as an emergency rule adoption. The repeal and replace to 6.30.12 NMAC is in response to new statute, K-5 Plus Act. The repeal and replace to 6.30.12 NMAC is implemented as an emergency rule. The Department finds that following the non-emergency rulemaking procedures in enacting regulation of K-5 Plus programs causes imminent peril to the public health, safety, and welfare, pursuant to Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency rule.

Rule Information. The purpose of this rule is to provide criteria for the development and implementation of the K-5 plus program in order to maximize successful outcomes and to facilitate the transition from the K-3 Plus Act to the K-5 Plus Act.

The statutory authorizations include the following:

Section 22-2-1 NMSA 1978 grants the authority of the secretary to adopt, promulgate, and enforce rules.

No technical information served as a basis for this proposed rule change.

A public comment period and a public hearing, pursuant to Section 14-4-5.3 NMSA 1978, State Rules Act, Public Participation, Comments, and Rule Hearings, will be held in order to adopt a permanent rule within 180 days of the effective date of June 14, 2019 for 6.30.12 NMAC, pursuant to Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency rule.

Copies of the rule may be accessed through the New Mexico Public Education Department’s website under the “Rule Notification” link at <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/> or may be obtained from John Sena by contacting him at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format are asked to contact John Sena at (505) 570-7816.

**End of Notices of
Rulemaking and
Proposed Rules**

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.

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved the emergency repeal of its rule 6.30.12 NMAC, K-3 PLUS PROGRAM (filed 10/30/2014) and replace it with 6.30.12 NMAC, K-5 PLUS PROGRAM (adopted on 5/30/2019), and effective 6/14/2019.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS PART 12 K-5 PLUS PROGRAM

6.30.12.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.30.12.1 NMAC – Rp/E, 6.30.12.1 NMAC, 6/14/2019]

6.30.12.2 SCOPE: This rule applies to all school districts and public schools, including charter schools.
[6.30.12.2 NMAC - Rp/E, 6.30.12.2 NMAC, 6/14/2019]

6.30.12.3 STATUTORY AUTHORITY: Section 22-1-2 NMSA 1978.
[6.30.12.3 NMAC - Rp/E, 6.30.12.3 NMAC, 6/14/2019]

6.30.12.4 DURATION: Permanent.
[6.30.12.4 NMAC - Rp/E, 6.30.12.4 NMAC, 6/14/2019]

6.30.12.5 EFFECTIVE DATE: June 14, 2019, unless a later

date is cited at the end of a section.
[6.30.12.5 NMAC - Rp/E, 6.30.12.5 NMAC, 6/14/2019]

6.30.12.6 OBJECTIVE: This rule provides criteria for the development and implementation of the K-5 plus program in order to maximize successful outcomes for students and to facilitate the transition from the K-3 Plus Act to the K-5 Plus Act. Development and implementation includes assisting school districts and charter schools as they build capacity to offer K-5 plus programs. Development and implementation also includes assessing and evaluating K-5 plus programs.
[6.30.12.6 NMAC - Rp/E, 6.30.12.6 NMAC, 6/14/2019]

6.30.12.7 DEFINITIONS:

A. “Capacity” means having the appropriate numbers of teachers and students participating in the K-5 plus program to meet program eligibility requirements.

B. “Evidence-based scientific math strategies and program” means instructional strategies and mathematics programs that apply rigorous, systematic, and objective procedures to obtain valid measures relevant to math instruction and that are developmentally appropriate and integrate standards for mathematical practices.

C. “Evidence-based scientific reading strategies and program” means instructional strategies and reading programs that apply rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties.

D. “High-priority schools” means, for the purpose of the K-5 plus program, a public school:

(1) in which eighty percent or more of the elementary school’s students are eligible for free or reduced-fee lunch at the time the public school applies for the K-5 plus program;

(2) that is a low-performing elementary school;

(3) that participated in K-3 plus or K-5 plus programs in the most recent school year;

(4) that is identified as a comprehensive support and improvement school; or

(5) that is identified as a targeted support and improvement school.

E. “Instructional day” means at least five and one-half instructional hours per day for kindergarten through sixth grade and at least six instructional hours per day for seventh through twelfth grade.

F. “K-5 plus program” means a voluntary program, for approved full-day kindergarten classes and classes in grades one through five, that extends the school year by 25 or more additional instructional days for the purpose of literacy and numeracy instruction. The additional 25 or more instructional days will commence prior to the regular school year.

G. “Local education agency or “LEA” means a school district, or a locally chartered, or state-chartered charter school.

H. “Multi-layered system of support” means an umbrella framework that encompasses response to intervention and positive behavioral intervention and supports.

I. “Progress monitoring” means a scientifically-based practice that teachers use to evaluate the effectiveness of their instruction for individual students and their entire class through:

(a) the identification of goals;

(b) measurement of progress toward meeting those goals, comparing expected and actual rates of learning; and

(c) adjustments in instruction.

J. "School-wide" means the program is offered in kindergarten and grades one through five, or as many of those grade levels as an elementary school has.

K. "Screening assessment" means the standardized assessment administered multiple times per year for all students to assess specific skills and to identify academically at-risk students.

L. "Secretary" means the secretary of public education. [6.30.12.7 NMAC - Rp/E, 6.30.12.7 NMAC, 6/14/2019]

6.30.12.8 PROGRAM DEVELOPMENT AND IMPLEMENTATION: The department shall support schools in their capacity-building to increase participation in the K-5 plus program. Capacity-building includes professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design and evaluation. [6.30.12.8 NMAC - Rp/E, 6.30.12.8 NMAC, 6/14/2019]

6.30.12.9 PROGRAM ELIGIBILITY:

A. To be eligible for K-5 plus program units a school shall commit to:

(1) providing 25 or more additional instructional days of K-5 plus programming prior to the start of the regular school year;

(2) keeping students that participate in the K-5 plus program with the same teacher and cohort of students for the following regular school year;

(3) providing K-5 plus teachers additional professional development on how young children learn to read; and

(4) implementing the program school-wide.

B. Schools shall pay for a teacher's salary and professional development in the event a school cannot meet the requirement in Paragraph (2) of Subsection A of 6.30.12.9 NMAC. The remaining K-5 programming elements must be delivered. This option is available for no more than two teachers per school.

C. Temporary flexibility may be granted to ensure sustainable programs. [6.30.12.9 NMAC - Rp/E, 6.30.12.9 NMAC, 6/14/2019]

6.30.12.10 PROGRAM ELEMENT - INSTRUCTION:

A. K-5 plus programs for kindergarten and grades one through five shall include:

(1) a daily classroom schedule with time for all students to practice independent reading;

(2) instruction and intervention provided to students based on screening assessment data to guide instruction to meet student needs;

(3) a comprehensive evidence-based early literacy core basal reading program or intervention in alignment with the English language arts common core state standards established in 6.29.13.8 NMAC that:

(a) identify the concepts and skills necessary to establish the foundation of success in early reading;

(b) include instructional strategies that ensure children learn identified concepts and skills; and

(c) include key early literacy skills instruction including but not limited to phonological awareness, phonics, reading fluency, vocabulary, comprehension, and writing to support comprehension.

(4) a sequential comprehensive, developmentally appropriate early mathematics program that aligns

with the mathematics common core state standards established in 6.29.14 NMAC that:

(a) identify the concepts and skills necessary to establish the foundation of success in early mathematics; and

(b) include instructional strategies that ensure children learn identified concepts and skills; and

(5) implementation of the department's multi-layered system of support.

B. Schools shall provide intervention services in literacy and numeracy for students enrolled in the K-5 plus program who are not meeting grade level requirements.

[6.30.12.10 NMAC - Rp/E, 6.30.12.10 NMAC, 6/14/2019]

6.30.12.11 PROGRAM ELEMENT - ASSESSMENT:

A. K-5 plus schools shall administer a common screening assessment for student literacy that diagnoses the acquisition of reading skills, including phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency.

B. The screening assessment in accordance with the requirements of this section shall be administered to students participating in the K-5 plus program at the following times:

(1) beginning of the K-5 plus program;

(2) end of the K-5 plus program;

(3) beginning of the regular school year;

(4) middle of the regular school year; and

(5) end of the regular school year.

[6.30.12.11 NMAC - Rp/E, 6.30.12.11 NMAC, 6/14/2019]

6.30.12.12 PROFESSIONAL DEVELOPMENT:

A. The LEA shall provide professional development to K-5 plus teachers in the following areas:

(1) early literacy research and its implications for instruction for phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency in kindergarten and grades one through five;

(2) best practices of culturally and linguistically responsive instruction, including instruction for English language learners; and

(3) best practices in early mathematics instruction.

B. To support successful implementation of K-5 plus programs the department shall develop and disseminate information on best practices in the areas of professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design. [6.30.12.12 NMAC - Rp/E, 6.30.12.12 NMAC, 6/14/2019]

6.30.12.13 APPLICATION AND REVIEW PROCESS:

A. Pursuant to the K-5 Plus Act, the department shall review all applications for approval. Priority will be given to those schools identified as high-priority schools. Applicants that meet the application deadlines will be approved based on demonstration of the capacity to meet K-5 plus program requirements as set forth in statute, regulation and department guidance, provided there is sufficient funding.

B. No later than October 15 of each year, a school district or charter school that wishes to apply for a new K-5 plus program for the next fiscal year shall submit to the department the actual number of students who participated in its K-5 plus programs in the current calendar year and an estimate of the number of students the school district or charter school expects will participate in the K-5 plus programs in the next calendar year. The department shall not approve a new K-5 plus program unless the school district or charter school notifies the department of

its intent to start a new program as required by Subsection B of 6.30.12.13 NMAC.

C. No later than November 15 of each year, the department shall notify the legislature of the number of students participating in K-5 plus programs in the current school year and of the number of students projected to participate in K-5 plus programs in the next school year. [6.30.12.13 NMAC - Rp/E, 6.30.12.13 NMAC, 6/14/2019]

6.30.12.14 FUNDING MECHANISMS:

A. Funding for individual school K-5 plus programs shall be calculated based on the approved number of students in attendance on a date prescribed by the department, multiplied by the cost differential factor of 0.3.

B. Any additional services for students with disabilities required by the individualized education program may be paid for by the district special education budget. School districts shall meet the maintenance of effort requirements at 34 CFR Section 300.203, of the Individuals with Disabilities Education Act (IDEA). The expenditure levels for special education and related services shall be maintained or shall exceed the previous year, unless a district has allowable exceptions under 34 CFR Section 300.204 or is allowed to reduce maintenance of effort pursuant to 34 CFR Section 300.205. School districts may use IDEA funds only for the excess cost of providing special education and related services for students with disabilities.

[6.30.12.14 NMAC - Rp/E, 6.30.12.14 NMAC, 6/14/2019]

6.30.12.15 EVALUATION AND REPORTING AND AUDITING:

A. Schools shall comply with annual and interim reports as required by the department for student and program assessment and evaluation.

B. All students participating in K-5 plus shall be

reported to the department through the department's data collection and reporting system. Required fields include the following:

(1) daily attendance;

(2) demographic information;

(3) services rendered under the multi-layered system of support;

(4) assigned teacher; and

(5) number of years the student has participated in the K-5 plus program.

C. The department may request additional information regarding staffing, endorsements, licensure levels, program elements, class roster reports, professional development activities, parent and family involvement activities, implementation successes and challenges, and suggested modifications.

D. Site monitoring visits by the department or by evaluators designated by the department shall be conducted. District and school personnel shall attend site visits as needed as determined by the department.

E. The department shall report annually to the legislature and the governor on the development and progress of the K-5 plus program.

F. The department shall establish a K-5 plus advisory committee composed of representatives of school districts and charter schools that participate in the K-5 plus program, the legislative education study committee, the legislative finance committee and other stakeholders. The advisory committee shall meet twice a year to advise the department on K-5 plus implementation.

[6.30.12.15 NMAC – N/E, 6/14/2019]

HISTORY OF 6.30.12 NMAC:

6.30.12 NMAC, K-3 Plus Program, filed 10/30/2014, was repealed and replaced by 6.30.12 NMAC, K-5 Plus Program, effective 6/14/2019.

PUBLIC LANDS, COMMISSIONER OF

Explanatory Paragraph: Gender neutral references have replaced the use of pronouns “he,” “she,” “his,” “her” or “him” throughout these rules. The use of “he” in 19.2.8 NMAC, Section 9 will be eliminated and replaced with a gender-neutral reference in the SLO’s counterpart rulemaking proposing amendments to 19.2.8 NMAC, Sections 9 and 11.

This is a short form amendment to 19.2.2 NMAC, Sections 12 and 66 effective 6/11/2019.

This is a short form amendment to 19.2.3 NMAC, Sections 10, 16, 17 and 18 effective 6/11/2019.

This is a short form amendment to 19.2.4 NMAC, Sections 10, 13 and 15 effective 6/11/2019.

This is a short form amendment to 19.2.5 NMAC, Sections 9, 10 and 12 effective 6/11/2019.

This is a short form amendment to 19.2.6 NMAC, Sections 8, 12, 17, 18, 19 and 26 effective 6/11/2019.

This is a short form amendment to 19.2.7 NMAC, Sections 15, 18, 19, 23, 31, 38 and 43 effective 6/11/2019.

This is a short form amendment to 19.2.8 NMAC, Sections 19 and 20 effective 6/11/2019.

This is a short form amendment to 19.2.9 NMAC, Sections 7, 8, 14, 15, 16, 18 and 21 effective 6/11/2019.

This is a short form amendment to 19.2.10 NMAC, Sections 7, 9, 11, 12, 14, 15, 16, 18, 22, 24 and 25 effective 6/11/2019.

This is a short form amendment to 19.2.11 NMAC, Sections 8, 9, 10 and 14 effective 6/11/2019.

This is a short form amendment to 19.2.12 NMAC, Section 8 effective 6/11/2019.

This is a short form amendment to 19.2.13 NMAC, Sections 9, 12, 21, 22, 23, 24 and 27 effective 6/11/2019.

This is a short form amendment to 19.2.14 NMAC, Sections 8, 9, 10, 14, 15, 16 and 17 effective 6/11/2019.

This is a short form amendment to 19.2.15 NMAC, Sections 7, 8, 9, 10, 11, 12, 13, 14 and 17 effective 6/11/2019.

This is a short form amendment to 19.2.16 NMAC, Sections 8, 11 and 14 effective 6/11/2019.

This is a short form amendment to 19.2.17 NMAC, Sections 7, 10, 12 and 13 effective 6/11/2019.

This is a short form amendment to 19.2.19 NMAC, Section 9 effective 6/11/2019.

This is a short form amendment to 19.2.21 NMAC, Sections 8, 9, 13 and 15 effective 6/11/2019.

This is a short form amendment to 19.2.22 NMAC, Sections 7, 13, 14 and 22 effective 6/11/2019.

This is a short form amendment to 19.2.23 NMAC, Section 7 effective 6/11/2019.

This is a short form amendment to 19.2.100 NMAC, Sections 13, 23, 25, 29, 30, 31, 42, 50, 51, 53, 56, 62, 66, 67, 68 and 69 effective 6/11/2019.

PUBLIC LANDS, COMMISSIONER OF

This is an amendment to 19.2.8 NMAC, Sections 9 and 11, effective 6/11/2019.

19.2.8.9 APPLICATIONS TO LEASE:

A. Requirements for all applications. Applications for agricultural leases may be filed for state trust lands shown on the state land office departmental tract books as either open acreage or land under

lease at the time an application is submitted. The commissioner shall reject any application to lease state trust lands, whether held under an existing lease or not under lease at the time application is made, if the commissioner determines that the award of a lease to the applicant would not be in the best interests of the trust.

(1) A single application shall not be accepted for lands held under more than one [(+)] existing lease or for both open acreage and lands held by an existing lease.

(2) All agricultural lease applications shall be made under oath on forms prescribed by the commissioner.

(3) All agricultural lease applications for open acreage or competitive bid shall include a sworn appraisal of the land applied for, and all improvements located thereon, made by a disinterested party who has personal knowledge and ability to provide a true and accurate assessment of the value of the land and the improvements [~~;~~ ~~provided, however, that an~~]. An existing lessee applying for a new lease on trust land which the lessee currently leases, in lieu of an appraisal of the improvements, shall submit a listing of all improvements located on the land, [~~in addition to the~~] but need not submit an appraisal of the land.

(a) All appraisals of improvements made for the purposes of this rule shall be made on the basis of replacement cost less a deduction for the total loss in value arising from the physical deterioration or functional obsolescence of the improvements, and a value shall be listed separately for each improvement.

(b) The inclusion of unauthorized improvements on any appraisal or listing of improvements submitted to the commissioner for any purpose shall not be interpreted as approval of those improvements by the commissioner. Improvements shall be approved only as provided under

19.2.8.17 NMAC “agricultural improvements” below.

B. Application requirements for open acreage. In addition to the requirements set forth in Subsection A above, agricultural lease applications for open acreage shall be accompanied by:

(1) the lease application filing fee as set forth in the schedule of fees;

(2) the deposit of a sum equal to the first year’s offered rental, which shall in no case be less than the minimum rent in the schedule of fees, or if fewer than ~~[twelve (12)]~~ 12 months remain in the period between the date of lease application and the following September 30th, the deposit of an amount equal to the first year’s offered rental reduced on a pro rata basis by month; and,

(3) the deposit of a sum equal to the appraised value of the authorized improvements on the land applied for or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

C. Simultaneous applications for open acreage. Upon receipt of simultaneous applications for open acreage, the lease shall be awarded to the applicant offering the highest annual rental or, at the commissioner’s discretion, the applications may be rejected; and

(1) the applicants permitted to submit confidential sealed lease bids on forms and pursuant to procedures prescribed by the commissioner with the lease awarded to the applicant who by the date and time specified by the commissioner submits the highest sealed bid, if to anyone; or

(2) the open acreage leased by advertised, competitive bid to the bidder offering the highest annual rental, if to anyone.

D. Application requirements for renewal. In addition to the requirements set forth in Subsection A above, agricultural lease applications for a new lease on lands held by the applicant under an existing lease shall:

(1) be accompanied by the lease application filing fee as set forth in the schedule of fees;

(2) be accompanied by the first year’s offered rental, which shall in no case be less than the minimum rent in the schedule of fees; and

(3) be filed with the commissioner on or before August 1st of the year in which the existing lease is to expire; the failure to submit the application on or before August 1st shall result in the forfeiture of the lessee’s right to obtain the lease by matching the highest annual rental offered by other applicants to lease the same land.

E. Application requirements for competitive bids. In addition to the requirements set forth in Subsection A above, agricultural lease applications to lease lands leased to another under an existing lease shall be made for the entire acreage under lease. Such applications shall be made on or before September 1st in the year in which the existing lease is to expire, and shall be accompanied by:

(1) the lease application filing fee as set forth in the schedule of fees;

(2) the deposit of a sum equal to the first year’s offered rental which shall in no case be less than the minimum rent in the schedule of fees; and

(3) the deposit by money order, cashier’s check or certified check of a sum equal to the appraised value of the authorized improvements on the land applied for, or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

F. Determination of competitive bids. In the event more than one ~~[(+)]~~ application is filed to lease lands held by an existing agricultural lease, the lease shall be awarded to the applicant offering the highest annual rental, provided that such award is in the best interest of the trust. If, however, the lease is not in default and one of the applicants is the lessee under the existing lease who correctly applied

for the new lease prior to August 1st, the commissioner shall notify the lessee in writing of the amount of the highest annual rental offered by another applicant for the lease and the name and address of the applicant offering the highest annual rental. If the lessee matches such offer on or before September 30th, the new lease shall be awarded to the lessee, if to anyone. If the lessee does not apply to lease the land on or before August 1st, and more than one ~~[(+)]~~ lease application is made on the leased land on or before September 1st, the commissioner, in the commissioner’s discretion, may award the lease to the applicant offering the highest annual rental, provided that such award is in the best interest of the trust.

Alternatively, the commissioner may implement the procedures applicable in instances of simultaneous application set out in Subsection C above.

G. Improvement value disputes. The value of the improvements, if in dispute, shall be determined by the commissioner’s appraisal. If there is a dispute over the value of the improvements as determined by the commissioner, the disputing party must file a contest to determine such value. The parties to such a contest shall be the existing lessee and the competitive bidder.

H. Sealed bids. A lessee or applicant submitting a sealed bid in response to the commissioner’s request for sealed bids, shall not be permitted to change or supplement that bid after it has been submitted.

I. Non-conforming applications. Any lease application which ~~[is non-conforming to]~~ does not comply with the requirements of this ~~[Subsection]~~ Section 19.2.8.9 NMAC shall be subject to rejection.

~~[(+)] — Applications that do not include an appraisal of the land and of the improvements, or a listing of improvements as described in Paragraph (2) of Subsection B of 19.2.8.9 NMAC above, and the required application filing fee and rental and improvement deposits set forth below shall be rejected.]~~

~~(2)~~ (1) If the rejected application is to renew a lease, and such application is not corrected in time, the applicant shall fail to retain the right to match a competitive bid set out in Section 19-7-49 NMSA 1978.

~~(3)~~ (2) In ~~his~~ the commissioner's discretion, but only in cases where there is no competitive bid, the commissioner may, pursuant to Section 19-7-4 NMSA 1978, grant additional time to correct minor errors or omissions in an application. [3/11/1981, 1/20/1984, 9/30/1985, 12/1/1992, 6/29/1996; 19.2.8.9 NMAC - Rn, 19 NMAC 3 SLO 8.9, 9/30/2002; A, 4/15/2010; A, 6/30/2016; A, 6/11/2019]

19.2.8.11 RENTAL:

A. In the absence of a competitive bid, the annual rental for grazing land leased under an agricultural lease shall be determined by the following formula:

Annual rental = \$0.0474 (Base Value) x Carrying Capacity (CC) x Acreage x Economic Variable Index (EVI).

(1) The EVI in any year (t), October 1st through September 30th, is the ratio of the value of a state land office adjustment factor for that year (SLOAFt) to the value of that same adjustment factor calculated for the base year 1987 (SLOAF87), i.e., SLOAFt : SLOAF87, or SLOAFt divided by SLOAF87 (1987 base = 135).

(2) To determine the SLOAF for each year (t+1), the commissioner shall use the following formula, in which the three indices (the western states forage value index (FVI), beef cattle price index (BCPI), and the prices paid index (PPI)) correspond to the United States department of agriculture's annually published indices for the immediately preceding year (t):

$$\text{SLOAF}_{t+1} = -14.92 + (1.57 \times \text{FVI}_t) + (0.26 \times \text{BCPI}_t) - (0.67 \times \text{PPI}_t)$$

B. The commissioner shall determine the carrying capacity for grazing land in accordance with Section 19-7-29 NMSA 1978, which may be redetermined. A lessee seeking a reevaluation and

redetermination of the carrying capacity shall submit such forms as may be prescribed by the commissioner.

[B] C. Notwithstanding the application of the formula to determine lease rentals for grazing land, the annual rental shall not be less than the minimum rent set forth in the schedule of fees nor shall it be decreased or increased by more than thirty-three and ~~a third~~ one-third percent ~~[(.333)]~~ of the preceding year's rental for the same land.

[C] D. The rental for cultivated land or land leased under an agricultural lease for other uses shall be determined by the commissioner.

[D] E. In computing rental on leases issued after October 1st, the rental for a part of a month shall be the same as the rental for a full month. [3/11/1981, 4/28/1982, 1/20/1984, 9/30/1985, 12/1/1992, 6/29/1996; 19.2.8.11 NMAC - Rn, 19 NMAC 3 SLO 8.11, 9/30/2002; A, 6/11/2019]

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.21.2 NMAC, Section 844, effective 6/11/2019.

1.21.2.844 FORENSIC AND TOXICOLOGY ANALYSIS:

A. **Category:** Public health and social services - laboratory management

B. **Description:** Records related to forensic or toxicology analysis.

C. **Retention:** destroy 10 years from date of final disposition of corresponding case [1.21.2.844 NMAC - N, 10/1/2015, A, 6/11/2019]

SUPERINTENDENT OF INSURANCE, OFFICE OF

TITLE 13 INSURANCE CHAPTER 4 LICENSING OF INSURANCE PROFESSIONALS PART 8 PUBLIC, STAFF AND INDEPENDENT ADJUSTERS

13.4.8.1 ISSUING

AGENCY: Office of Superintendent of Insurance (OSI), Producer Licensing Bureau (PLB).

[13.4.8.1 NMAC - N, 7/1/2019]

13.4.8.2 SCOPE: This rule applies to resident and non-resident persons seeking licensure to provide adjusting services in this state, as defined in Article 13 of 59A NMSA 1978.

[13.4.8.2 NMAC - N, 7/1/2019]

13.4.8.3 STATUTORY

AUTHORITY: Sections 59A-2-8, 59A-2-9, and 59A-13-1 et seq. NMSA 1978.

[13.4.8.3 NMAC - N, 7/1/2019]

13.4.8.4 DURATION:

Permanent.

[13.4.8.4 NMAC - N, 7/1/2019]

13.4.8.5 EFFECTIVE

DATE: July 1, 2019, unless a later date is cited at the end of a section.

[13.4.8.5 NMAC - N, 7/1/2019]

13.4.8.6 OBJECTIVE:

A. **Covered by this rule.** The purpose of this rule is to set forth licensing requirements of public, independent and staff adjusters in this state.

B. **Exclusions:** This rule does not apply to persons who are excluded pursuant to Subsection B of Section 59A-13-2 NMSA 1978.

[13.4.8.6 NMAC - N, 7/1/2019]

13.4.8.7 DEFINITIONS:

As used in this rule:

A. **"Adjuster"** has the meaning provided in Section 59A-13-2 NMSA 1978.

B. “Advertisement”
is as set forth in Subsection 19 of this rule.

C. “Business entity”
has the meaning provided in Section 59A-13-2 NMSA 1978.

D. “Catastrophic disaster” means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; or severely affects state, local and private sector capabilities to begin and sustain response activities. For purposes of this rule, a catastrophic disaster shall be declared by the president of the United States, the governor of the state, or the superintendent of insurance.

E. “Designated home state” is used when the adjuster’s home state does not license adjusters and means a state in which an adjuster does not maintain his, her, or its principal place of residence or business, but in which the adjuster is licensed in good standing and has designated as the home state for purposes of compliance with licensing regulations.

F. “Home state”
means the District of Columbia or any state or territory of the United States which is the principal place of residence or principal place of business for an insurance adjuster and in which the adjuster is licensed to provide services as a resident adjuster.

G. “Independent adjuster” means an adjuster who is not a staff adjuster or a public adjuster and includes a representative or an employee of an independent adjuster. An independent adjuster is a professional who conducts investigations, verifications, negotiations, and settling of claims for or on behalf of an insurance company, a self-insured firm, or a government agency, without being under the employment of the company, firm, or agency in question.

H. “Insurance” has the meaning set forth in Section 59A-1-5 NMSA 1978.

I. “Negotiate” means the act of conferring directly with or offering advice directly to a person whose real or personal property is covered under a policy of insurance regarding a claim or claims for loss or damage with the objective of arriving at a settlement.

J. “Nonresident adjuster” means an adjuster who has a current resident license in the adjuster’s home state or designated home state, and who has applied for and received a nonresident adjuster’s license in this state. A nonresident adjuster may be licensed only for the same type or types of adjuster’s license for which the adjuster is licensed in the home state or designated home state.

K. “Public adjuster”
means an adjuster who, for direct or indirect compensation or any other thing of value on behalf of the insured:

(1) acts or aids, investigates, negotiates, settles, adjusts, advises or otherwise assists an insured with a claim or claims for loss or damage under any policy of insurance covering the insured person’s real or personal property, or on behalf of any other public insurance adjuster who is acting on behalf of an insured;

(2) advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as an public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or

(3) directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

L. “Resident of the state” means an individual who maintains a principal home in New Mexico and holds no active resident insurance license in another state.

M. “Resident adjuster” means an adjuster who resides principally in New Mexico and who conducts business primarily in New Mexico or who has designated New Mexico as the home state for purposes of licensing;

N. “Staff adjuster” a person who is a salaried employee of an insurer or an affiliate of the insurer, and who is engaged in adjusting insured losses solely for that company or other companies under common control or ownership.

O. “Superintendent”
means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope of the superintendent’s official duties and with the superintendent’s authorization.

[13.4.8.7 NMAC - N, 7/1/2019]

13.4.8.8 LICENSE REQUIRED:

A. No individual or business entity shall act as or make any representation as being an adjuster unless licensed as such by the superintendent, nor shall such person accept a commission, service fee or other valuable consideration for investigating or settling claims in New Mexico if that person is required to be licensed and is not so licensed.

B. No person, regardless of location, shall act as, or make any representation as being, an adjuster with respect to workers’ compensation claims of claimants resident or located in New Mexico unless licensed as such by the superintendent. Pursuant to Section 59A-13-11 NMSA 1978, each workers’ compensation insurer shall have at least one claims representative within New Mexico, licensed as an adjuster, to pay workers’ compensation claims of claimants resident or located in New Mexico. Such claims shall be paid promptly through such representatives from accounts in financial institutions located within New Mexico.

C. A business entity may not be licensed as an adjuster unless at least one officer,

active partner, or other managing individual of the business entity, and each individual performing acts of an insurance adjuster on behalf of the business entity in this state, are individually licensed by the superintendent separately from the business entity. The business entity shall designate a licensed adjuster responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

D. Each license shall contain:

- (1) the name of the insurance adjuster;
- (2) the date of issuance and the date of expiration of the license; and
- (3) if applicable, the name of the firm with which the insurance adjuster is employed at the time the license is issued.

E. An individual may be licensed as both an independent and staff adjuster, but must apply separately for each.

F. Each licensee who is a resident of this state or a business entity organized under the laws of this state shall:

- (1) maintain a place of business in this state which shall be easily accessible to the public and is the place where the adjuster principally conducts transactions under the license;
- (2) maintain in the place of business the required records; and
- (3) notify the superintendent of any change in the address of the licensee's place of business within 20 days or be subject to a penalty of fifty dollars (\$50).

G. No later than 30 days after moving within a state or from one state to another state, a nonresident adjuster's licensed in this state shall file with the superintendent:

- (1) the licensee's new address, and
- (2) proof of authorization to act as an insurance adjuster in any new state of residence if that state requires licensure of insurance adjusters.

[13.4.8.8 NMAC - N, 7/1/2019]

13.4.8.9 LICENSING REQUIREMENTS FOR INDIVIDUAL ADJUSTERS: The superintendent will issue, renew and continue adjuster's licenses for individual adjusters as follows:

A. Electronic submission. The individual applicant shall submit the application electronically or as otherwise directed by the superintendent.

B. Individual requirements. The superintendent shall issue an individual adjuster's license only to an individual who is otherwise in compliance with Chapter 59A, Articles 11 and 13 NMSA 1978 and who has furnished evidence satisfactory to the superintendent that the applicant for license:

- (1) is not less than 18 years of age;
- (2) is a bona fide resident of this state, or of a state or country that permits residents of this state to act as adjusters therein, except that under circumstances of necessity the superintendent may waive the requirement of reciprocity;
- (3) is trustworthy, reliable and can demonstrate a good business reputation, and intent to engage in a bona fide manner in the business of adjusting insurance claims;
- (4) has passed the examination required for licensing;
- (5) shall not have committed an act that is a ground for license denial, suspension or revocation under the Insurance Code;

(6) has paid the license fee, as set forth in Section 59A-6-1 NMSA 1978; and

(7) has filed the bond as required 13.4.8.11 NMAC, or otherwise demonstrated financial responsibility, as approved by the superintendent.

C. Exceptions for staff adjuster. Paragraphs (2) and (7) of Subsection B of this section shall not apply as to staff adjusters.

D. Exceptions for prior license holders. Individuals holding licenses as adjusters as of

July 1, 2017, shall be deemed to meet the qualifications for the license except as provided in Chapter 59A, Articles 11 and 13 NMSA 1978. The examination requirement is waived provided that the individual's license is not allowed to terminate through lapse, or otherwise.

E. Additional requirement for public adjusters. An applicant for a license to act as a public adjuster must, as part of the application, endorse an authorization for disclosure to the superintendent of all financial records of any funds the public insurance adjuster holds as a fiduciary using the form available on the OSI website. The authorization shall continue in force and effect while the public adjuster continues to be licensed in this state.

F. Application form.
(1) The application form may require the following information about the applicant:

- (a) proof of the applicant's identity;
- (b) name, date of birth, social security number, residence and business addresses, and email address;
- (c) personal history;
- (d) business experience, including experience, special training or education pertaining to insurance adjusters;
- (e) previous licensing information, including:
 - (i) whether the applicant was ever previously licensed to transact insurance or adjusting in this state or elsewhere;
 - (ii) whether any license was ever refused, suspended or revoked;
 - (iii) whether any insurer or member of the public claims that the applicant is indebted to it, and if so, the details of the claim; and
 - (iv) whether the applicant has ever had a contract or appointment with an

insurer canceled and, if so, the facts of the cancellation;

(f) type or types of adjuster's license applied for;

(g) if the applicant will be adjusting workers' compensation claims, then an in-state physical address for the business entity;

(h) the NAIC number and name of the company holding a New Mexico certificate of authority that is sponsoring the applicant, if applicable;

(i) such other pertinent information and matters as the superintendent may reasonably require.

(2) The superintendent may require any application to be in the applicant's handwriting and under the applicant's oath.

G. Approval. Before approving an application and issuing a license, the superintendent shall confirm that:

(1) all of the applicant's answers to the questions on the application are complete, truthful and satisfactory, including acknowledgment and explanation of any prior criminal charges;

(2) if the applicant is applying for a resident license, the applicant does not currently hold an active New Mexico resident or nonresident license or an active resident license in another state;

(3) if the applicant is applying for a resident license, the applicant has provided an in-state residential or business address (a post office box does not satisfy this requirement), unless the applicant has designated New Mexico as the home state for licensing purposes only;

(4) if the applicant is applying for a nonresident license, the applicant currently holds an active resident license in another state or designated home state that requires an examination;

(5) if applying for a resident license, the applicant has passed the required examination,

or if applying for a nonresident license, the applicant has passed the required examination in the applicant's home state or designated home state;

(6) the applicant has provided at least five years of employment history without gaps in the employment record;

(7) the applicant's fingerprints have been submitted for purposes of a state and federal background check, and

(a) pursuant to 18 U.S.C. Section 1033, no individual who has been convicted of a felony involving dishonesty or a breach of trust may be licensed as a resident adjuster, unless the person has the written consent of the superintendent;

(b) pursuant to the Criminal Offender Employment Act found at Section 28-2-1 et seq. NMSA 1978, any prior criminal record shall be considered in connection with application for any license; and

(c) if the results of the background check have not been received or indicate a need for further investigation, the application will not be approved pending further review;

(8) the applicant has satisfied both the general and specific requirements and has provided any additional information necessary for the adjuster's license requested or as required by the superintendent based the initial application answers;

(9) the applicant has submitted the application fee as set forth in Section 59A-6-1 NMSA 1978; and

(10) if the applicant is a citizen of a foreign county, then the application shall include proof that the applicant is eligible to reside and work in the United States.

H. Requirements for nonresident applicants and licensees.

(1) A nonresident adjuster's licensee must designate the superintendent for service of process in accordance

with the application requirement for nonresident licensees.

(2) Upon submission of the required application and payment of the license fee set forth in Section 59A-6-1 NMSA 1978, the superintendent may issue a nonresident license to an applicant for an adjuster's license who is not a permanent resident of this state, if the applicant is currently licensed as a resident adjuster in the applicant's home state or designated home state and the applicant satisfies all of the following:

(a) currently holds a valid adjuster's license, of the same type as the license applied for, in another state that requires a qualifying examination of sufficient scope as required by the superintendent;

(b) meets the requirements set forth in Subsection B of this section;

(c) is self-employed as an adjuster or associated with or employed by a business entity or other adjuster in the adjuster's home state or designated home state; and

(d) discloses whether the applicant has ever had any license or eligibility to hold any license declined, denied, suspended, or revoked, whether the applicant has ever been placed on probation and whether an administrative fine or penalty has been levied against the applicant and, if so, the reason for the action.

(3) Each individual who holds a nonresident license shall comply with all requirements of this rule and with other rules and laws of this state applicable to adjusters, including the requirements on record maintenance for each license type and for financial responsibility as set forth in 13.4.8.11 NMAC.

(4) As a condition of doing business in this state, a nonresident adjuster shall submit an affidavit certifying that the licensee is familiar with and understands the laws set forth in Article 13 of 59A NMSA 1978, these

rules, and the terms and conditions of the types of insurance contracts that provide coverage on real and personal property. The affidavit shall be provided initially and upon renewal, using the form available on the OSI website. Compliance with this filing requirement is necessary for the issuance, continuation, reinstatement, or renewal of a nonresident adjuster's license.

[13.4.8.9 NMAC - N, 7/1/2019]

13.4.8.10 LICENSING REQUIREMENTS FOR BUSINESS ENTITIES:

A. Individual licenses required. A business entity that is licensed as a public or independent adjuster, or as both, shall employ licensed individual adjusters to adjust the types of claims for which the business entity is licensed. Such individuals shall hold an adjuster's license of the same type or types as that of the business entity employer.

B. General adjuster licensing requirements for business entities. Any resident or nonresident business entity that desires a license as a public or independent adjuster, or as both, shall file a completed application or applications with the superintendent, pursuant to Sections 59A-11-3 and 59A-12-15 NMSA 1978.

(1) The business entity shall be:

(a) organized under the laws of this state or any other state or territory of the United States;

(b) admitted to conduct business in this state by the secretary of state, if required; and

(c) authorized by its articles of incorporation or its partnership agreement to act as a public or independent adjuster; and

(2) The business entity's application or applications shall:

(a) be filed by the business entity;

(b) be submitted electronically or as

otherwise specified by the superintendent;

(c) specify the business type as one of the following legal business types:

(i) partnership;

(ii) limited liability company (LLC);

(iii) limited liability partnership (LLP); or

(iv) corporation; but not as a

(v) sole proprietorship;

(d) be accompanied by payment of fees, as follows:

(i) all fees required pursuant to Section 59A-6-1 NMSA 1978;

(ii) a bond or evidence of financial responsibility as set forth in 13.4.8.11 NMAC; and

(iii) an additional license application filing fee for each individual in excess of one who is to exercise the license powers of the business entity, if not a general partner therein;

(e) designate an individual licensed adjuster who is responsible for the business entity's compliance with the insurance laws, rules and regulations of this state; and

(f) be signed on behalf of the applicant by an authorized partner or corporate officer, under oath if required by the superintendent.

(3) If the business is a firm, then each individual who is not a bona fide general partner and who is to exercise license powers, shall file an application for the same type of adjuster's license as that applied for by the business entity.

(4) If the business is a corporation, then each individual, whether or not an officer, director, stockholder or in other relationship to the corporation, who is to exercise license powers shall file an application for the type of adjuster's license as that applied for by the business entity.

(5) If the business is a partnership, then each individual who is not a general partner and who is to exercise license powers, shall file an application for the same type of adjuster's license applied for by the business entity.

C. Application form. The application form may require information about the business entity as follows:

(1) the name, state of residence, proof of identity, business record, reputation and experience of each partner, officer, member of the board of directors and controlling stockholder of the business entity, and any additional information required of an individual applicant for an adjuster's license as the superintendent deems necessary;

(2) evidence satisfactory to the superintendent that transaction of the business proposed to be transacted under the requested license is within the powers of the business entity as set forth in the entity's articles of incorporation, charter, bylaws, partnership, operating agreement or other governing documents;

(3) at least one individual is specified as the designated responsible adjuster who is actively licensed in this state as either a resident or nonresident adjuster for each type of adjuster's license applied for by the business entity.

The designated responsible licensed adjusters designated by the business entity shall cumulatively be licensed for all types of adjuster's license of the business entity; and

(4) such further information concerning the applicant, appointment of partners, corporate officers, directors and stockholders as may be requested by the superintendent.

D. Approval. The superintendent shall review the application and confirm that:

(1) the applicant meets all of the requirements set forth in Subsections B and C of this section;

(2) all answers to the questions on the application are complete, truthful and satisfactory;

(3) the applicant does not already hold an active resident or nonresident license in New Mexico or, if applying for a resident license, an active resident license in another state;

(4) the business entity has paid the fees set forth in Section 59A-6-1 NMSA 1978;

(5) the business entity application lists at least one individual as an owner, officer, partner or director;

(6) the business entity has designated a licensed adjuster responsible for the business entity's compliance with the laws of this state;

(7) the application sets forth the names of all the members, officers and directors of the business entity and the names of each individual who is to exercise the powers conferred by the license upon the business entity;

(8) the business entity license application uses the entity's legal name, unless an assumed name has been previously approved in writing by the superintendent; and

(9) at least one licensed adjuster who is to exercise license powers is affiliated by submission of an application, and the application for affiliation was submitted with payment as required in Section 59A-6-1 NMSA 1978.

E. Special licensing requirements. The following apply to business entities seeking an adjuster's license:

(1) The business entity intends to be actively engaged in the business of public or independent adjusting.

(2) No officer, director, member, manager, partner, or any other person who has the right or ability to control the license holder has:

(a) had a license suspended or revoked or been the subject of any other disciplinary action by a financial or insurance regulator of this state, another state, or the United States; or

(b) committed an act for which a license may be denied under the Insurance Code.

(3) Nothing contained in this section shall be construed to permit any unlicensed employee or representative of any business entity to perform any act of a public or independent adjuster without obtaining that type of adjuster's license.

(4) Each corporation or partnership shall notify the superintendent not later than the 30th day after the date of:

(a) a felony conviction of a licensed adjuster of the entity or any individual affiliated with the business entity; and

(b) an event that would require notification under the Insurance Code.

(5) If a licensee does not maintain the qualifications necessary to obtain the license, the superintendent shall revoke or suspend the license or deny the renewal of the license.

(6) Each adjuster shall maintain all required records, including all records relating to customer complaints received from customers and the superintendent.

F. Portable electronics. A business entity applying for an independent adjuster's license for the purposes of portable electronics insurance shall comply with the filing requirements set forth in Subsection D of Section 59A-13-4 NMSA 1978.

[13.4.8.10 NMAC - N, 7/1/2019]

13.4.8.11 PROOF OF FINANCIAL RESPONSIBILITY:

A. Prior to issuance of a license as an independent or public adjuster to an individual and for the duration of the license, the applicant shall file with the superintendent a surety bond in favor of the superintendent in aggregate amount of not less than ten thousand dollars, conditioned to pay actual damages resulting to this state or any member of the public in this state from violation of law by the licensee

while acting as an adjuster. The bond shall be one executed by an authorized surety insurer and offered by a producer licensed and appointed in this state.

B. A surety bond used to maintain and demonstrate proof of financial responsibility under this section shall:

(1) remain in effect for the duration of the license, or until the surety is released from liability by the superintendent, or until canceled by the surety;

(2) be in the form specified by the superintendent;

(3) be executed by the insurance adjuster as principal and a surety company authorized to do business in this state as surety;

(4) be payable to the superintendent for the use and benefit of an insured, conditioned that the insurance adjuster shall pay any final judgment recovered against it by an insured;

(5) provide that the surety will give no less than 30 days prior written notice of bond termination to the licensee and the superintendent;

(6) be separate from any other financial responsibility obligation; and

(7) not be used to demonstrate financial responsibility for any other license, certification, or person.

C. The applicant or licensee may file with the superintendent a cash bond, a professional liability policy or similar policy or contract of professional liability coverage in like amount acceptable to the superintendent, in lieu of the surety bond.

D. Each public or independent insurance adjuster must obtain separate proof of financial responsibility and may not rely on the bond of any other insurance adjuster to demonstrate proof of financial responsibility.

E. The superintendent may ask for the evidence of financial responsibility at any time that the superintendent deems relevant.

F. The authority to act as a public or independent adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired. [13.4.8.11 NMAC - N, 7/1/2019]

13.4.8.12 EXAMINATION OF APPLICANTS:

A. Examinations required. An individual applying for a license as an adjuster shall, prior to issuance of a license, personally take and pass a written examination. The examination required by this section shall be of sufficient scope to reasonably test the applicant's:

(1) knowledge, experience or training relating to the assessment of:

(a) real and personal property values; and

(b) physical loss of or damage to real or personal property that may be the subject of insurance and claims under insurance;

(2) knowledge of the duties and responsibilities of an adjuster holding the type of adjuster's license applied for as set forth by law and regulation in this state, including ethical and fair trade practices;

(3) knowledge of basic insurance theory, the essential elements of contracts, and claims, and ethics terms and effects of the types of insurance contracts that provide coverage on real and personal property;

(4) knowledge and experience adequate to enable an adjuster holding the type of adjuster's license applied for to engage in the business as an adjuster fairly and without injury to the public or any member of the public with whom the applicant may have business as an adjuster; and

(5) technical competence in the handling of the types of claims for which the applicant is being tested.

B. Examination exemptions.

(1) Examination is not required for an individual who was licensed in this state as an adjuster prior to July 1, 2017, unless the license is allowed

to lapse or is terminated for any reason, as set forth in Subsection D of 13.4.8.9 NMAC.

(2) Examination is not required for applicants who have taken and passed a similar examination and received the same type of adjuster's license in a state in which the reciprocal provisions of Section 59A-5-33 NMSA 1978 apply; and

(a) the license in the other state is current, or

(b) the application is received within 90 days after cancellation of the previous license. If the license has been canceled, then the following is required:

(i) a certification from the reciprocal state that at the time of cancellation the applicant was in good standing in that state; or

(ii) records maintained by the NAIC indicate that the adjuster is or was licensed in good standing for the type of license applied for.

(3) Reexamination is not required for renewal or continuance of resident or designated home state licenses, unless ordered by the superintendent.

(4) Reexamination is not required for resident applicants who have been licensed in this state within the year prior to the date of the new application and who seek to be relicensed for the same types of adjuster's license. This exemption does not apply if the previous license was suspended, revoked or terminated, if continuation of the license was refused by the superintendent or if the applicant did not previously take and pass an exam in this state.

(5) Examination is not required for a nonresident applicant who is licensed by designating a home state other than the state of residence, if the state of licensure requires the passing of a written examination in order to obtain the license and is a reciprocal state.

(6) Examination is not required for an applicant currently licensed as an adjuster in another state who moves to this state and applies to become a resident insurance adjuster within 90 days of establishing legal residence. For such applicants, the examination requirement is waived as to licensure for the type of adjuster's license previously held in the prior state, unless otherwise determined by the superintendent.

C. Examination fee. Each individual applying for an examination shall remit a nonrefundable fee as set forth in Section 59A-6-1 NMSA 1978.

D. Administration of exams. The superintendent may contract with an outside testing service for administering examinations and collecting the nonrefundable fee.

E. Failure to appear. An individual who fails to appear for an examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination. [13.4.8.12 NMAC - N, 7/1/2019]

13.4.8.13 CONTINUATION, NONRENEWAL, CANCELLATION, DENIAL, REVOCATION, SUSPENSION, TERMINATION AND REINSTATEMENT OF LICENSE:

A. Continuation and nonrenewal of adjuster's licenses. Unless the license is canceled, revoked, suspended or otherwise terminated, an adjuster's license is continuous, subject to payment by the due date of renewal fees as set forth in Section 59A-6-1 NMSA 1978, and for individual licensees, compliance with the continuing education requirements set forth in 13.4.7 NMAC.

(1) For resident licenses issued to individuals:

(a) Biennial renewal fees shall be paid on or before the last day of the second occurrence of the individual's birth month following issuance of the license.

(b) Continuing education requirements shall be satisfied during the 24 months immediately preceding the renewal date of the license. Additional information pertaining to continuing education requirements is set forth at 13.4.7 NMAC.

(c) An individual who is unable to comply with license renewal requirements due to military service, disability or other extenuating circumstance may request a waiver using forms available on the OSI website or as otherwise directed by the superintendent. An adjuster in such circumstances may also request a waiver of a fine or sanction imposed for failure to comply with renewal procedures.

(d) If the superintendent has reason to believe that the competence of any individual licensee is in question, the superintendent may require as a condition of continuation of the license that the individual licensee take and pass the written examination that is required for new applicants for the same license.

(e) If an adjuster's license has been expired for one year or more, the adjuster applicant must submit to reexamination. Reexamination must be completed within the 12 months preceding the application.

(2) For licenses issued to business entities:

(a) Business entity licenses shall renew and continue on a biennial basis on March 1 of the biennial year, subject to payment of fees as set forth in Section 59A-6-1 NMSA 1978.

(b) Business entity affiliations shall renew and continue on an annual basis on March 1 of every year, subject to payment of fees pursuant to Section 59A-6-1 NMSA 1978.

(3) For nonresident licenses issued to individuals:

(a) As a condition of the continuation of a nonresident adjuster's license,

the licensee shall maintain a resident adjuster's license of the same type in the adjuster's home state or designated home state.

(b) The licensee shall pay the biennial renewal fees on or before the last day of the second occurrence of the individual's birth month following issuance of the license.

(c) If the licensee's home state requires continuing education substantially equivalent to that of this state as set forth in 13.4.7 NMAC for renewal of the adjuster's license and the licensee has satisfied the continuing education requirements of the home state, then the licensee may renew the nonresident adjuster's license in this state with evidence that the licensee is compliant with the continuing education requirement of the home state.

(d) If the home state does not require continuing education, the nonresident license cannot be renewed until the licensee:

(i) completes the hours required for renewal of the New Mexico resident license by completing courses offered by a continuing education provider that have been approved by the continuing education committee in this state, or

(ii) completes equivalent continuing education requirements for license renewal for a state that the licensee has designated as the home state; and

(iii) uploads the certificates of completion electronically or as otherwise directed by the superintendent.

B. Reasons for suspension, revocation or refusal to continue license. The superintendent may suspend, revoke, or refuse to issue or renew an adjuster's license or may levy a fine or penalty or any combination of the above actions for any one or more of the following causes:

(1) providing incorrect, misleading, incomplete or materially untrue information in the license application;

(2) violating any insurance laws, regulations, subpoena or order of the superintendent or of another state's insurance commissioner, including engaging in any unfair trade practices or fraud;

(3) obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;

(5) intentionally misrepresenting the terms of an actual or proposed insurance contract or settlement offer;

(6) committing an illegal act that is a ground for license denial, suspension or revocation under the Insurance Code;

(7) using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, in the conduct of insurance business in this state or elsewhere;

(8) having an insurance or adjuster's license probated, suspended, revoked or refused in any other state;

(9) forging another's name to any document related to an insurance transaction;

(10) cheating, including improperly using notes or any other reference material, to complete an examination for an adjuster's license;

(11) failing to comply with an administrative or court order imposing a child support obligation; or

(12) termination or cancelation of evidence of financial responsibility, as set forth in 13.4.8.11 NMAC.

C. Termination of licenses.

(1) Adjuster's licenses are subject to termination for any of the reasons set forth in Subsection B of 13.4.2.27 NMAC.

(2) If a nonresident adjuster's license is terminated by the home state or

designated home state for any reason, the nonresident adjuster's license shall terminate immediately, unless the termination is due to the adjuster being issued a resident adjuster's license in a new home state. If there is a change in the home state, then the notice of change must include both the previous and current addresses. If the new home state does not have reciprocity with this state, the nonresident adjuster's license shall terminate.

D. Effects of suspension. While a license is suspended, the licensee shall not engage in any transaction for which the license is required, other than transfer of business that was transacted by the licensee while the license was active.

E. Application for license after suspension, denial of application, or revocation of license. Adjuster's licenses are subject to the provisions for reinstatement as set forth in Subsection C of 13.4.2.27 NMAC.

(1) An adjuster whose license is suspended by the superintendent may apply for a new license only after the expiration of the period of suspension.

(2) In the event that the action by the superintendent is to revoke or deny application for licensure or refuse renewal of an existing license, the superintendent shall notify the applicant or licensee in writing, advising of the reason for the refusal. The applicant or licensee may request a hearing to be held within 30 days.

(3) Paragraph (2) of this subsection does not apply to an applicant whose license application was denied for failure by the applicant to:

- (a) pass the required written examination; or
- (b) submit a properly completed license application.

F. Action against business entities. The license of a business entity may be probated, suspended, revoked, or refused if

the superintendent finds, after a hearing, that its designated individual licensee's violation occurred while acting on behalf of or representing the business entity and that the violation was known or should have been known by one or more of the business entity's partners, officers or managers and that the violation was neither reported to the superintendent nor was corrective action taken.

G. Disciplinary proceeding for conduct committed before surrender or forfeiture of license. The superintendent shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Insurance Code against any person who is under investigation for or charged with a violation of this regulation even if the person's license has been surrendered or has expired by operation of law.

(1) The superintendent may institute a disciplinary proceeding against a former licensee for conduct that the licensee committed before the effective date of a voluntary surrender or automatic forfeiture of the license.

(2) In a proceeding under this section, the fact that the license holder has surrendered or forfeited the license does not affect the license holder's culpability for the conduct.

[13.4.8.13 NMAC – N, 7/1/2019]

13.4.8.14 CONDUCT OF ADJUSTERS:

A. Standards of conduct. All adjusters shall adhere to the following standards of conduct:

(1) An adjuster shall not permit an unlicensed employee or representative of the adjuster to conduct business for which a license is required pursuant to the Insurance Code.

(2) An adjuster shall be honest and fair in all communications with the insured, the insurer and the public.

(3) An adjuster shall give prompt, knowledgeable service and courteous, fair and objective treatment at all times.

(4) An adjuster shall not give legal advice, and shall not deal directly with any policyholder or claimant who is represented by legal counsel without the consent of the legal counsel involved.

(5) An adjuster shall comply with all local, state and federal privacy and information security laws, if applicable.

(6) An adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed pursuant to the Insurance Code and is not so licensed.

(7) An adjuster shall not undertake the adjustment of any claim if the adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage or which otherwise exceeds the adjuster's experience. An adjuster shall obtain competent technical assistance, when necessary to help handle claims and losses outside the adjuster's area of expertise.

(8) An adjuster shall disclose to an insured if the adjuster has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other business entity that performs any work in conjunction with damages caused by the insured loss.

B. Conduct prohibited.

(1) An adjuster shall not represent an insured on a claim or charge a fee to an insured while representing the insurance carrier against which the claim is made.

(2) An adjuster shall not advance money to any potential client or insured.

(3) An adjuster shall not adjust a loss related to physical damage of a property on which the adjuster also acts as or is employed as any type of contractor or otherwise provides building repairs or products of any type for compensation, or is a controlling

person in a business relating to such contracting, regardless of whether the contractor is a licensed adjuster.

(4) An adjuster shall avoid any direct or indirect financial interest of a claim adjusted by the adjuster other than the salary, fee, commission or other consideration established in a written contract, unless, in the case of a public adjuster, full written disclosure has been made to the insured.

(5) An adjuster shall avoid conflicts of interest, including acquiring any interest in salvaged property or participating in any way, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted, unless, in the case of a public adjuster, full written disclosure has been made to the insured and written permission has been obtained from the insured.

(6) In those instances in which an adjuster who is also a contractor is performing either as an adjuster or as a contractor on behalf of an insured, the adjuster shall provide the insured with a disclaimer, on a form promulgated by the superintendent and signed by the adjuster, indicating in which of these two capacities the adjuster is serving the insured and affirming that the adjuster is not serving the insured in the other capacity. The adjuster shall retain copies of such signed disclaimers and make them available to the superintendent upon the superintendent's request.
[13.4.8.14 NMAC – N, 7/1/2019]

13.4.8.15 STAFF ADJUSTERS:

A. Description of staff adjusters. A staff adjuster is an employee of an insurance company whose work is to investigate, evaluate, and eventually settle a claim. In certain situations, a staff adjuster may award the claim to the insured (by writing a check in behalf of the company). Evidence of financial responsibility as described in 13.4.8.11 NMAC is not required of licensed staff adjusters.

B. Powers of staff adjusters. A staff adjuster shall have

only such powers with respect to claims and losses as granted by the staff adjuster's employer or affiliates of the staff adjuster's employer.

C. Appointment required. A staff adjuster must be appointed by an insurance company in order to be licensed in this state.

(1) If the appointment of a licensed staff adjuster is terminated by an insurance company for any reason, notice shall be provided to the superintendent within 10 days.

(2) After a staff adjuster's appointment by the insurance company is terminated, the staff adjuster's license will terminate automatically if the superintendent is not notified that the staff adjuster has been appointed by another insurance company within 30 days after submission of the initial notice that the appointment has been terminated.

D. Examination requirement.

(1) Although the initial examination requirement is waived for adjusters who were licensed prior to July 1, 2017, the examination waiver is lost if the adjuster's license is terminated for any reason after July 1, 2017, including loss of the staff adjuster's appointment. Once a license is terminated and the waiver is lost, the adjuster must pass the required examination before the license will be reinstated.

(2) The applicant must pass the required examination within one year prior to applying for the license. If a staff adjuster who has passed the required examination is without an appointment or is otherwise unlicensed for more than one year, reexamination will be required before the license can be reinstated.
[13.4.8.15 NMAC - N, 7/1/2019]

13.4.8.16 INDEPENDENT ADJUSTERS:

A. Description of independent adjusters.

(1) An independent adjuster is a professional who conducts investigations,

verification, negotiations, and settling of claims for or on behalf of an insurance company, a self-insured firm, or a government agency, without being under the employment of the company, firm, or agency in question.

(2) Independent adjusters either are hired through a third-party firm that specializes in handling claims or are self-employed entities. A licensed independent adjuster may be outsourced by an insurer to handle claims in this state.

(3) Independent adjusters are generally utilized for one of the following reasons:

(a) to assist an insurer following a major catastrophe resulting in a manpower shortage to investigate and negotiate on its behalf;

(b) for statutory reasons or to comply with provisions of an insurance contract;

(c) to meet a need for special expertise; or

(d) to deal with claims in remote areas.

B. Powers and responsibilities of independent adjusters. An independent adjuster shall have the powers granted by its principal to investigate, report upon, adjust and settle claims on behalf of an insurer or self-insurer and have additional powers as to claims and losses only as may be conferred by the principal.

C. Standards of conduct of independent adjusters. In addition to the general standards of conduct that apply to all adjusters as set forth in 13.4.8.14 NMAC, an independent adjuster shall also self-identify as an independent adjuster and, if applicable, identify the adjuster's employer when dealing with any policyholder or claimant.

D. Records of independent adjusters.

(1) Each independent adjuster shall keep at the business address shown on his license a record of all transactions under the license. The records shall include:

(a) documents relating to all investigations or adjustments undertaken, and

(b) a statement of any fee, commission or other compensation received or to be received by the adjuster on account of such investigation or adjustment.

(2) The adjuster shall make such records available for examination by the superintendent at all reasonable times, and shall retain records as to a particular investigation or adjustment for not less than three years after completion of such investigation or adjustment.

(3) Failure of a licensed independent adjuster, as determined by the superintendent after notice and an opportunity for a hearing, to properly maintain records in accordance with this section and make them available to the superintendent on request constitutes grounds for the suspension of the license.

[13.4.8.16 NMAC - N, 7/1/2019]

13.4.8.17 POWERS AND RESPONSIBILITIES OF PUBLIC ADJUSTERS:

A. General authority.

A licensed public adjuster may adjust claims on behalf of insured clients for property claims, both real and personal, including loss of income. Although business entities can be licensed as a both public and independent adjuster, an individual adjuster that is licensed as a public adjuster shall not be licensed additionally as either a staff or independent adjuster.

B. Standards of conduct. In addition to the general standards of conduct that apply to all adjusters as set forth in 13.4.8.14 NMAC, public adjusters shall also adhere to the following legal and ethical requirements:

(1) All contracts for the services of a public adjuster and required disclosures shall be executed in writing and shall comply with the specific requirements set forth in Section 59A-13-15 NMSA 1978. A sample contract and sample

disclosure form, which may be used by a public adjuster, are available on the OSI website. Use of the sample contract and disclosure will be accepted by the superintendent as compliance with this requirement.

(2) A public adjuster shall serve with objectivity and complete loyalty in the interest of the public adjuster's client alone and shall render to the client such information, counsel and service as will best serve the client's insurance claim needs and interest.

(3) A public adjuster shall not solicit, or attempt to solicit, a client during the progress of a loss-producing occurrence, as defined in the client's insurance contract.

(4) Unless disclosed to the client in writing, a public adjuster shall not refer or direct the client to get needed repairs or services in connection with a loss from any person:

(a) with whom the public adjuster has a financial interest; or

(b) from whom the public adjuster may receive direct or indirect compensation for the referral.

(5) Unless disclosed to the client in writing, a public adjuster shall not accept any compensation or anything of value in connection with a client's specific loss in exchange for the referral of a client to any third-party individual or firm, attorney, appraiser, umpire, construction company, contractor, or salvage company. Such disclosure shall include the source and amount of any such compensation.

(6) A public adjuster shall not agree to any settlement without the client's knowledge and consent.

(7) An individual public adjuster, while so licensed by the superintendent, shall not be licensed as a staff adjuster or an independent adjuster.

(8) The contract between the public adjuster and the client shall not be construed to prevent a client from pursuing any

civil remedy after the three-business day revocation or cancellation period.

(9) A public adjuster shall not engage in the unauthorized practice of law.

C. Misrepresentation.

(1) A public adjuster shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity, including acting as a staff adjuster employed by the insurer or acting as an independent adjuster.

(2) A public adjuster shall not make a misrepresentation, in violation of Insurance Code, to an insured or to an insurance company in the conduct of their actions as public adjusters.

D. Public adjuster fees.

(1) The public adjuster's contract shall disclose that the public adjuster is hired by and compensated by the insured to assist in preparation, presentation and settlement of the claim. The contract shall disclose that the public adjuster's fee or commission shall be paid by the insured from the proceeds of the settlement, and shall state whether the compensation is based on a percentage of the settlement.

(2) No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value prior to settlement of a claim and collection of money due to be paid by an insurance company. The public adjuster shall not collect the entire fee from the first check issued by an insurance company. Rather, the public adjuster's fees shall be paid as a percentage of each check issued by an insurance company.

(3) A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed pursuant to the Insurance Code and is not so licensed.

(4) A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in

this state if that person is required to be licensed pursuant to the Insurance Code and is not so licensed.

(5) In the event of a catastrophic disaster, there shall be limits on catastrophic fees that a public adjuster shall charge, agree to, or accept as compensation or reimbursement. Any payment, commission, fee, or other thing of value shall not exceed ten percent of any insurance settlement or proceeds.

E. Records of public adjusters. Records of public adjusters shall be maintained in compliance with Section 59A-13-17 NMSA 1978.

F. Fiduciary duties of public adjusters.

(1) **Escrow or trust accounts.** Public adjusters shall comply with the escrow and trust account requirements set forth in Section 59A-13-16 NMSA 1978.

(2) **Handling of funds.**

(a) All funds of others received by a public adjuster, including funds received as claim proceeds shall be received and held by the public adjuster in a fiduciary capacity. A public adjuster may not divert or appropriate fiduciary funds received or held. An adjuster who diverts or appropriates such funds for personal use or takes or secretes such funds with intent to embezzle without the consent of the person entitled to the funds is subject to fines and penalties set forth in the Insurance Code and is guilty of larceny.

(b) Subject to the terms of any agreement between an adjuster and the adjuster's principal or obligee, each adjuster who does not make immediate remittance of funds to the insured or other person entitled to them shall elect and follow one of the following methods:

- (i) forward insurance funds received (less applicable compensation, if any) to the insured or person entitled thereto within 15 days after receipt; or
- (ii) establish and maintain one or more

fiduciary bank accounts separate from accounts holding personal, firm or corporate funds, and promptly deposit and retain therein all funds of others pending transmittal to the insured or person thereto entitled.

(c) The following exceptions to the prohibition against commingling of funds shall apply:

(i) Funds belonging to more than one principal may be deposited and held in the same account so long as the amount held for each principal is readily ascertainable from the records of the licensee.

(ii) A public adjuster may commingle with such fiduciary funds in a particular account such additional funds as the adjuster deems prudent for payment of claims or for other contingencies arising in the adjusting business.

(iii) A public adjuster may commingle with the adjuster own funds those funds of a particular principal who has expressly waived the segregation requirement in writing and in advance.

(iv) Permitted commingling of the funds of others with the adjuster's funds shall not alter the fiduciary duties of the adjuster as to the others' funds. [13.4.8.17 NMAC - N, 7/1/2019]

13.4.8.18 EMPLOYMENT OF EMERGENCY ADJUSTERS:

In the event of an emergency requiring the immediate expansion of adjuster services in this state, an insurer or a public adjuster licensed in this state may request authority from the superintendent to employ adjusters to assist with the emergency who are not licensed in this state but who have fulfilled all licensing requirements in their home or in a designated home state and are in good standing in the state of licensure.

A. Request to employ emergency adjusters. An insurer or public adjuster requesting authority to employ emergency adjusters shall provide the superintendent with the following information:

(1) the nature of the emergency and the affected region of the state;

(2) a list of the emergency adjusters that the insurer or public adjuster shall use that are not licensed in this state, including the following information for each emergency adjuster:

- (a) name,
- (b) home address,
- (c) last four digits of social security number,
- (d) national producer number,
- (e) home state where the adjuster is licensed, and
- (f) the effective date of the contract between the adjuster and the insurer or public adjuster;

(3) for the individual designated by the insurer or public adjuster who will be responsible for the conduct of these adjusters:

- (a) name,
- (b) contact information,
- (c) national producer number, and
- (d) New Mexico license number; and
- (4) any other information that the superintendent may require.

B. Limits on use of emergency adjusters.

(1) The adjustment of claims by the adjusters listed in Paragraph (2) of Subsection A of this section shall be limited to claims arising from the emergency. An emergency adjuster shall, as to claims and losses, have the powers of the employer, subject to extension or limitation by contract.

(2) Use of the listed adjusters shall be limited to the 90 days immediately following the emergency, unless an extension of time is requested by the insurer or public adjuster and granted by the superintendent.

C. Approval of emergency adjusters.

(1) A request by an insurer or public adjuster to employ emergency adjusters to assist with an emergency who are not licensed in New Mexico but who are currently licensed and in good standing in their home state shall be deemed approved unless the request is disapproved by the superintendent within three business days of its submission to the superintendent.

(2) An insurer or public adjuster that requests authorization pursuant to this section may commence employing the adjusters listed in Paragraph (2) of Subsection A of this section while awaiting the superintendent's decision on their request.

D. Denial. An insurer or public adjuster may not utilize emergency adjusters who do not have an adjuster's license issued by the home state or designated home state. [13.4.8.18 NMAC - N, 7/1/2019]

13.4.8.19

ADVERTISEMENTS:

A. Definition. As used in this section, "advertisement" includes:

(1) printed and published material, audio visual material and descriptive literature of an insurance adjuster used in direct mail, newspapers, magazines, radio, telephone and television scripts, internet web sites, billboards, and similar displays;

(2) descriptive literature and promotional aids of all kinds issued by an insurance adjuster for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, form letters, and lead-generating devices of all kinds;

(3) prepared promotional talks, presentations and materials for use by an insurance adjuster, and those representations made on a recurring basis by an insurance adjuster to members of the public;

(4) advertising material used to:

(a) solicit contracts from insureds; or

(b) modify existing contracts;

(5) material included with a contract when the contract is delivered and materials used in the solicitation of contract renewals, extensions or reinstatements, except those extensions or reinstatements provided for in the contract;

(6) lead card solicitations, defined as communications distributed to the public which, regardless of form, content, or stated purpose, are intended to result in the compilation or qualification of a list containing names or other personal information regarding insureds who have expressed a specific interest in obtaining assistance with having their claims settled, and which are intended to be used to solicit residents of this state for the execution of a contract for an insurance adjuster's services; and

(7) any other communication directly or indirectly related to an insurance adjuster contract, and intended to result in the eventual execution of such a contract.

B. Exclusions: "Advertisement" does not include:

(1) communications or materials used within an insurance adjuster's own organization, not used as promotional aids and not disseminated to the public;

(2) communications with insureds other than materials soliciting insureds to enter, renew, extend or reinstate a contract for an insurance adjuster's services;

(3) correspondence between a prospective insured and an adjuster in the course of negotiating a contract; and

(4) material used solely for the recruitment, training, and education of an insurance adjuster's personnel and subcontractors, provided it is not also

used to induce the public to enter, renew, extend or reinstate a contract for an insurance adjuster's services.

C. Use of materials.

An adjuster shall not disseminate or use any form of agreement, advertising, or other communication, regardless of format or medium, in this state that is harmful to the profession of insurance adjusting and that does not comply with Insurance Code or this section.

D. Requirements and prohibitions.

(1) Each advertisement by a licensed adjuster soliciting or advertising business must display the adjuster's name, address, and license number as they appear in the records of the superintendent.

(2) A licensed adjuster may not solicit or attempt to solicit a client for employment during the progress of a loss-producing natural disaster occurrence.

(3) A licensed adjuster may not solicit or attempt to solicit business, directly or indirectly, or act in any manner on a bodily injury loss covered by a life, health, or accident insurance policy or on any claim for which the client is not an insured under the insurance policy.

(4) A licensed adjuster may not use any letterhead, advertisement, or other printed material, or use any other means, to represent that the adjuster is an instrumentality of the federal government, of a state, or of a political subdivision of a state. [13.4.8.19 NMAC - N, 7/1/2019]

History of 13.4.8 NMAC:
[RESERVED]

END OF ADOPTED RULES

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Issue 9	April 25	May 14
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