

TITLE 12: TRADE, COMMERCE AND BANKING

CHAPTER 1: [RESERVED]

CHAPTER 2: CONSUMER PROTECTION

PART 1: GENERAL PROVISIONS

12.2.1.1 ISSUING AGENCY:

Office of the New Mexico Attorney General, Consumer Protection Division, Post Office Drawer 1508, Santa Fe, New Mexico 87504-1508.

[5/1/98; Recompiled 10/15/01]

12.2.1.2 SCOPE:

Attorneys general.

[5/1/98; Recompiled 10/15/01]

12.2.1.3 STATUTORY AUTHORITY:

New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq.; New Mexico Pyramid Promotional Schemes Act, Section 57-13-11 NMSA 1978; New Mexico False Advertising Act, Section 57-15-7 NMSA 1978; New Mexico Indian Arts and Crafts Act, Section 30-33-11 NMSA 1978; and New Mexico Charitable Organizations and Solicitations Act, Subsection C of Section 57-22-9 NMSA 1978.

[5/1/98; Recompiled 10/15/01]

12.2.1.4 DURATION:

Permanent.

[5/1/98; Recompiled 10/15/01]

12.2.1.5 EFFECTIVE DATE:

Re-promulgated and reformatted in NMAC format effective as of May 1, 1998, unless a later date is cited at the end of a section or paragraph.

[5/1/98; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.2.1.6 OBJECTIVE:

These rules govern the procedures for rule-making by the attorney general and shall be construed to secure a just and speedy determination of every proceeding. The purpose is to promote uniformity with respect to rule-making and this part shall be liberally construed to carry out that purpose.

[5/1/98; Recompiled 10/15/01]

12.2.1.7 DEFINITIONS:

The following words when used in this part, except as otherwise required by the context, shall have the following meaning:

A. "Attorney general" means the office of the attorney general or any division therein.

B. "Rule" includes the whole or any part of every regulation of general or particular application adopted by the attorney general to implement, interpret or prescribe law enforced or administered by the attorney general, if the adoption or issuance of such rules is specifically authorized by the law giving the attorney general jurisdiction over such matters.

C. "Rule-making" means any process for the promulgation, adoption, amendment or repeal of a rule.

D. "Proceeding" means any division process in connection with rule-making.

E. "Action" includes the whole or part of every rule or failure to act upon a proposed rule.

[5/1/98; Recompiled 10/15/01]

12.2.1.8 RULE-MAKING REQUIREMENTS:

In addition to other rule-making requirements imposed by law, the attorney general shall:

A. make available all required or suggested forms, together with proper instructions pertaining thereto; and make available for public inspection all rules formulated, adopted or used by the attorney general in the discharge of his functions; and

B. provide a reasonable manner at a reasonable cost for interested persons to obtain copies of items described in Paragraph 8.1.1 of this section [now Subsection A of 12.2.1.8 NMAC].

[5/1/98; Recompiled 10/15/01]

12.2.1.9 RULE-MAKING PREREQUISITES:

A. Prior to the adoption, amendment or repeal of any rule, the attorney general shall, within the time specified by law, or if no time is specified, then at least 30 days prior to its proposed action:

(1) publish notice of the proposed action in the state register; and

(2) notify any person specified by law, and, in addition, any person or group filing a written request for notice of proposed action which may affect that person or group, notification being by mail or otherwise to the last address specified by the person or group. The notice shall:

(a) give the time and place of any public hearing or state the manner in which data, views or arguments may be submitted to the attorney general by any interested person;

(b) either state the express terms or adequately describe the substance of the proposed action or adequately state the subjects and issues involved; and

(c) include any additional matter required by any law, together with specific reference to the statutory authority under which the rule is proposed;

(3) afford all interested persons reasonable opportunity to submit data, views or arguments orally or in writing. If the attorney general finds that oral presentation is unnecessary or impracticable, he may require data, views or arguments to be submitted in writing.

(4) All written documents shall be submitted to the attorney general no later than 30 days after the conclusion of any hearing. Where oral presentation is unnecessary or impracticable, written documents shall be submitted no later than 30 days after publication of a notice of a proposed rule in the state register. The attorney general shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule contested at hearing or otherwise, the attorney general shall issue a concise statement of his principal reasons for adoption of the rule together with the reasons for any rejections. All persons heard or represented at any hearing or who submit any writing to be considered in connection with the proposed rule, shall promptly be given a copy of the decision by mail or otherwise.

B. Emergency procedures: If the attorney general finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, or if the attorney general for good cause finds that observance of the requirements of notice and public hearing would be contrary to the public interest, the attorney general may dispense with such requirements and adopt, amend or suspend the rule as an emergency. The attorney general's finding and a brief statement of the reasons for his finding shall be incorporated in the emergency rule, amendment or suspension filed under 10.1 of this Part [now Subsection A of Section 12.2.1.10 NMAC].

C. Upon adoption of an emergency rule, amendment or suspension, notice of the adopted emergency rule, amendment or suspension shall be published in the state register and all interested persons shall be afforded reasonable opportunity to submit data, views or arguments orally or in writing as required in this part for proposed rules.

[5/1/98; Recompiled 10/15/01]

12.2.1.10 RULES; PUBLICATION AND REVISION:

A. The attorney general:

(1) shall compile and publish all effective rules adopted by the attorney general. Compilations shall be supplemented or revised as often as necessary and at least once every two years;

(2) shall publish an annual bulletin setting forth the text of all rules filed during the previous year, excluding rules in effect upon the adoption of this procedure; and

(3) may omit from the bulletin or compilation any rule, the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule, in printed or processed form, is made available on application to the adopting agency and if the bulletin or compilation contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

B. Bulletins and compilations shall be made available upon request to state agencies, institutions and political subdivisions free of charge and to other persons at prices fixed by the attorney general to cover mailing and publication costs.

[5/1/98; Recompiled 10/15/01]

12.2.1.11 PETITIONS FOR ADOPTION; AMENDMENT OR REPEAL OF RULES:

Any interested person may petition the attorney general requesting the promulgation, amendment or repeal of a rule and may accompany his petition with data, views and arguments he or she thinks pertinent. Within sixty days after the submission of a petition, the attorney general shall either deny the petition in writing stating the reasons

for the denial or shall initiate rule-making proceedings in accordance with Section 9 of this Part [now 12.2.1.9 NMAC].

[5/1/98; Recompiled 10/15/01]

12.2.1.12 JUDICIAL REVIEW BY DECLARATORY JUDGMENT; GRANTING RELIEF NOT OTHERWISE PROVIDED FOR:

Unless otherwise provided by law, the validity or applicability of a rule may be determined in an action for declaratory judgment in any district court which has jurisdiction.

[5/1/98; Recompiled 10/15/01]

12.2.1.13 AMENDMENT AND REPEAL:

The provisions of this part may be amended, repealed or superseded by another act of the legislature or the attorney general only by direct reference to the section or sections of this part being amended, repealed or superseded.

[5/1/98; Recompiled 10/15/01]

12.2.1.14 SEVERABILITY:

If any part or application of any part of these procedures is held invalid, the remainder and application thereof shall not be affected.

[5/1/98; Recompiled 10/15/01]

12.2.1.15 SIGNATURE:

Original Adoption and Promulgation

Tom Udall

Attorney General

Date: 1/17/92

Readoption and Repromulgation

Tom Udall

Attorney General

Date: 4/9/98

Tom Udall

Attorney General

[5/1/98; Recompiled 10/15/01]

PART 2: GAME PROMOTION REQUIREMENTS

12.2.2.1 ISSUING AGENCY:

Office of the New Mexico Attorney General, Consumer Protection Division, Post Office Drawer 1508, Santa Fe, New Mexico 87504-1508.

[5/1/98; Recompiled 10/15/01]

12.2.2.2 SCOPE:

Promoters of games.

[5/1/98; Recompiled 10/15/01]

12.2.2.3 STATUTORY AUTHORITY:

New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq. and New Mexico False Advertising Act, Section 57-15-1 NMSA 1978 et seq.

[5/1/98; Recompiled 10/15/01]

12.2.2.4 DURATION:

Permanent.

[5/1/98; Recompiled 10/15/01]

12.2.2.5 EFFECTIVE DATE:

Re-promulgated and reformatted in NMAC format effective as of May 1, 1998 unless a later date is cited at the end of a section or paragraph.

[5/1/98; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.2.2.6 OBJECTIVE:

The purpose of these game regulations is to describe certain practices in the game promotion industry which are unfair and deceptive trade practices under the Unfair Practices Act, or which constitute false advertising under the False Advertising Act.

[5/1/98; Recompiled 10/15/01]

12.2.2.7 DEFINITIONS:

A. As used in these regulations, "game promotion" shall mean any promotional enterprise whose entrants are sought on the basis of representations that prizes or awards will be made to a certain number of entrants based upon chance or on the entrant's skill; and whose primary purpose in so doing is the direct or indirect promotion of a product, service or business entity, or the generation of money through the collection of entry fees or other consideration. Game promotions shall encompass, without limitation, such terms as "contest", "giveaway", "sweepstakes", "drawing" or "game".

B. As used in these regulations, "consideration" means anything of pecuniary value, and includes any business advantage to the sponsor, user or promoter of the game promotion.

[5/1/98; Recompiled 10/15/01]

12.2.2.8 STATEMENT OF BASIS:

A. The consumer protection division of the attorney general has received a substantial number of complaints on game promotions, which led that office to consider the extent to which such promotions pose a problem to consumers in New Mexico. As a result of an investigation conducted by that office, it was determined that much promotional material was potentially deceptive with respect to not only what was stated in the literature, but what was omitted. Confusion and misleading information was especially prevalent in the areas of the consideration required to enter a game promotion, odds of winning and the nature of prizes to be awarded. Solicitation of consumer comment on an Albuquerque television program also resulted in a large response, and a strong expression of opinion by New Mexico consumers that the game promotion industry should be strictly regulated.

B. Proposed game promotion regulations were issued in draft form on June 1, 1977, in accordance with procedures filed with the state records center by the attorney general pertaining to issuance of regulations under the New Mexico Unfair Practices Act, False Advertising Act and Pyramid Sales Act (see 1 NMAC 2.3) [now 12.2.3 NMAC]. Notice was published in 12 newspapers across the state, pursuant to the procedures mentioned above, announcing the fact that regulations had been proposed, describing the regulations briefly and stating that a public hearing would be held on July 1, 1977 at the Bataan Memorial Building in Santa Fe. The testimony submitted at the hearing was that the regulations were ambiguous, and, unless clarified, might result in

enforcement which was too restrictive and prohibitive. Testimony was received that a more effective regulatory approach would be to require a wide range of disclosures, with written substantiation of the disclosed information.

C. The game promotion regulations were re-drafted in accordance with the approach suggested at the hearing. The basic features of the revised regulations are the disclosure and substantiation requirements. In addition, a game promotion designed solely to sell a product or service at a discount was found to be an unfair and deceptive trade practice. The revised regulations were disseminated to interested parties, and all comments received were incorporated into the final draft, which is promulgated herewith pursuant of the Unfair Practices Act and of the False Advertising Act.

D. It is not the intention of these regulations to authorize any lottery prohibited by the New Mexico statute relating to gambling, Section 44-5-1 NMSA 1978 et seq., or to prohibit any otherwise lawful game promotion except to the extent that it may be false or misleading.

[5/1/98; Recompiled 10/15/01]

12.2.2.9 ADVERTISING:

It is an unfair or deceptive trade practice for any person to engage in any advertising or oral, written or graphic representation in conjunction with any game promotion, which may, tends to or does deceive or mislead any person concerning the number of participants, odds of winning any prize, amount of consideration required to enter, nature of the prize or any other aspect of the game promotion.

[5/1/98; Recompiled 10/15/01]

12.2.2.10 PROMOTIONS:

It is an unfair or deceptive trade practice for any person to sponsor, use or promote in any manner any game promotion, whether involving skill or chance, which requires consideration in order to participate, unless the following disclosures are clearly and conspicuously made in each and every representation made in connection with the game promotion, including all advertising and promotional literature:

A. the number of prizes to be awarded in each category or denomination, and a complete description of all prizes, including the exact monetary amount of cash prizes. If a prize is to be shared in the event of multiple winners, that fact should be disclosed, as well as the method by which the allocation will be made, and the approximate amount of the reduced share;

B. the odds of winning each stated prize. This information should be based on statistics on actual numbers of participants in prior similar game promotions, if available;

or upon a reasonable estimate of anticipated participation in the promotion. If the promotion has multiple stages, the odds of reaching each stage should be disclosed;

C. the total amount of consideration necessary in order to be eligible for the first prize in each category or denomination. If the promotion has multiple stages, each involving separate consideration, the amounts involved should be totaled to reflect the full consideration which would be required by a participant were he successful at each stage;

D. the manner in which winners in each category or denomination shall be selected;

E. the complete name and address of the sponsor, user or promoter. Where there is a national sponsor, user or promoter as well as local retail outlets through which the game promotion is operated, only the name and address of the national sponsor, user or promoter need be stated in national advertisements or representations, although the local retail outlets should be described or identified if possible. Both the national and local sponsors must be identified in local advertising;

F. the geographic area covered;

G. the opening date and scheduled termination date;

H. the scheduled announcement date of the winners and the date and manner of award of prizes;

I. with respect to radio, television and outdoor billboard advertising, only the information required by Subparagraphs 10.1.5, 10.1.6 and 10.1.7 [now Subsections E, F and G of 12.2.2.10 NMAC] need be disclosed in the body of the advertisement, as long as the advertisement also contains a specific reference to a publication or other source where further detailed information concerning the game promotion can be obtained;

J. for purposes of Paragraph ten [now 12.2.2.10 NMAC] **only**, game promotions shall not include athletic competition or other sports events, pari-mutuel betting, booths at fairs or competition whose entrants are judged on the results of their skilled efforts at raising animals, training dogs, growing flowers, baking cakes, creating arts and crafts or other endeavors.

[5/1/98; Recompiled 10/15/01]

12.2.2.11 EXEMPTIONS:

Persons may receive an exemption from some or all of the requirements of Paragraph ten [now 12.2.2.10 NMAC] through application to the office of the attorney general. Exemptions will be granted only in limited cases, and only if the lack of specific disclosures will not result in a false, misleading or deceptive game promotion.

[5/1/98; Recompiled 10/15/01]

12.2.2.12 DISCLOSURE:

A. It is an unfair or deceptive act or practice to represent that a person is a "winner" or has been "selected" or is otherwise being involved in a select group for receipt of a prize or an opportunity or that a person is entering a "contest", "sweepstakes", "drawing" or other competitive enterprise from which a winner or select group of winners will receive a prize or opportunity when, in fact, the contest is no more than the sale of a product or service at a discounted price and, to that end, most if not all of the entrants receive prizes which have value, if at all, only when applied towards the purchase of said product or service.

B. A sponsor, user or promoter of any game promotion shall maintain written documentation in support of each and every disclosure requirement stated in these regulations. Sponsors, users or promoters shall, upon written demand from the attorney general's office, provide that office with substantiating evidence on any required disclosure.

[5/1/98; Recompiled 10/15/01]

12.2.2.13 SEVERABILITY:

If any portion of these regulations is held invalid, the remainder of the regulations and applications thereof shall remain unaffected.

[5/1/98; Recompiled 10/15/01]

12.2.2.14 SIGNATURE:

Original Adoption and Promulgation

Toney Anaya

Attorney General

Date: 9/18/77

Readoption and Repromulgation

Tom Udall

Attorney General

Date: 4/9/98

Tom Udall

Attorney General

[5/1/98; Recompiled 10/15/01]

PART 3: REQUIREMENTS FOR THE PROMOTION AND ADVERTISING OF SUBDIVIDED LAND, TIME SHARE INTERESTS, CONDOMINIUMS AND MEMBERSHIP CAMPGROUNDS ISSUED PURSUANT TO NEW MEXICO'S UNFAIR PRACTICES ACT AND FALSE ADVERTISING ACT

12.2.3.1 ISSUING AGENCY:

Office of the New Mexico Attorney General, Consumer Protection Division, Post Office Drawer 1508, Santa Fe, New Mexico 87504-1508.

[5/1/98; Recompiled 10/15/01]

12.2.3.2 SCOPE:

Promoters and sellers of subdivided land, time-share interests, condominiums and membership campgrounds.

[5/1/98; Recompiled 10/15/01]

12.2.3.3 STATUTORY AUTHORITY:

New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq. and New Mexico False Advertising Act, Section 57-15-1 NMSA 1978 et seq. This rule-making proceeding has been conducted in conformity with the Administrative Procedures Act, Section 12-8-1 NMSA 1978 et seq., and the rule-making procedures adopted in 1 NMAC 3.3.10 [now 1.24.10 NMAC] and 1 NMAC 2.1 [now 12.2.1 NMAC].

[5/1/98; Recompiled 10/15/01]

12.2.3.4 DURATION:

Permanent.

[5/1/98; Recompiled 10/15/01]

12.2.3.5 EFFECTIVE DATE:

Re-promulgated and reformatted in NMAC format effective as of May 1, 1998 unless a later date is cited at the end of a section or paragraph.

[5/1/98; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.2.3.6 OBJECTIVE:

All promoters of any and all products, interests or services are always subject to the general proscriptions of the New Mexico Unfair Trade Practices Act and False Advertising Act. These regulations merely address those same general prohibitions against unfair or deceptive practices in the context of the specific issues raised by time-share and related promotions. The specificity of these regulations is designed to assist the industry in knowing precisely what practices have caused substantial concern and merit particularized guidelines. The scope of these regulations is thus rationally based.

[5/1/98; Recompiled 10/15/01]

12.2.3.7 DEFINITIONS:

The following words when used in these regulations shall have the following meaning:

A. "Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a condominium or a specified portion thereof, or any other estate or interest in land.

B. "Membership campground" means any enterprise that has as one of its purposes camping or outdoor recreation, including the use of camping sites, which solicits memberships paid for by a fee or periodic payments, and which provides camping facilities primarily for the use of contractual members. "Membership campground" does not include:

- (1) a mobile home park as defined by Section 47-10-2 NMSA 1978;
- (2) camping or recreational trailer parks which are open to the general public and which provide camping sites only for a per use fee; or
- (3) any enterprise that is tax exempt under Section 501(c) (3) of the Internal Revenue Code of 1954, as amended. "Membership" in this context means the contractual right or license to use campground facilities for more than 14 days in a year.

C. "Subdivided land" constitutes an area of land in New Mexico that has been divided into five or more parcels within three years for the purpose of sale or lease.

D. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by

the owner of those portions. Real estate is not a condominium unless the undivided interest in the common elements are vested in the unit owners.

E. "Game promotion" or "promotional" means any advertising or publicity of an enterprise on the basis of representations that prizes, awards or gifts will be given to a certain number of entrants without any regard for the recipient's skill, and based solely on chance, for the primary purpose of the direct or indirect promotion of the sale of subdivided land, condominiums, time-share interests or membership in campground organizations. Game promotions shall include, without limitation, such activities as a "sweepstakes", "giveaway", "contest", "drawing", "lotto" or "game".

F. A "giveaway" means that all recipients of the game promotion are guaranteed receipt of the gift or gifts described in a promotional piece.

G. "Sweepstakes" means that there is an element of chance involved to receive a gift described in the promotional piece, and that there will be winners and losers. A program or promotion is not a sweepstakes unless the sweepstakes is offered in addition to the items given to all recipients of promotional pieces.

H. "Promotional pieces" or "promotional materials" includes, but is not limited to, brochures, pamphlets, letters, envelopes, advertisements or other materials disseminated in connection with the sale of subdivided land, condominiums, time-share interests or memberships in campgrounds. This includes mail solicitations, advertising copy, testimonials and endorsements, telephone solicitations and offers of accommodations, meals or entertainment at no cost or at reduced cost, in whatever form.

I. "Property interest" means a time-share interest, a campground membership or any ownership interest in subdivided land or a condominium.

J. "Vacation certificates" means lodging certificates which include complimentary or discounted transportation, meals or other material benefits in addition to the mere use of accommodations and motel, hotel or campground facilities.

K. "Verifiable retail value" means either

(1) the price charged by a national or local retail outlet for an identical or substantially similar item; or

(2) an amount equal to no more than three times the cost paid by the seller or promoter for the item.

L. "Premium gift" means the gift which the majority of promotion recipients who claim their gifts will receive. It is usually the gift offered which is of the lowest value.

M. "Promoter" means any organization which authorizes or disseminates promotional material.

[5/1/98; Recompiled 10/15/01]

12.2.3.8 STATEMENT OF BASIS:

A. The attorney general's office is concerned about sweepstakes and giveaway promotions conducted in the course of the sale of subdivided land, condominiums, time-share interests and campground memberships. Since 1984, the attorney general's office has received numerous telephone calls and letters concerning the promotion of time-shares. Indeed, the complaints and questions have come in daily. They have reflected consumer dissatisfaction in a number of areas. For example, consumers have not received complete disclosure of the nature of promotions; to claim an offered gift, consumers have had to attend sales presentations of which they were not advised, including some where high-pressure sales tactics were reportedly employed; consumers have not understood the real odds of winning various gifts; the conditions placed on receiving gifts have not been adequately disclosed; consumers have reported that promised gifts were not available, or that gifts that were available did not have the characteristics described in the original promotional mailing or phone solicitation. It is precisely such concerns that these regulations address.

B. These regulations do not expressly or impliedly authorize any lottery prohibited by statute, including but not limited to Section 30-19-1 NMSA 1978. Neither do these regulations prohibit any otherwise lawful sweepstakes and giveaway promotions, except to the extent they are deceptive or misleading. These regulations do not supersede those set forth in 1 NMAC 2.2 [now 12.2.2 NMAC] entitled "Game Promotion Regulations Issued Pursuant to New Mexico Unfair Practices Act and False Advertising Act". Rather, these regulations supplement those regulations; these set forth additional requirements to apply specifically to promotional sales of subdivided land, condominiums, time-share interests and campground memberships in New Mexico. The regulations apply so long as the promotion occurs in New Mexico, even if the property itself is located outside of New Mexico.

C. Advertising of subdivided land is governed by Section 47-6-18 NMSA 1978 of the New Mexico Subdivision Act, Section 47-6-1 NMSA 1978 et seq. The regulations promulgated here apply to subdivided land only when game promotions are used in connection with the sale of that land, and these regulations do not supersede the New Mexico Subdivision Act.

D. Before promulgating these regulations, three public hearings were held: on May 23, 1985 in Ruidoso; on June 10, 1985, in Santa Fe; and on June 11, 1985, in Albuquerque. All comments received at the hearings were considered in the revision of the regulations finally adopted. Consumers had already effectively spoken to this office and expressed their concern through their daily complaints and inquiries. Representatives of developers and advertisers who produce and disseminate

promotional materials testified at the hearings to address their concerns. This office also solicited written comments on the regulations. The comments received reflected the interests of the American land development association, particular developers involved in the development of time-shares in New Mexico and the game promotion industry. All comments were considered.

E. Preamble to the regulations.

(1) The attorney general has concluded that regulation of the promotion and sale of subdivided land, condominium, time-share and campground memberships in New Mexico is in the best interest of the health, safety and general welfare of the citizens of New Mexico. Revisions have been made to the proposed regulations to reflect the input received from all concerned. The revised final regulations particularly reflect direct mail standards developed by the American land development association, the land development industry's own professional association and lobby organization.

(2) The revisions should make the regulations both more acceptable to the industry regulated and more readily enforceable by the office of the attorney general while preserving the primary focus of protecting consumers from unfair or deceptive acts or practices. Since these final regulations do not differ significantly from those that were proposed, and indeed since the vast majority of changes adopted conform to industry concerns, it was not necessary to issue these regulations in any revised proposed form or to hold any additional hearings.

(3) The following responds to a number of the particular comments received during the rule-making proceeding:

(a) This office has authority to promulgate these regulations pursuant to the New Mexico Unfair Practices Act, at Section 57-12-13 NMSA 1978, and the False Advertising Act, at Section 57-15-7 NMSA 1978. The fact that these regulations apply only to the promotion and sale of subdivided land, condominium, time share and campground interests does not mean these regulations are not authorized or that they unfairly and unlawfully discriminate against one particular industry. The attorney general is not required, as some commentators suggested, to regulate all promotional materials of every kind rather than limit the regulations, as done here, to the particular promotions targeted. These regulations address the specific concerns consumers have raised. They are drawn narrowly, to address the problems noted, and are not intended to be any broader than necessary. All promoters of any and all products, interests or services are always subject to the general proscriptions of the New Mexico Unfair Trade Practices Act and False Advertising Act. These regulations merely address those same general prohibitions against unfair or deceptive practices in the context of the specific issues raised by time-share and related promotions. The specificity of these regulations is designed to assist the industry in knowing precisely what practices have caused substantial concern and merit particularized guidelines. The scope of these regulations is thus rationally based.

(b) The need for these regulations has been emphasized repeatedly in the steady flow of complaints and inquiries the attorney general's office has received from consumers. Some opponents of the regulations have argued, however, that consumers who have been confused or misled by sweepstakes promotions have not been sophisticated enough to protect themselves and that regulations should not be adopted to protect them. We disagree. Consumer protection law is not designed only to protect the sophisticated and the educated. To the contrary, consumer protection law is geared to the entire general public. Indeed, it should provide special protections for the less educated and most vulnerable members of society. These regulations are designed to help provide that protection without imposing unreasonable burdens on the industry.

(c) Regulations such as these to address unfair trade practices and false advertising in the promotion and sale of property interests are not novel. Many of these provisions simply conform with requirements in many other states. The fact that these requirements are adopted by regulation, and not enacted by the legislature, also does not render them unlawful. The test is whether the regulations pursue the general prohibition against unfair and deceptive acts or practices. So long as they do, these regulations are authorized and appropriate. Contrary to some industry critics, other industry representatives expressed interest in the establishment of these specific standards in New Mexico for promotional materials since similar standards are in effect in other states. For example, industry representatives concurred that these regulations should help protect the industry from violators who adversely affect the industry as a whole. Furthermore, the American land development association, a nationwide representative organization of land developers, recognized the similarity of these regulations with standards the industry has imposed on itself. These regulations should not, therefore, prove burdensome.

(d) This office recognizes the importance of tourism in New Mexico. These regulations are by no means intended to hinder that vital element of the state's economy. To the contrary, these regulations should help enhance state tourism by providing important protections and safeguards to visitors. These protections should help ensure favorable impressions and encourage visitors to suggest that other potential tourists visit New Mexico as well. The state's interest in tourism is not served by any unfair or misleading practices, and that is all these regulations are designed to prohibit.

(e) Specific changes made since the regulations were proposed include a change in the definition of the term "sweepstakes". The change makes the definition more acceptable to the industry by providing even more specific terminology, consistent with the federal trade commission's definition of the term. The definition of "verifiable retail value" has also been changed to conform to industry standards, as well as to the federal trade commission's definition of the term.

(f) These final regulations do not apply to radio and television advertising, as was initially proposed. Upon considering the comments tendered, it was decided that the time constraints of those media make such regulation impractical. These regulations

do apply, however, to telephone solicitations, with a more limited standard for compliance consistent with the opportunities available in telephone conversations.

(g) A definition for "vacation certificates" has been added to the regulations, since substantial deception in utilizing this particular form of promotion has been brought to this office's attention since the regulations were originally proposed. Specific standards concerning vacation certificates, consistent with these regulations other provisions, have likewise been added to the regulations.

(h) A definition for "premium gift" has also been added. The "premium gift" is the gift which the majority of promotion recipients receive. It is the gift which creates the most controversy, in terms of its value and availability.

(i) The definition of "promoter" has been changed to be more specific by including any organization which either authorizes or disseminates the promotional material. Wording of specific regulations in 9.1.2.1.f [now Subparagraph (f) of Paragraph (1) of Subsection B of Section 12.2.3.9 NMAC] has also been clarified, giving examples of specified industry practices, such as characterizing time share weeks during seasons of the year as "high", "medium", and "low", "red", "white" and "blue", or "floating".

(j) The proposed requirement to disclose affirmatively that which is obvious - i.e., that consumers must bear the cost of travel to the site - has been eliminated. A clarification instead has been made to disclose conditions of eligibility for purchase of the property interest promoted.

(k) The regulations have been clarified so that all conditions or terms of sale of the property interest promoted do not have to be included on the game promotion piece itself; only the conditions of eligibility for purchase must be disclosed. Subject to applicable federal and state laws, promotions may request information regarding age, income level and marital status.

(l) Words such as "awards", "prizes", and "gifts" may not be used if the person must supply anything, other than his time to visit the property, in order to claim the award, prize or gift. Likewise, a recipient of a promotion shall not be described as a "winner" or a "finalist" and promotional pieces may not notify persons that they have won a "prize" unless the matters "won" or "prizes" to be received are given without condition. Conditions attached to the receipt of anything of value offered in a promotional piece must be prominently disclosed. This should help leave no reasonable probability that the offer will be misunderstood.

(m) The required disclosure of the time required to attend any sales presentation has been changed to allow for "a reasonable estimate of the least amount of time" required to attend such sales presentation. This responds to concerns seeking to provide reasonable time estimates, since individual circumstances may vary.

(n) Promotional material need not include the telephone number of the sponsor of the promoter, developer, broker or owner. The identity of the promoter and sponsor should continue to be disclosed, however, to respond to consumer inquiries and to assist this office's ability to enforce the regulations.

(o) Words and graphics which create a likelihood of confusion and misunderstanding that the promotion is connected with a government agency cannot be used. The final regulation addresses this general standard more flexibly than the proposed rule, which was geared to particular words and phrases.

(p) The manner in which winners are selected must be disclosed. The regulations do not intend, however, to prevent the use of preselection of winners by computer. They merely require disclosure of the particular method used.

(q) The definition of "verifiable retail value" and the obligations of the promoter or seller to substantiate this value have been revised to reflect the input of the industry and the practice of other states.

(r) A separate section has been included concerning the statements of the odds of winning various "prizes". The regulations do not require that odds and values be stated on the front of the promotional piece, as the proposed regulation did, to conform with other state practices. The final regulations do encourage that format, though, and the suggested examples noted provide for this placement. The most important part of the requirement - namely, that odds and values be clearly and conspicuously disclosed - remains intact.

(s) The regulations impose special requirements for the so-called "premium" gifts that almost everyone wins. If gifts are not on hand, then they must be shipped within 30 days.

(t) The regulations have not changed the requirement to disclose whether a promotion is part of a national sweepstakes, and to state, where applicable, that all gifts will not be given at all locations. This follows an existing requirement in 1 NMAC 2.2 [now 12.2.2 NMAC] and could be confusing to consumers if not disclosed.

(u) The proposed requirement that the number of gifts be disclosed has been eliminated as duplicative of stating the odds. The proposal to require that the names of winners of previous gifts may not be used on a future promotional piece without their consent has been revised to require disclosure on the promotion that a person's name might be so used if he or she wins. This enhances the regulation's goals of full disclosure to consumers of all relevant terms and conditions.

(v) These regulations do not require submission of promotional material to the attorney general for prior review. Such promotional material certainly may be submitted, and promoters are encouraged to do so. Commenters suggested, however, that if promoters were required first to submit their materials to the attorney general's office,

then that office should be required to respond with approval or disapproval in a certain number of days, and that no response should be deemed to constitute approval. Those comments are not persuasive. Given limited resources, this office cannot review and respond to all promotions, and should not be required to do so. This office nevertheless has a valid state interest in receiving promotions before they are distributed to allow it to decide whether to seek injunctive relief. This office thus could have properly required prior submissions of promotions without binding itself to any time limits on when to respond. To avoid, however, even the potential appearance of imposing unfair burdens, the office has decided instead to encourage voluntary submissions of promotions before they are distributed, rather than to require such submissions.

[5/1/98; Recompiled 10/15/01]

12.2.3.9 REGULATIONS:

It is an unfair or deceptive trade practice for any person to engage in a game promotion in connection with the sale or lease of subdivided land, condominiums, time-share interests or campground memberships unless the game promotion is in compliance with the following regulations:

A. General regulations.

(1) Claims or representations contained in any promotional material shall be accurate.

(2) Promotional materials shall state fully and clearly all factual material so as neither to misrepresent the facts nor to create misleading impressions.

B. Specific regulations.

(1) No promotional materials shall:

(a) misrepresent a fact or create a false or misleading impression;

(b) make a prediction of specific or immediate increases in the price or value of the property interest promoted, unless it is registered as a security with the securities division of the New Mexico department of regulation and licensing;

(c) contain a statement concerning future price increases by the seller of the property interest promoted which are nonspecific or not bona fide;

(d) describe any improvement to the property interest promoted that is not required to be completed or that is uncompleted unless the improvement is conspicuously labeled as, for example, "NEED NOT BE COMPLETED", "PROPOSED" or "UNDER CONSTRUCTION";

(e) misrepresent the size, nature, extent of development, qualities or characteristics of the offered accommodations or facilities;

(f) misrepresent the amount or period of time or nature of the period of time during which the accommodations or facilities will be available to any purchaser. (For example, time-share weeks are commonly characterized with colors or other adjectives, such as "red", "white" and "blue", or "high", "medium" and "low." Prospective purchasers should know whether they have purchased the use of a specific week or a "floating week" during a specific period.);

(g) misrepresent the nature or extent of any services incident to the property interest being promoted;

(h) make any misleading or deceptive representation with respect to the contents of any disclosure statement, the contract or any other statement of the purchaser's rights, privileges, benefits or obligations; or

(i) misrepresent the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location. For example, if a consumer purchases a "red" or "high" week at the resort visited, but it will not be honored as a "red" or "high" week for exchange purposes, that fact should be disclosed.

(2) All promotional materials shall clearly and conspicuously disclose any and all conditions on or eligibility requirements for:

(a) the receipt of anything of value offered in connection with the promotion;

(b) and the sale or lease of the property being promoted.

(c) This does not mean that each and every term of sale must be included on a game promotion piece; only conditions of eligibility for purchase must be disclosed. Subject to applicable federal and state law, promotions may request information regarding age, income level and marital status. For example, the piece may contain a statement similar to the following: The recipient named in this letter is eligible to receive a gift in these sweepstakes. However, (resort name) is designed to be of particular interest to credit-worthy single persons or married couples between the ages of 21 and 60 who have an individual or combined income of at least \$20,000. We request that if you are married, husband and wife must be present. Both must also attend a sales presentation of at least one hour to claim the gift.

(3) Offers of anything of value at no cost or reduced cost made in connection with a promotion shall not be described as "awards", "prizes", "gifts" or by words of similar meaning if the recipient must purchase anything or give, or promise to give, any sum or other consideration, other than visiting the property to claim the gifts, in

exchange for the item. The word "sweepstakes" should not be used if the offer is in fact a "giveaway".

(4) Recipients of any promotion offer shall not be described as "winners" or "finalists" or notified that they have "won a prize" unless either:

(a) the prizes that have been won are to be given to the recipients without condition (i.e., there are no eligibility requirements, sales tours or other requirements to receive the gifts or prizes); or

(b) any conditions attached to the receipt of anything of value offered in such a promotional piece are clearly and conspicuously disclosed in the offer and leave no reasonable possibility that the offer will be misunderstood.

(5) All promotional materials must specifically and affirmatively disclose in boldface type that the purpose of the promotion is the sale of interests in subdivided land, condominiums, time-shares or membership campgrounds. If the recipient of the promotional material must attend any sales presentation, this fact must be prominently stated in boldface type, together with a reasonable estimate of the least amount of time required to attend the sales presentation. (For example: **YOU MUST ATTEND A SALES PRESENTATION OF AT LEAST ONE HOUR BEFORE YOU WILL RECEIVE YOUR GIFT.**)

(6) It is unlawful to make offers of anything of value in connection with a promotion unless contemporaneously, with the offer, all expenses the recipient must pay, excluding the cost of travel to the area being promoted, are disclosed to the recipient in the offer.

(7) In the case of vacation certificates, all conditions of the vacation must be clearly and conspicuously disclosed in the promotional piece, including any required deposits, points of departure if outside of New Mexico, the nature of the accommodation and all items and conditions of the trip. For example, if two persons must take the trip, but free airfare is provided for only one person, this should be clearly disclosed. Vacation certificates must be redeemable within a reasonable period of time, which should be disclosed, and they must not include unduly burdensome or unreasonable procedures which must be followed in order to take the trip.

(8) Complete rules and procedures for any contest or drawing advertised in connection with a promotion shall be included clearly and conspicuously in promotional materials.

(9) All written promotional materials shall contain the name and address of the entity conducting the promotion, and of the sponsor, developer, broker or owner, as applicable, on whose behalf the promotional material is distributed.

(10) Promotional materials shall not employ any term that creates confusion, misunderstanding or a reasonable impression that the promotion is connected with a government agency.

(11) Promotional pieces shall not include any words or graphics which simulate a notary "seal" or which otherwise tend to mislead the recipient as to the legal significance of the document.

(12) The manner in which winners are selected must be accurately disclosed. The following are examples of such disclosures:

(a) The prize which you receive has been randomly pre-selected by computer. You must match your number to numbers on the official gift list at the resort to determine the particular gift you will receive.

(b) Every person visiting the resort will receive the set of luggage. In addition, your number will be placed in a container at the resort. When there are 1,000 numbers in the container, an independent accounting firm will draw three numbers, the holders of which will receive the car, the \$500 and the TV set, in that order.

(13) It is unlawful to represent that a promotion is a "survey" or a "research project" if it is not, and if the primary purpose of the promotion is to lease or sell a property interest.

(14) Promotional material shall not describe any gift to be given in terms which are confusing or misleading. The verifiable retail value must be clearly disclosed in arabic numbers following a dollar sign. In disclosing the verifiable retail value of any gift, the promoter or seller must be able to substantiate it at the time the alleged value is asserted. Such substantiation may be provided with the following:

(a) the name and address of the retail outlet at which the product or a substantially similar product is or has been sold, the price at which the product was advertised or sold and the dates on which the product was advertised or sold at that place or places; or

(b) proof that the value stated is no more than three times the price paid for the item by the promoting entity or developer.

(15) The odds of receiving each gift must be clearly and conspicuously disclosed.

(a) An example of stating the odds clearly for any gift other than a premium gift is as follows: "Your chances of winning the _____ (gift) are one in 100,000."

(b) An example of stating odds clearly for a premium gift is as follows: "Out of 100,000 persons who respond to this mailing, 99,997 persons will receive the (premium gift)."

(16) Offered gifts must be delivered on site when the recipient appears and establishes his/her eligibility for the gift. If the gift is of a kind not capable of immediate delivery (e.g., a vacation, automobile, etc.), then the recipient must be given specific documentation to enable him to claim the gift. Promoters and owners shall have an adequate supply of premium gifts on site and if an item cannot be supplied to an eligible recipient, it must be shipped within 30 days to the recipient's address without additional cost or burden to the recipient.

(17) The geographic area covered by the promotional mailing must be clearly and conspicuously stated in the promotional piece. If the promotion is part of a national sweepstakes, it must be clearly and conspicuously stated that the described prizes may be awarded to people outside of the geographical area within which that particular promotional piece is distributed, with a corresponding explanation that every gift may not be given away at every location.

(18) Names of winners of previous gifts may not be used on a future promotion unless disclosure of future use is made known to the recipient on the original promotional piece, or unless the recipient provides written consent for such disclosure. Every promotional piece must also include an explanation of the procedure by which the consumer may receive a list of names and addresses of major gift recipients who have consented to have their names made available to recipients of promotional pieces.

(19) The date upon which the promotion begins and the date upon which it terminates must be clearly stated.

(20) Promotional pieces shall not represent that there is a limited time in which to accept the terms of the offer, or that a gift is only available on the day the recipient visits the resort, if such is not the case.

(21) Promotional pieces shall disclose that the supplier reserves the right to substitute gifts of greater or equal value or to give rain checks if such is the case.

(22) No offer shall be made of items commonly given recipients if there is reason to know that the items are not or will not be readily available at the time and place the recipient is to receive them.

(23) Items shall not be represented by way of description, name, pricing, narrative copy or graphic depiction so as to mislead or deceive the recipient as to the true nature, size or kind of an item.

(24) Promotional pieces shall not use any type size, style, location, color, layout, headline or illustration which renders misleading any material fact of the offer,

including but not limited to using excessively small size type and/or an inconspicuous location for eligibility conditions, odds or value.

(25) Telephone solicitations which involve game promotions need not disclose all information described herein but they must disclose at least the following information:

(a) that the purpose of the solicitation is the sale of a time-share, subdivided land, condominium or membership campground interest;

(b) that to claim an offered gift, the listener must visit the resort and hear a sales presentation, including a reasonable estimate of the least amount of time that the sales presentation will take;

(c) the principal conditions attached to claiming the gift;

(d) the verifiable retail value of any gift promoted and the odds of receiving each such gift offered if the promotion is a sweepstakes, as set forth in paragraph 9.1.2.15 above [now Paragraph (15) of Subsection B of 12.2.3.9 NMAC].

(26) All promotional material may be submitted to the attorney general for review before distribution in this state. The attorney general may comment on the legal sufficiency of the material or take such other action as he deems appropriate. The attorney general's failure to respond shall not be construed, however, as an approval, exemption or waiver of any statutory or other enforcement authority by the attorney general. No person shall use or refer to any correspondence to or received from the attorney general in any promotional piece or in any sales presentation. It shall be an unfair or deceptive trade practice to state directly or indirectly that the attorney general or the state of New Mexico has approved, sanctioned, authorized or given any favorable opinion concerning the legality of any game promotion.

[5/1/98; Recompiled 10/15/01]

12.2.3.10 SIGNATURE:

Original Adoption and Promulgation

Paul Bardacke

Attorney General

Date: 9/3/85

Readoption and Repromulgation

Tom Udall

Attorney General

Date: 4/9/98

Tom Udall

Attorney General

[5/1/98; Recompiled 10/15/01]

PART 4: REQUIREMENTS FOR THE ADVERTISING AND SALE OF MOTOR VEHICLES

12.2.4.1 ISSUING AGENCY:

Office of the New Mexico Attorney General, Consumer Protection Division, Post Office
Drawer 1508, Santa Fe, New Mexico 87504-1508.

[5-1-98; Recompiled 10/15/01]

12.2.4.2 SCOPE:

Motor vehicle dealers.

[5-1-98; Recompiled 10/15/01]

12.2.4.3 STATUTORY AUTHORITY:

New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq., and New
Mexico False Advertising Act, Section 57-15-1 NMSA 1978 et seq.

[5-1-98; Recompiled 10/15/01]

12.2.4.4 DURATION:

Permanent.

[5-1-98; Recompiled 10/15/01]

12.2.4.5 EFFECTIVE DATE:

Re-promulgated and reformatted in NMAC format effective as of May 1, 1998 unless a
later date is cited at the end of a section or paragraph.

[5-1-98; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.2.4.6 OBJECTIVE:

A. The purpose of these regulations is to accomplish two principal objectives. The first is to deter unfair and deceptive practices that result in economic harm to consumers. The second is to provide clear legal standards for motor vehicle advertising to facilitate dealer compliance and fair competition and to make evaluation of particular practices easier.

B. The attorney general's office has long been concerned about unfair and deceptive practices in connection with the advertising and sale of motor vehicles. The attorney general's consumer protection division has received numerous written consumer complaints and telephone calls alleging such practices. Indeed, the division receives such complaints virtually every day. The consumer protection division has also received a substantial number of telephonic and written complaints from motor vehicle dealers concerning other dealers' use of deceptive advertising as an unfair method of competition.

C. The complaints that have come to the attention of the attorney general's office have involved a large number of specific unfair or deceptive practices. These practices can be grouped into a number of more general categories. These include, but are not limited to: advertising vehicles for sale at prices lower than the actual prices at which the dealers will sell the vehicles; advertising fictitious discounts or trade-in allowances; failing to make required disclosure concerning credit terms; misrepresenting or failing to disclose material information concerning the age, condition and/or prior usage of motor vehicles. It is precisely such concerns that these regulations address.

D. The experience of the attorney general's office also indicates that the advertising and sale of motor vehicles is a particularly appropriate area for the promulgation of regulations. The sheer number of complaints, the number of dealers about whom consumers have complained and the fact that a significant number of complaints have been received from dealers concerning the use of unfair methods of competition in the industry all lead to the conclusion that regulations are necessary to ensure that advertising and sales practices are not unfair or deceptive, that such practices conform to legitimate consumer expectations and that all dealers are placed on an equal competitive footing. The attorney general has therefore concluded that regulation of the advertising and sale of motor vehicles is in the best interest of the health, safety and general welfare of the citizens of New Mexico.

E. These regulations provide a basis for evaluating motor vehicle advertising. They reflect provisions of New Mexico law, but do not necessarily cover every possible deceptive advertising practice. Therefore, it is not intended that literal compliance with these regulations be an absolute protection against liability for deceptive advertising. Dealers must review their advertising in light of the purpose of the regulations.

F. Before promulgating these regulations, notice of the proposed action was published pursuant to AG 92-3-1.3(A) [now 12.2.1.9 NMAC], and a public hearing was held on July 9, 1992 in Santa Fe. All comments received during the hearings were considered in the revision of the regulations finally promulgated. Consumers had already effectively spoken to this office and expressed their concerns through their written complaints and telephone calls. Representatives of the motor vehicle industry and the advertising industry testified at the hearings. This office also solicited written comments on the regulations. The comments received reflect the views of the New Mexico automotive dealers association representing the interests of new vehicle dealers and the independent automobile dealers association representing the interests of used vehicle dealers. All comments received were considered.

[5-1-98; Recompiled 10/15/01]

12.2.4.7 DEFINITIONS:

All vehicles may be classified as one of the following:

A. "Used" shall mean

(1) a vehicle that has previously been sold to a retail buyer who has taken possession of the vehicle and the vehicle has been driven a total of at least two hundred (200) miles by one or more retail buyers; or

(2) a vehicle for which the manufacturer's certificate of origin or the manufacturer's statement of origin has been surrendered to a registration authority, unless the certificate or statement has subsequently been returned, uncanceled, to the dealer or a substitute certificate or statement has been issued to the dealer.

B. "Demonstrator" shall mean a vehicle which is not used but which has been placed in demonstration or courtesy service regardless of the miles it has been driven.

C. "New" means a vehicle which is neither used nor a demonstrator.

D. "Rebate" means a reduction in price of a vehicle created, at least in part, by a payment of money by a third party either to the dealer or the purchaser of the vehicle.

[5-1-98; Recompiled 10/15/01]

12.2.4.8 VEHICLE CATEGORIES:

A. It is an unfair or deceptive trade practice for a dealer to describe a vehicle as new when it is either used or a demonstrator or to describe a vehicle as a demonstrator when it is used.

B. It is an unfair or deceptive trade practice for dealers to use any phrase containing the word "new" to describe a vehicle which is not new.

C. It is an unfair or deceptive trade practice for a dealer to use any description which would lead a reasonable person to believe that

- (1) a vehicle is new if the vehicle is not new or
- (2) that a vehicle is a demonstrator if the vehicle is used.

D. It is an unfair or deceptive trade practice for a dealer to represent expressly or by implication in an advertisement for a used vehicle or a demonstrator that the dealer obtained the vehicle from the manufacturer unless the advertisement clearly and conspicuously discloses the fact that the vehicle is used or a demonstrator. Examples of implied representations that a dealer obtained a vehicle from the manufacturer include but are not limited to the following:

- (1) "program car";
- (2) "factory program car";
- (3) "factory auction car";
- (4) "special purchase car";
- (5) "special factory purchase".

[5-1-98; Recompiled 10/15/01]

12.2.4.9 SPOT DELIVERIES:

It is an unfair or deceptive trade practice for any dealer to advertise or otherwise represent a vehicle as new if the vehicle has been delivered to a retail buyer who signed a contract obligating the buyer to pay the purchase price of the vehicle in exchange for the vehicle and the vehicle has been driven a total of at least two hundred (200) miles by one or more retail buyers; provided, however, that this section shall not be construed to prohibit a dealer from titling a vehicle that has been spot delivered as a new vehicle or providing new vehicle financing or warranty coverage for a vehicle that was previously spot delivered, if the vehicle is otherwise eligible for a new vehicle, financing or warranty coverage.

[5-1-98; Recompiled 10/15/01]

12.2.4.10 DISCOUNTS:

A. Manufacturers are required by federal law to label new automobiles with a suggested retail price. See 15 USC 1232. Automobiles as defined by federal law include passenger cars and station wagons. Federal law does not require similar labeling for other vehicles.

B. It is an unfair or deceptive trade practice to advertise a discount price or price savings for a new motor vehicle unless the discount or savings claim is made in reference to a reference price that is objectively verifiable using data not solely subject to the dealer's control, such as the manufacturer's suggested retail price or the invoice price, and:

- (1) the claim is not deceptive;
- (2) the dollar amount of the reference price meets any applicable requirement such as Section 15 [now 12.2.4.15 NMAC]; and
- (3) the resulting price meets the requirements of these regulations.

C. It is an unfair or deceptive trade practice for a dealer to raise any price of a vehicle to increase or create any discount, savings or rebate for the period of a sale and then decrease the price after the sale.

D. It is an unfair or deceptive trade practice for a dealer to use a reference price as the basis for a discount price or price savings claim unless the dealer clearly and conspicuously discloses:

- (1) the source of the reference price, such as manufacturer's suggested retail price or invoice price; and
- (2) the amount of the reference price.

E. It is an unfair or deceptive trade practice for a dealer to use a reference price greater than the manufacturer's suggested retail price as a basis for a discount or savings claim unless the dealer clearly and conspicuously discloses that:

- (1) the reference price is greater than the manufacturer's suggested retail price; and
- (2) the amount by which the reference price exceeds the manufacturer's suggested retail price.

[5-1-98; Recompiled 10/15/01]

12.2.4.11 "OVER INVOICE/UNDER INVOICE" DISCOUNT CLAIMS:

It is an unfair or deceptive trade practice for a dealer to use the term "invoice" or "invoice price" in advertising unless the term is used in reference to the manufacturer's or distributor's total invoice price on a vehicle and the advertisement clearly and conspicuously includes one or both of the following disclosures:

- A. "the invoice may not represent actual dealer cost"; or
- B. "the factory invoice refers to the manufacturer's or distributor's total invoice price".

[5-1-98; Recompiled 10/15/01]

12.2.4.12 BELOW MARKET FINANCE CHARGE:

A. If dealer participation in "buying down" an interest rate may affect the final price of the vehicle, it is an unfair or deceptive trade practice for a dealer to fail to clearly and conspicuously disclose that fact in any advertisement offering the interest rate.

B. It is an unfair or deceptive trade practice for a dealer to advertise below market financing rates unless the advertisement clearly and conspicuously discloses all the terms which must be met in order to qualify for that advertised rate. Examples are large down payments, hidden finance charges, unusual terms of the loan or higher selling prices.

[5-1-98; Recompiled 10/15/01]

12.2.4.13 HIDDEN DISCLOSURES:

A. It is an unfair or deceptive trade practice for a dealer to obscure or make misleading any material fact in any advertisement or sales presentation by the use of layout, headlines, illustrations, footnotes, style, sound, length of time, lighting, color or type size of an advertisement or any portion of an advertisement.

B. It is an unfair or deceptive trade practice for a dealer to use any disclosure or disclaimer in an advertisement unless the disclosure or disclaimer is clear and conspicuous and in close proximity to the terms it modifies.

C. It is an unfair or deceptive trade practice for a dealer to use television advertisements with disclosures that are in such fine print or appear on the screen so briefly that they cannot be easily read.

D. Comment. Each advertisement shall be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement or search for inconspicuous disclaimers. Dealers shall not advertise by placing important disclosures in small print, inconspicuously buried at the bottom of the advertisement.

[5-1-98; Recompiled 10/15/01]

12.2.4.14 "FREE GIFTS":

A. It is an unfair or deceptive trade practice for a dealer to represent that another product or service is being offered "free" or at no cost with the sale if a product or service usually is sold at a price arrived at through bargaining, rather than at a fixed price. FTC Guidelines at 16 CFR 251.1(g).

B. It is an unfair or deceptive trade practice for a dealer to use the word "free" or words of like meaning and import when describing a gift or other item to be given to a customer who purchases a product or service if the selling price of the product or service is increased as a result of the "free" item or if the product or service can be purchased for a lesser price without the "free" item.

[5-1-98; Recompiled 10/15/01]

12.2.4.15 TRADE-INS:

A. It is an unfair or deceptive trade practice for a dealer to use a guaranteed trade-in amount or range of amounts in any advertising.

B. It is an unfair or deceptive trade practice for a dealer to use a multiple, such as "double", or other type of increased trade-in allowance in any advertising.

[5-1-98; Recompiled 10/15/01]

12.2.4.16 REBATES:

A. It is an unfair or deceptive trade practice for a dealer to advertise rebates if the dealer raises the price of the vehicle prior to a sale in order to compensate for the allowance of the rebate.

B. It is an unfair or deceptive trade practice for a dealer to advertise the existence of a rebate or a price that takes into account a rebate unless the advertisement discloses the existence, amount and source of the rebate.

C. It is an unfair or deceptive trade practice for a dealer to advertise any rebate unless the dealer maintains sufficient documentation to demonstrate that the sale prices of vehicles sold in connection with such promotions have not been increased to compensate for the rebate and the dealer makes such documentation available for inspection and copying by the attorney general's office upon written request during normal business hours.

D. It is an unfair or deceptive trade practice for a dealer to advertise as a rebate any price reduction which is not a rebate.

[5-1-98; Recompiled 10/15/01]

12.2.4.17 ON APPROVED CREDIT:

It is an unfair or deceptive trade practice for a dealer to advertise a specified finance rate and then have a customer sign a contract with a higher finance rate, unless the advertisement discloses the information specified in Section 18 [now 12.2.4.18 NMAC] for the loan program under which the low rate is offered and:

- A. the customer declines to participate in the program advertised; or
- B. the customer is not financially eligible for that loan program; or
- C. the transaction is not eligible for the loan program.

[5-1-98; Recompiled 10/15/01]

12.2.4.18 CREDIT ADVERTISING:

A. The Truth in Lending Act and accompanying regulations govern credit advertising. The following are triggering terms that require certain disclosures to be made in the advertisement:

- (1) the amount or percentage of any down payment (expressed as either a percentage or dollar amount);
- (2) the number of payments;
- (3) the amount of any payment (expressed either as a percentage or dollar amount);
- (4) the amount of any finance charge; and
- (5) the period of repayment (the total time required to repay).

B. If any one of the triggering terms appear, it is an unfair or deceptive trade practice to fail to clearly and conspicuously disclose in the advertisement:

- (1) the amount or percentage of the down payment;
- (2) the terms of repayment; and
- (3) the annual percentage rate. If the annual percentage rate may be increased after consummation of the credit transaction, such as an adjustable rate loan, that fact must be disclosed.

C. If an advertisement mentions the amount of any payment, expressed as a dollar amount, that payment must be based on a sales price no less than the price required to be used under Section 21 [now 12.2.4.21 NMAC].

[5-1-98; Recompiled 10/15/01]

12.2.4.19 LEASE ADVERTISING:

A. The Truth in Lending Act and accompanying regulations regulate consumer leases because they represent an alternative to buying on credit. Also, unless certain information is provided, a consumer might easily confuse leasing with purchasing on credit.

B. If an advertisement promoting a "consumer lease" contains any of the following triggering terms, then five specific disclosures must also be included in the advertisement and it is an unfair or deceptive trade practice to fail to make all five disclosures. The triggering terms are:

- (1) the amount of any payment;
- (2) the number of required payments; and
- (3) a statement that any or no down payment or other payment, is required at the beginning of the lease.

C. If any triggering term is used in a consumer lease advertisement, then it is an unfair or deceptive trade practice to fail to clearly and conspicuously make all five of the following disclosures in that advertisement:

- (1) a statement that the transaction advertised is a lease;
- (2) the total amount of any payment (such as security deposit or capitalized cost reduction) required at the beginning of the lease, or a statement that no such payment is required;
- (3) the number, amounts, due dates or periods of scheduled payments, and the total number of such payments under the lease;
- (4) a statement of whether the customer has the option to purchase the leased property and at what time and price (the method of determining the price may be substituted for disclosure of the price); and
- (5) a statement of the amount or method of determining the amount or any liabilities the lease imposes upon the customer at the end of the term, and, if the customer has such liability, a statement that the customer shall be liable for any

difference between the estimated value of the leased property and its realized value at the end of the lease term.

[5-1-98; Recompiled 10/15/01]

12.2.4.20 ADVERTISED PRICES AVAILABLE TO ALL:

A. It is an unfair or deceptive trade practice for a dealer to sell a vehicle to a customer for more than the advertised price of the vehicle.

B. It is an unfair or deceptive trade practice for a dealer to sell a vehicle at a price above the advertised price of the vehicle regardless of whether the advertised price has been actually communicated to the purchaser prior to the sale; provided that this provision does not prevent dealers from requiring customers to present a coupon or copy of the advertisement to obtain the advertised price if the advertisement clearly and conspicuously discloses that a coupon or copy of the advertisement must be presented.

[5-1-98; Recompiled 10/15/01]

12.2.4.21 DEALER PRICE ADVERTISING:

A. It is an unfair or deceptive trade practice for a dealer to advertise the price of a new motor vehicle unless the advertised price is the full cash price for which the dealer will sell the vehicle. The only charges that may be excluded from the advertised price are:

(1) federal and state taxes;

(2) license fees;

(3) vehicle registration; and

(4) dealer transfer service fees, if the advertisement clearly and conspicuously discloses, in close proximity to the advertised price, the amount of any such fee and that the fee is a dealer imposed fee; provided, however, that it is an unfair or deceptive trade practice for a dealer to fail to disclose in writing to a buyer purchasing a vehicle on which no security interest is retained that the buyer may register the vehicle on his own without paying a dealer transfer service fee.

B. It is an unfair or deceptive trade practice for a dealer to use any qualification when advertising the price of a vehicle such as "with trade", "with acceptable trade", "with dealer-arranged financing" or "with down payment."

C. If a price advertisement for a vehicle discloses a rebate, cash back, discount savings claim or other incentive, it is an unfair or deceptive trade practice for a dealer to

fail to disclose in the advertisement the full cash price of the vehicle as well as the price of the vehicle after deducting the incentive.

D. It is an unfair or deceptive trade practice for a dealer to fail to include the price of standard or optional equipment with which all cars sold by the dealer are minimally equipped in the advertised price of the vehicle; provided, however, that the cost of additional options or services requested by the purchaser may be added at the time of sale to the purchase price.

E. It is an unfair or deceptive trade practice for a dealer to use an illustration of a motor vehicle in an advertisement unless the illustration is that of the motor vehicle advertised. If an illustration of the advertised vehicle is not available, then the dealer must clearly and conspicuously disclose that the illustration is not the vehicle being advertised.

[5-1-98; Recompiled 10/15/01]

12.2.4.22 ADVERTISED VEHICLE AVAILABILITY:

A. When a dealer advertises a specific type of vehicle for sale that is not readily available, it is an unfair or deceptive trade practice to fail to disclose the vehicle's lack of availability.

B. It is an unfair or deceptive trade practice for a dealer to advise prospective customers that an advertised vehicle is available when the vehicle is not available for sale, or that an advertised vehicle is not available for sale when the vehicle is available for sale.

C. It is an unfair or deceptive trade practice for a dealer to advertise a particular vehicle or type of vehicle for sale at a special price, unless the advertisement discloses the number or stock numbers of the vehicles in stock for sale at that price.

[5-1-98; Recompiled 10/15/01]

12.2.4.23 NO DOWN PAYMENT:

It is an unfair or deceptive trade practice for a dealer to advertise that no down payment is required in connection with the purchase of a vehicle when a down payment or trade-in is in fact required. If only a trade-in is required a dealer may advertise that fact.

[5-1-98; Recompiled 10/15/01]

12.2.4.24 CONTRACT ADDITIONS WITHOUT CUSTOMER'S KNOWLEDGE:

A. It is an unfair or deceptive trade practice for a dealer to negotiate the terms of a sale and then add the cost of such items as extended warranty, credit life, dealer

preparation, undercoating, etc., to the contract without the customer's knowledge and consent.

B. It is an unfair or deceptive trade practice for a dealer to use "documentary fee" or other similar term for any charges other than those actually required by law for processing of documents.

C. It is an unfair or deceptive trade practice for a dealer to negotiate the terms of a sale and then add the cost of "comptroller inventory adjustment", "floor plan, handling, overhead and advertising", or any other charges, however denominated, that represent additional dealer profit, are part of the overhead expenses of running a dealership, are necessary incidents of the sale of a vehicle, do not represent payment for a bona fide product or service or are fictitious.

[5-1-98; Recompiled 10/15/01]

12.2.4.25 EXTENDED WARRANTIES:

It is an unfair or deceptive trade practice for a dealer to misrepresent or fail to accurately disclose the terms or conditions of an extended service contract.

[5-1-98; Recompiled 10/15/01]

12.2.4.26 USE OF INITIALS OR ABBREVIATIONS:

It is an unfair or deceptive trade practice for a dealer to use initials or abbreviations in an advertisement of a motor vehicle, including the window sticker and supplementary sticker, unless all such initials or abbreviations are clearly defined in the advertisement or window sticker; provided, however, that abbreviations may be used for such options and features as air conditioning, power steering and power brakes in classified and similar advertisements if such abbreviations are commonly understood by consumers.

[5-1-98; Recompiled 10/15/01]

12.2.4.27 SUPPLEMENTAL STICKER PRICES:

A. When a dealer is selling a vehicle for which a federal Monroney window sticker is required pursuant to 15 USC 1232, it is an unfair or deceptive trade practice to charge or attempt to charge a customer more than the manufacturer's suggested retail price unless the dealer's asking price or supplemental price is clearly and conspicuously disclosed on a supplemental sticker adjacent to the Monroney sticker.

B. It is an unfair or deceptive trade practice for a dealer to misrepresent the reasons for additional charges listed on a supplemental sticker.

C. It is an unfair or deceptive trade practice for a dealer to list on a supplemental sticker a charge which:

- (1) the dealer did not incur;
- (2) is otherwise accounted for on the Monroney sticker; or
- (3) is otherwise reimbursed.

D. It is an unfair or deceptive trade practice for a dealer to represent, by a sticker or other means, that options have been added to a vehicle before they have been added.

[5-1-98; Recompiled 10/15/01]

12.2.4.28 LEMON VEHICLES:

It is an unfair or deceptive trade practice for a dealer or manufacturer to sell a vehicle knowing that it has been returned to a dealer or manufacturer under the terms of the Motor Vehicle Quality Assurance Act, Section 57-16A-1 NMSA 1978 et seq., or any similar law of any other state unless prior to sale the dealer clearly and conspicuously discloses in writing to any prospective purchaser that the vehicle was returned to the manufacturer due to one or more defects under the New Mexico Lemon Law or the Lemon Law of another state and the nature of the defects if known.

[5-1-98; Recompiled 10/15/01]

12.2.4.29 SELF-REGULATION PROGRAMS:

A. The attorney general may refer any complaint alleging a violation of these regulations by a dealer participating in an approved self-regulation program to the program. Not more than forty-five (45) days of receiving a complaint by referral from the attorney general, the program shall provide the attorney general with a written report describing the substance of the complaint and the program's disposition of the complaint.

B. At a minimum, an approved self-regulation program shall include:

- (1) substantive standards determined by the attorney general to be identical to or more stringent than the standards set forth in these regulations; and
- (2) an enforcement procedure that the attorney general determines to be fair and impartial, responsive to complaints and likely to enforce compliance with the program's substantive standards.

C. Not less than every twelve (12) months, or more frequently if requested by the attorney general, the program shall submit a written report to the attorney general containing the following information:

- (1) copies of all complaints received by the program;
- (2) the number of complaints against each dealer;
- (3) the disposition of each complaint;
- (4) the number of complaints received by type of complaint; and
- (5) any other information or documents the attorney general may request.

D. All records of the program shall be available for inspection and copying by the attorney general upon request during normal business hours.

E. All proceedings of the program concerning consumer complaints shall be open to the public.

F. All consumer complaints, complaint resolutions regardless of the source of the complaint and decisions of the program shall be available for inspection and copying by the public upon reasonable notice during normal business hours.

G. The attorney general may withdraw approval of a program at any time upon a finding by the attorney general that the program has failed to comply with the requirements of these regulations or that the program, while complying, has failed to effectively and meaningfully regulate the practices of the dealers participating in the program.

[5-1-98; Recompiled 10/15/01]

12.2.4.30 SEVERABILITY:

If any part of these regulations is held invalid, the remainder and the application thereof shall not be affected.

[5-1-98; Recompiled 10/15/01]

12.2.4.31 SIGNATURE:

Original Adoption and Promulgation

Tom Udall

Attorney General

Date: 5/12/93

Readoption and Repromulgation

Tom Udall

Attorney General

Date: 4/9/98

Tom Udall

Attorney General

[5-1-98; Recompiled 10/15/01]

PART 5: REQUIREMENTS FOR ENVIRONMENTAL MARKETING CLAIMS

12.2.5.1 ISSUING AGENCY:

Office of the New Mexico Attorney General, Consumer Protection Division, Post Office
Drawer 1508, Santa Fe, New Mexico 87504-1508

[5/1/98; Recompiled 10/15/01]

12.2.5.2 SCOPE:

Marketers and advertisers.

[5/1/98; Recompiled 10/15/01]

12.2.5.3 STATUTORY AUTHORITY:

New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq. and New Mexico
False Advertising Act, Section 57-15-1 NMSA 1978 et seq.

[5/1/98; Recompiled 10/15/01]

12.2.5.4 DURATION:

Permanent.

[5/1/98; Recompiled 10/15/01]

12.2.5.5 EFFECTIVE DATE:

Re-promulgated and reformatted in NMAC format effective as of May 1, 1998 unless a later date is cited at the end of a section or paragraph.

[5/1/98; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.2.5.6 OBJECTIVE:

A. These regulations are intended to accomplish two principal objectives. The first is to deter unfair and deceptive practices that result in economic harm to consumers. The second is to encourage fair competition by providing clear legal standards for environmental marketing claims to facilitate compliance with and enforcement of the law.

B. In recent years consumers have increasingly made purchasing decisions based upon their perception of the environmental attributes and benefits of various products and packaging. Similarly, persons marketing products and packaging have increasingly made reference to the environmental attributes and benefits of their products and packaging in advertising and sales presentations.

C. Unlike some other kinds of advertising, environmental marketing claims are difficult, if not impossible, for consumers to evaluate on their own. Scientific testing is normally required to determine whether an environmental marketing claim is true. Consumers are not in a position to make independent evaluations of such claims. Regulations are needed to ensure that advertising and sales practices are not unfair or deceptive, that such practices conform to legitimate consumer expectations and that all marketers and advertisers are placed on an equal competitive footing. The attorney general has therefore concluded that regulation of environmental marketing claims is in the public interest and will promote the health, safety and general welfare of the citizens of New Mexico.

D. These regulations provide a basis for evaluating environmental marketing claims. They reflect provisions of New Mexico law, but do not necessarily cover every possible deceptive marketing practice. Therefore, it is not intended that literal compliance with these regulations be an absolute protection against liability for deceptive environmental marketing claims. Marketers and advertisers must review their environmental marketing claims in light of the purpose of the regulations.

E. The federal trade commission has promulgated Guides for the Use of Environmental Marketing Claims. See, 16 C.F.R. 260. These guides apply to such claims in or affecting commerce. To the extent possible, these regulations follow the federal trade commission's guides both out of deference to the legislative directive that interpretation of the Unfair Practices Act be guided by the commission's interpretations and to reduce the burden on business by avoiding conflicting regulatory requirements.

F. Before promulgating these regulations, notice of the proposed action was published on January 15, 1994 in the New Mexico Register, Volume V, No. 1, pursuant to AG 92-3-1.3(A) [now 12.2.1.9 NMAC], and a public hearing was held on March 2, 1994 in Santa Fe. All comments received during the hearing were considered in the revision of the regulations finally promulgated. Representatives of the New Mexico grocers association, the general services department of the state of New Mexico, New Mexico PIRG, the New Mexico environment department and the owner of a diaper service testified at the hearing. This office also solicited written comments on the regulations. Twelve written comments were received reflecting the views of a variety of business interests, government agencies and New Mexico PIRG. All comments received were considered.

[5/1/98; Recompiled 10/15/01]

12.2.5.7 DEFINITIONS:

A. As used in these regulations, the term "environmental marketing claim" means any representation about the environmental attributes of a product or a package made in connection with the advertising, marketing, offer for sale or sale of such product or package.

B. As used in these regulations, the term "prior reasonable basis" means such competent and reliable evidence as would satisfy a reasonable and prudent businessperson, acting in good faith, that the environmental marketing claim is true. In general, environmental marketing claims must be supported by competent and reliable scientific evidence, and the prior reasonable basis for an environmental marketing claim must be based on such evidence. For any test, analysis, research, study or other evidence to be "competent and reliable" for the purposes of these regulations, it must be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

[5/1/98; Recompiled 10/15/01]

12.2.5.8 FALSE AND MISLEADING CLAIMS PROHIBITED:

It is an unfair or deceptive trade practice for any person to make an environmental marketing claim that is false or misleading.

[5/1/98; Recompiled 10/15/01]

12.2.5.9 PRIOR REASONABLE BASIS REQUIRED:

It is an unfair or deceptive trade practice for any person to make an environmental marketing claim unless prior to making the claim:

A. the person has and relies upon a prior reasonable basis from which to conclude that the claim is true; and

B. the person possesses documents that evidence the prior reasonable basis for the claim.

[5/1/98; Recompiled 10/15/01]

12.2.5.10 RECORD-KEEPING REQUIREMENTS:

A. Any person who makes an environmental marketing claim must retain any and all documents evidencing the prior reasonable basis for the claim for a period of at least two years after the last date on which the claim is made. It is an unfair or deceptive trade practice for any person who makes an environmental marketing claim to fail to retain any and all documents evidencing the prior reasonable basis for the claim for a period of not less than two years after the last date on which the claim is made.

B. Any person who makes an environmental marketing claim must provide the attorney general with any and all documents evidencing the prior reasonable basis for such claim upon ten days written notice. It is an unfair or deceptive trade practice to fail to provide the attorney general with any and all documents evidencing the prior reasonable basis for an environmental marketing claim upon ten days written notice.

[5/1/98; Recompiled 10/15/01]

12.2.5.11 QUALIFICATIONS AND DISCLOSURES:

A. It is an unfair or deceptive trade practice for any person to obscure or make misleading any material fact in any environmental marketing claim by the use of layout, headlines, illustrations, footnotes, style, sound, length of time, lighting, color or type size.

B. It is an unfair or deceptive trade practice for any person to use any disclosure or disclaimer in an environmental marketing claim unless the disclosure or disclaimer is clear and conspicuous and in close proximity to the terms it modifies.

C. It is an unfair or deceptive trade practice for any person to make a televised environmental marketing claim with disclosures that are in such fine print or appear on the screen so briefly that they cannot be easily read.

D. Comment: To be effective, any qualifications and disclosures must be sufficiently clear and prominent to prevent deception. Clarity of language, relative type size and proximity to the claim being qualified and an absence of contrary claims that could undercut effectiveness will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

[5/1/98; Recompiled 10/15/01]

12.2.5.12 DISTINCTION BETWEEN BENEFITS OF PRODUCT AND PACKAGE:

It is an unfair or deceptive trade practice to make an environmental marketing claim in a way that fails to make clear whether the environmental attribute or benefit being asserted refers to the product, the product's packaging or to a portion or component of the product or packaging.

[5/1/98; Recompiled 10/15/01]

12.2.5.13 OVERSTATEMENT OF ENVIRONMENTAL BENEFITS:

It is an unfair or deceptive trade practice to make an environmental marketing claims in a manner that overstates the environmental attribute or benefit, expressly or by implication. Marketers must avoid implications of significant environmental benefits if the benefits are in fact negligible.

[5/1/98; Recompiled 10/15/01]

12.2.5.14 COMPARATIVE CLAIMS:

It is an unfair or deceptive trade practice to make an environmental marketing claim that includes a comparative statement unless:

A. the claim is presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception; and

B. the marketer is able to substantiate the comparison.

[5/1/98; Recompiled 10/15/01]

12.2.5.15 GENERAL ENVIRONMENTAL BENEFIT CLAIMS:

A. It is an unfair or deceptive trade practice to misrepresent directly or by implication that a product or package offers a general environmental benefit.

B. Comment: Unqualified general claims of environmental benefit are difficult to interpret and, depending on their context, may have a wide range of meanings to consumers. Such claims may convey that a product or package has specific and far-reaching environmental benefits when it does not. Every express and material implied claim that a general assertion conveys to reasonable consumers about an objective quality must be substantiated. Unless this substantiation duty can be met, broad environmental claims must either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.

[5/1/98; Recompiled 10/15/01]

12.2.5.16 DEGRADABLE, BIODEGRADABLE AND PHOTODEGRADABLE:

It is an unfair or deceptive act or practice to misrepresent, directly or by implication, that a product or package is degradable, biodegradable or photodegradable. An unqualified claim that a product or package is degradable, biodegradable or photodegradable must be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature, within a reasonably short period of time after customary disposal.

Claims of degradability, biodegradability or photodegradability must be qualified to the extent necessary to avoid consumer deception about:

A. the product's or package's ability to degrade in the environment where it is customarily disposed; and

B. the rate and extent of degradation.

[5/1/98; Recompiled 10/15/01]

12.2.5.17 COMPOSTABLE:

A. It is an unfair or deceptive trade practice to misrepresent, directly or by implication, that a product or package is compostable.

B. It is an unfair or deceptive trade practice to make an unqualified claim that a product or package is compostable unless the claim is substantiated by competent and reliable scientific evidence that all the materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device.

C. Claims of compostability must be qualified to the extent necessary to avoid consumer deception. An unqualified claim may be deceptive if:

(1) municipal composting facilities are not available to a substantial majority of consumers or communities where the product is sold;

(2) the claim misleads consumers about the environmental benefit provided when the product or package is disposed of in a landfill; or

(3) consumers misunderstand the claim to mean that the product or package can be safely composted in their home compost pile or device, when in fact it cannot.

[5/1/98; Recompiled 10/15/01]

12.2.5.18 RECYCLABLE:

A. It is an unfair or deceptive trade practice to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated or otherwise recovered from the solid waste stream for use in the form of raw materials in the manufacture or assembly of a new product or package.

B. Unqualified claims of recyclability may be made only if the entire product or package, excluding minor incidental components, is recyclable. For products or packages that are made of both recyclable and non-recyclable components, the recyclable claim must be adequately qualified to avoid consumer deception about which portions or components of the product or package are recyclable. Claims of recyclability must be qualified to the extent necessary to avoid consumer deception about any limited availability of recycling programs or collection sites. If an incidental component significantly limits the ability to recycle the product or package, the claim would be deceptive. A product or package that is made of recyclable material, but because of its shape, size or some other attribute, is not accepted in recycling programs should not be marketed as recyclable. Qualification may be necessary to avoid consumer deception about the limited availability of recycling programs and collection sites if recycling collection sites are not available to a substantial majority of consumers or communities.

[5/1/98; Recompiled 10/15/01]

12.2.5.19 RECYCLED CONTENT:

A. It is an unfair or deceptive trade practice to make a recycled content claim unless the materials for which the claim is made have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (pre-consumer) or after consumer use (post-consumer). To the extent that the source of recycled content includes pre-consumer material, the manufacturer or advertiser must have substantiation for concluding that the pre-consumer material would otherwise have entered the solid waste stream. In asserting a recycled content claim, distinctions may be made between pre-consumer and post-consumer materials. Where such distinctions are asserted, any express or implied claim about the specific pre-consumer or post-consumer content of a product or package must be substantiated.

B. It is an unfair or deceptive trade practice to misrepresent, directly or by implication, that a product or package is made of recycled material. Unqualified claims of recycled content may be made only if the entire product or package, excluding minor incidental components, is made from recycled material. For products or packages that are only partially made of recycled material, a recycled claim must be adequately qualified to avoid consumer deception about amount, by weight, of recycled content in the finished product or package.

[5/1/98; Recompiled 10/15/01]

12.2.5.20 SOURCE REDUCTION:

It is an unfair or deceptive trade practice to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume or toxicity. Source reduction claims must be qualified to the extent necessary to avoid consumer deception about the amount of the source reduction and the basis for any comparison asserted.

[5/1/98; Recompiled 10/15/01]

12.2.5.21 REFILLABLE:

A. It is an unfair or deceptive trade practice to misrepresent, directly or by implication, that a package is refillable. An unqualified refillable claim should not be asserted unless a system is provided for:

- (1) the collection and return of the package for refill; or
- (2) the later refill of the package by consumers with product subsequently sold in another package.

B. It is an unfair or deceptive trade practice to market a package with an unqualified refillable claim if it is up to consumers to find new ways to refill the package.

[5/1/98; Recompiled 10/15/01]

12.2.5.22 OZONE SAFE AND OZONE FRIENDLY:

It is an unfair or deceptive trade practice to misrepresent, directly or by implication, that a product is safe for or "friendly" to the ozone layer. A direct or implicit claim that a product does not harm the ozone layer is deceptive if the product contains an ozone-depleting substance.

[5/1/98; Recompiled 10/15/01]

12.2.5.23 SEVERABILITY:

If any part of these regulations is held invalid, the remainder and the application thereof shall not be affected.

[5/1/98; Recompiled 10/15/01]

12.2.5.24 SIGNATURE:

Original Adoption and Promulgation

Tom Udall

Attorney General

Date: 11/1/94

Readoption and Repromulgation

Tom Udall

Attorney General

Date: 4/9/98

Tom Udall

Attorney General

[5/1/98; Recompiled 10/15/01]

Pre-NMAC Regulatory Filing History. The material in this part is derived from that previously filed with the State Records Center and Archives under:

AG 94-1, Regulations for Environmental Marketing Claims Issued Pursuant to the Unfair Practices Act and False Advertising Act, filed 11/2/94.

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

PART 6: REQUIREMENTS FOR REPAIR OF VEHICLES

12.2.6.1 ISSUING AGENCY:

Office of the New Mexico Attorney General, Consumer Protection Division, Post Office Drawer 1508, Santa Fe, New Mexico 87504.

[1/1/98; Recompiled 10/15/01]

12.2.6.2 SCOPE:

Automotive repair shops and automotive repair facilities.

[1/1/98; Recompiled 10/15/01]

12.2.6.3 STATUTORY AUTHORITY:

New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq.

[1/1/98; Recompiled 10/15/01]

12.2.6.4 DURATION:

Permanent.

[1/1/98; Recompiled 10/15/01]

12.2.6.5 EFFECTIVE DATE:

January 1, 1998, unless a later date is cited at the end of a section or paragraph.

[1/1/98; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.2.6.6 OBJECTIVE:

The purpose is to accomplish three principal objectives:

A. to deter unfair business practices within the automotive industry;

B. to provide clear legal standards for the automotive repair industry in order to facilitate industry compliance, clearly establish a set of rights and responsibilities for both consumers and automotive repair facilities and make evaluation of existing practices easier; and

C. to make sure the genuine public interest is served in the encouragement of industry self-regulation when available government resources are too few to permit substantial government oversight of the industry.

[1/1/98; Recompiled 10/15/01]

12.2.6.7 DEFINITIONS:

A. As used in these regulations, the terms "automotive repair shop" and "repair facility" are interchangeable and mean any business or operation engaged in automotive repair or automotive service (including, but not limited to, tune-up, oil change, window tinting, collision repair or refinishing and installation of new or used automotive parts and/or accessories).

B. As used in these regulations, "automobile" shall mean every vehicle which is self-propelled and subject to registration under the Motor Vehicle Code.

C. As used in these regulations, "diagnostic" or "trouble shooting fee" shall mean a fee charged for the purpose of determining the nature, extent and source of the need for repair.

D. As used in these regulations, "sublet" shall mean work performed by a business or person other than the automotive repair shop charging the customer for the work unless the other business is owned by or in common ownership with the shop.

[1/1/98; Recompiled 10/15/01]

12.2.6.8 STATEMENT OF BASIS:

A. The attorney general has long been concerned about unfair and deceptive practices in the automotive repair industry. The attorney general's consumer protection division has received numerous complaints and telephone calls alleging unfair and deceptive trade practices in the automotive repair industry.

B. The complaints include, but are not limited to, the absence of a warranty on completed repairs, price gouging, automotive part misrepresentation, failure to give written estimates, failure to adhere to estimates, failure to disclose labor rates, unauthorized repairs and the imposition of liens for unauthorized repairs. The consumer protection division has also received requests and complaints from industry members regarding the necessity of a statement clearly defining their rights and responsibilities.

C. These regulations provide some basic rules in a complicated industry. They are not exhaustive and do not cover every practice and procedure involved in automotive repair. Therefore, it is not intended that literal compliance with these regulations be an absolute protection against liability for practices and procedures surrounding automotive repair.

[1/1/98; Recompiled 10/15/01]

12.2.6.9 WARRANTIES, RATES AND RETURNS:

A. It is an unfair or deceptive trade practice for an automotive repair shop to fail to post the major provisions of its warranty policy in a prominent and conspicuous location within the repair facility and to fail to provide any person who has purchased automotive repair services with a written warranty or statement that there is no warranty, if such is the case.

B. It is an unfair or deceptive trade practice for an automotive repair facility to fail to make available to all customers upon request the details of its warranty and return policies.

C. It is an unfair or deceptive practice for an automotive repair facility to fail to post the current method by which labor charges are calculated, including any dollar figures used, at a prominent and conspicuous location within the facility or on the customer invoice or estimate.

[1/1/98; Recompiled 10/15/01]

12.2.6.10 ESTIMATES, INVOICE AND PAYMENT:

A. It is an unfair or deceptive trade practice for an automotive repair facility to fail to give an estimate of repairs that exceed one hundred dollars (\$100). A written estimate from an insurance company or independent appraisal firm shall be deemed to meet this requirement in lieu of the repair facility estimate. For calculation of the dollar amount, fees for related repairs diagnosed at the same time shall be aggregated. A diagnostic fee is not subject to this section as long as the disclosure required by Section 11.1 [now Section 12.2.6.11 NMAC] is made at the time an estimate would have been required. The estimate shall be written. If the customer is not present at the time the estimate is finalized, the repair facility may obtain oral approval from the customer or proceed, based upon full disclosure of the content of the written estimate. If oral approval is obtained, the repair facility shall provide the customer with a copy of the written estimate no later than the time the customer picks up his or her vehicle. The estimate shall document who authorized the repairs, the phone numbers at which they were contacted, exactly what repairs were authorized and the time, date and name of the person obtaining the authorization. If the repairs exceed the estimate by the greater of ten percent or fifty dollars (\$50), the shop must obtain a new authorization for any repairs beyond 110 percent or (\$50) of the original estimate. If the additional repairs are authorized and paid for by an insurance company, no customer authorization is necessary. If the consumer does not desire an estimate, the consumer may choose to sign a waiver relieving the facility of these responsibilities and requirements when he or she initially leaves the automobile for repair. However, a consumer must be made fully aware of the consequences of his or her waiver, which shall include a brief explanation of the privileges he or she has waived.

B. It is an unfair or deceptive trade practice for an automotive repair facility to solicit, collect or require payment for repair charges in excess of those permitted by Section 10.1 [now Subsection A of 12.2.6.10 NMAC].

C. It is an unfair or deceptive trade practice for an automotive repair facility to fail to provide the customer with an invoice stating in detail all repairs completed and, pursuant to Section 12.1 [now Subsection A of Section 12.2.6.12 NMAC], all parts and material used in the repair or service of the customer's automobile; provided that no itemization is required if the charge for parts and materials is (\$50) or less. Furthermore, if any repair is sublet, the sublet repairs shall be marked "sublet" on the customer's invoice.

D. It is an unfair or deceptive trade practice for an automobile repair shop to assert or impose or attempt to assert or impose a mechanic's lien for charges in excess of those permitted by Section 10.1 [now Subsection A of 12.2.6.10 NMAC].

[1/1/98; Recompiled 10/15/01]

12.2.6.11 FEES:

It is an unfair or deceptive trade practice for an automotive repair facility to fail to disclose the basis for calculating a trouble shooting or diagnostic fee.

[1/1/98; Recompiled 10/15/01]

12.2.6.12 PARTS:

A. It is an unfair or deceptive trade practice for an automotive repair facility or insurance company to fail to disclose (if known) whether particular parts used in the repair of the customer's automobile were used or rebuilt or aftermarket crash parts. If a facility or insurance company fails to disclose such information regarding the condition of the parts used in the repair or service, it will be assumed that the parts installed were new, and they shall be warranted as such.

B. All repair facilities shall keep the parts for customer inspection. Customers may retain the parts if they so desire, unless the specific manufacturer requires that the part be returned or if the part is hazardous to the environment. If the customer desires removed parts that involve a core, the customer will be responsible for the core charge. A repair facility shall not be required to keep parts if disposal or special handling is required by law. A repair facility shall not be required to keep parts after a vehicle has been released to the customer.

[1/1/98; Recompiled 10/15/01]

12.2.6.13 SUBSTANTIAL COMPLIANCE:

A procedure or requirement is in substantial compliance with these regulations if, taking all relevant circumstances into account, the purpose of the procedure or requirement in the regulations is met, regardless of whether or not the technical requirements of the regulations are met.

[1/1/98; Recompiled 10/15/01]

12.2.6.14 SELF-REGULATION PROGRAMS:

A. The attorney general may refer to an approved self-regulation program any complaint alleging a violation of these regulations by an automotive repair shop participating in the program. Not more than forty-five (45) days of receiving a complaint by referral from the attorney general, the program shall provide the attorney general with a written report describing the substance of the complaint and the program's disposition of the complaint.

B. At a minimum, an approved self-regulation program shall include:

(1) substantive standards determined by the attorney general to be in substantial compliance with the standards set forth in these regulations; and

(2) an enforcement procedure that the attorney general determines to be fair and impartial, responsive to complaints and likely to enforce compliance with the program's substantive standards.

C. Not less than every twelve (12) months, or more frequently if required by the attorney general, the program shall submit a written report to the attorney general containing the following information:

- (1) copies of all complaints received by the program; and
- (2) the number of complaints against each auto repair facility; and
- (3) the disposition of each complaint; and
- (4) the number of complaints received by type of complaint; and
- (5) any other information or documents requested by the attorney general.

D. All records of the program shall be available for inspection and copying by the attorney general upon request during normal business hours.

E. All proceedings of the program concerning consumer complaints shall be open to the public.

F. The attorney general may withdraw approval of a program at any time upon a finding by the attorney general that the program has failed to comply with the requirements of these regulations, or the program, while complying, has failed to effectively and meaningfully regulate the practices of the automotive repair shops participating in the program.

[1/1/98; Recompiled 10/15/01]

12.2.6.15 ENFORCEMENT:

A violation of these regulations is a violation of the Unfair Practices Act.

[1/1/98; Recompiled 10/15/01]

12.2.6.16 SEVERABILITY:

If any portion of these regulations is held invalid, the remainder of the regulations and applications thereof shall remain unaffected.

[1/1/98; Recompiled 10/15/01]

Date: _____

Tom Udall

Attorney General

PART 7: COMPARATIVE PRICE ADVERTISEMENTS AND SAVINGS CLAIMS FOR THE NATIVE AMERICAN JEWELRY AND ARTS AND CRAFTS RETAIL INDUSTRY

12.2.7.1 ISSUING AGENCY:

Office of the New Mexico Attorney General, Consumer Protection Division, Post Office Drawer 1508, Santa Fe, New Mexico 87504-1508.

[7/15/98; 12.2.7.1 NMAC - Rn, 1 NMAC 2.7.1, 02/14/08]

12.2.7.2 SCOPE:

Native American jewelry and arts and crafts retail industry.

[7/15/98; 12.2.7.2 NMAC - Rn, 1 NMAC 2.7.2, 02/14/08]

12.2.7.3 STATUTORY AUTHORITY:

New Mexico Unfair Practices Act, Section 57-12-13 NMSA 1978 (1967); New Mexico and False Advertising Act, Section 57-15-7 NMSA 1978 (1967).

[7/15/98; 12.2.7.3 NMAC - Rn, 1 NMAC 2.7.3, 02/14/08]

12.2.7.4 DURATION:

Permanent.

[7/15/98; 12.2.7.4 NMAC - Rn, 1 NMAC 2.7.4, 02/14/08]

12.2.7.5 EFFECTIVE DATE:

July 15, 1998, unless a later date is cited at the end of a section.

[7/15/98; 12.2.7.5 NMAC - Rn & A, 1 NMAC 2.7.5, 02/14/08]

12.2.7.6 OBJECTIVE:

These regulations provide a foundation for comparative price advertisements for the Native American jewelry and arts and crafts retail industry. Although these regulations reflect New Mexico law and federal trade commission regulations (16 C.F.R. Ch. 1, Part 233 (*Guides Against Deceptive Pricing*)), they should not be presumed to constitute a guard against deceptive pricing practices entirely. The principal objective of these regulations is to deter unfair, deceptive and misleading price comparison advertising within the industry.

[7/15/98; 12.2.7.6 NMAC - Rn, 1 NMAC 2.7.6, 02/14/08]

12.2.7.7 DEFINITIONS:

A. "Advertisement" means any statement, offer, sales presentation or representation, whether oral or written, regardless of medium or form, concerning or related to any good offered for sale or lease, including, but not limited to, any statement or representation contained on any label, tag or sign, or in any catalog or other printed material, or whether through any electronic transmission or medium, including, but not limited to, television, radio, facsimile or electronic data transmission over a modem or electronic mail, the purpose of which is to promote, describe or characterize the good in order to induce the public to buy or lease it, or otherwise to give consideration to the offer for the good.

B. "Clearly and conspicuously" means that the statement, representation or term being disclosed is reasonably understandable, is in such size, color contrast or audibility, is so placed and represented as to be readily noticeable, is in close proximity to the information it modifies, and, where applicable, is of a sufficient duration as to be reasonably understandable.

C. "Comparable good" means a good that is substantially identical in composition, style, design, model, kind, variety, service or performance characteristics to the good to which it is compared in any advertisement.

D. "Good" means any item or article of jewelry, including, but not limited to, necklaces, earrings, bracelets, pendants, broaches, rings and pins. "Good" means also any Native American or southwestern style art or craft object or article, including, but not limited to, kachinas, fetishes, pottery and drums, whether or not the object or article is "Indian handmade" or "Indian crafted", as defined by New Mexico Indian Arts and Crafts Sales Act, Section 30-33-4 NMSA 1978.

E. "List price" means a price given to a retailer by a manufacturer, supplier or other non-retail distributor as a suggested retail price for the good and includes the term "manufacturer's suggested retail price".

F. "Native American jewelry and arts and crafts" means such goods meeting the criteria of of the Indian Arts and Crafts Sales Act, Section 30-33-4 NMSA 1978, for "Indian handmade" and "Indian crafted" and all other jewelry and arts and crafts which,

although they do not qualify as "Indian handmade" or "Indian crafted", are made or manufactured to appear to be in the Native American style.

G. "Price comparison" means an express or implied comparison in any advertisement (whether or not expressed wholly or in part in dollars, cents, fractions or percentages) of a seller's current price for a good with any reference price, whether or not the price is actually stated in the advertisement.

H. "Reasonably substantial period of time" means 90 consecutive days.

I. "Reference price" means the price or other description of value of a good to which a seller compares its current price in an advertisement.

J. "Regular price" means the price at which a seller offered the good for a reasonably substantial period of time in the recent, regular course of its business, openly, actively and in good faith, with an intent to sell such good or product at that price.

K. "Seller" means any person who offers to sell, or sells, and in doing so disseminates advertisements for any good (as defined in Subsection D of 12.2.7.7 NMAC) in New Mexico, whether or not the sale of goods as defined herein is the seller's primary business. "Seller" may include any officer, agent, employee, sales person or representative of the seller, and any advertising agency employed by a seller.

L. "Trade area" means the geographic area where a seller's outlets are located.

M. "Wholesale" means the sale of goods to a retail merchant who intends to resell the merchandise to the public at a higher retail price.

[7/15/98; 12.2.7.7 NMAC - Rn, 1 NMAC 2.7.7, 02/14/08]

12.2.7.8 IDENTIFICATION OF BASIS FOR PRICE COMPARISON REQUIRED:

A. Except as provided in this rule, it is an unfair and deceptive trade practice to mark, label or otherwise advertise Native American jewelry or arts and crafts at any price other than the actual, good faith retail price at which the seller offers and intends to sell the goods to the public.

B. Except as provided in Subsection B of 12.2.7.9 NMAC, it is an unfair and deceptive practice for a seller to advertise using a price comparison or claim of savings as to any good offered for sale unless the seller clearly and conspicuously discloses the basis or source of the price comparison or savings claim.

(1) Comment: It is a prevalent advertising practice in the retail Native American jewelry and arts and crafts industry to compare, directly or indirectly, a seller's price to another's price for the purpose of emphasizing the bargain to be had. The

attorney general has received numerous inquiries and complaints from consumers, artists and retailers regarding misleading and deceptive advertising in the form of the perpetual sales, fictitious reference prices, fictitious discounts and the absence of a bona fide reference price.

(2) Comment: Often consumers rely upon advertising which contains an implied or express comparison between prices or the offer of a price reduction to make purchasing decisions. Consumers can be misled or deceived as to the existence or amount of a bargain when such advertisements utilize a fictitious reference or former price, or imply a "regular" price that has been established only to create the illusion of a bargain. Sellers have also complained about such advertising practices as an unfair method of competition.

(3) Comment: The Unfair Practices Act prohibits deceptive representations in connection with the sale or lease of goods or services, the making of false or misleading statements of fact concerning the price of goods and the existence of or amounts of price reductions. Under the act, it is also unlawful to fail to state a material fact if such failure deceives or tends to deceive the public. Regulations are needed to ensure that price comparison advertising and other savings claims are not unfair, deceptive or misleading. The attorney general has determined that regulation of price comparison advertisements and other savings claims in the affected industry is in the interest of the citizens of New Mexico.

[7/15/98; 12.2.7.8 NMAC - Rn, 1 NMAC 2.7.8, 02/14/08]

12.2.7.9 COMPARISON TO SELLER'S OWN FORMER PRICE:

A. It is an unfair and deceptive practice for a seller to advertise using a comparison between the seller's current price and the seller's former price for any good unless the good was offered to the public openly and honestly, in good faith, with intent to sell at the former price, for a reasonably substantial period of time which immediately preceded the effective date of the price reduction.

B. A seller may advertise using a price comparison or claim a savings without the required disclosure(s), as described in Subsection B of 12.2.7.8 NMAC, only if the price comparison or savings claim is clearly based on the seller's former price. Terms such as "regular," "regularly," "formerly," "originally," "was" or words of similar meaning may be used by the seller to refer and identify a comparison to his or her former price.

[7/15/98; 12.2.7.9 NMAC - Rn, 1 NMAC 2.7.9, 02/14/08]

12.2.7.10 COMPARISON TO SELLER'S FUTURE PRICES:

It is an unfair and deceptive practice for a seller to advertise an introductory offer or to compare its current price for a good with the price at which the good will be offered in the future, unless both of the following requirements are met:

A. the future price takes effect within a reasonable time not to exceed 30 days after the introductory offer of price comparison is first published; and

B. after the end of the introductory sale, the advertised future price of the good becomes the seller's regular and customary price.

[7/15/98; 12.2.7.10 NMAC - Rn, 1 NMAC 2.7.10, 02/14/08]

12.2.7.11 USE OF LIST PRICE OR SIMILAR COMPARISONS:

It is an unfair and deceptive practice for a seller to advertise using a price comparison or to claim a savings, expressed or implied, from a list price or term of similar meaning, including the manufacturer's suggested retail price, unless one of the following requirements is met:

A. the list price does not exceed the highest price at which a substantial number of sales of the same or substantially comparable goods have been made in the seller's trade area; or

B. the list price is the price at which the seller offered the good for at least 90 consecutive days in the regular course of its business, openly, actively and in good faith, with an intent to sell the good at that price; the 90-day period must precede immediately the start of any advertised price comparison; or

C. the list price does not exceed the highest price at which the good is offered by a reasonable number of merchants in the seller's trade area for 90 consecutive days in the regular course of business; the 90 day period must precede immediately the start of any advertised price comparison; or

D. the list price does not exceed the seller's cost plus the percentage mark-up regularly used by the seller in the actual sale of such good or service of an identical class or kind, in the seller's recent, regular course of business.

[7/15/98; 12.2.7.11 NMAC - Rn, 1 NMAC 2.7.11, 02/14/08]

12.2.7.12 COMPARISON TO COMPETITOR'S PRICE:

It is an unfair and deceptive practice for a seller to advertise using a comparison between the seller's price with a price currently being offered by another seller for goods or services unless the goods are comparable in quality, design, grade, material and craftsmanship and the seller's price is at or below the price at which the comparable goods are being offered currently in the seller's trade area by a reasonable number of other sellers in the same trade area, or another seller identified in the advertisement.

A. Any seller making price comparisons with another seller or sellers shall be required to document the basis on which the comparisons are made. Such

documentation shall include identification of the seller(s) with whom goods and prices are being compared, identification of the goods being compared and claimed to be the comparable, a statement of the prices charged by each seller for the comparable goods and the date(s) on which the comparison was made.

B. Any seller making price comparisons with another seller or sellers shall update his or her records no less than every six months, and shall be required to retain the documentation which form the basis of the price comparisons, as required by Subsection A of 12.2.7.12 NMAC, for a period of no less than two years from the date of the first advertisement which uses the price comparisons.

[7/15/98; 12.2.7.12 NMAC - Rn, 1 NMAC 2.7.12, 02/14/08]

12.2.7.13 UNFAIR OR DECEPTIVE TRADE PRACTICE TO ADVERTISE OR OTHERWISE REPRESENT A SALE USING A FICTITIOUS REGULAR PRICE:

It is an unfair and deceptive trade practice to advertise or otherwise represent a sale or bargain using a fraudulent regular or former price at which the seller never sold or could not in good faith reasonably have expected to sell the good or service. A "fraudulent regular or former price" is any price at which the seller did not offer the good openly and honestly, in good faith, for a reasonably substantial period of time, and includes any unreasonably inflated price at which a reasonable and prudent seller would not have expected to sell the good. Example. Seller's cost for a concha belt is \$300. Seller labels the item with a price of \$3,000, knowing that no reasonable buyer would pay that much for this particular belt. Shortly thereafter, Seller then advertises a "70% discount" on the belt, offering it for \$900, which is the price she wanted from the beginning. This violates the rule.

[7/15/98; 12.2.7.13 NMAC - Rn, 1 NMAC 2.7.13, 02/14/08]

12.2.7.14 PRICE NEGOTIATIONS:

A. Except as provided in this rule, a seller shall offer and sell goods at the marked or labeled retail prices.

B. It is an unfair and deceptive trade practice for a seller to mark and offer goods at prices which he or she does not intend to sell them, for the purpose of being able to negotiate price reductions off the marked or labeled prices, except that a seller may routinely and regularly negotiate price reductions not to exceed 25%, so long as the seller clearly and conspicuously discloses to the prospective purchasers that the prices of the goods offered for sale are negotiable. A seller may, on an infrequent and non-regular basis, accept more than a 25% price reduction as a result of negotiations with a customer.

C. The disclosure that prices are negotiable shall be in writing and posted in a conspicuous manner at each entrance to the seller's place of business, and at each

cash register or other place where the seller accepts payment for goods. The disclosure must be no less than 8 by 8 inches at any entrance, and no less than 6 by 8 inches at any cash register or other place where the seller accepts payment for goods. The disclosure must be in bold-face type of 26 point or greater font, and shall state as follows:

PRICES ARE NEGOTIABLE

The prices of [specify goods for which prices are negotiable] are negotiable. The marked or labeled prices of these items are initial asking prices only.

D. Subsection B of 12.2.7.14 NMAC shall not apply to reasonable discounts given to consumers for good faith purchases of more than one object or article from the seller; provided that the seller shall not engage in a pattern and practice of encouraging or permitting a customer to purchase a second low-cost item in order to qualify for the discount.

(1) Example: Consumer is interested in a three hundred dollar (\$300) necklace. Seller tells consumer that if she buys a pair of \$10 earrings, he will give consumer a 25% multiple purchase discount on the price of the necklace. This transaction violates this rule because the seller-initiated offer of a multiple item discount is intended to circumvent the requirement that merchandise be marked and sold at the actual price.

(2) Example: Consumer asks about a \$300 necklace and a \$100 ring. Seller tells consumer that she will give a 25% price reduction if consumer buys both items, although any single item purchase will be at the labeled price. This transaction does not violate the rule because the consumer-initiated purchase of more than one item is in good faith and is not intended merely to obtain a price reduction.

[7/15/98; 12.2.7.14 NMAC - Rn & A, 1 NMAC 2.7.14, 02/14/08]

12.2.7.15 BARGAIN OFFERS BASED ON THE PURCHASE OF OTHER GOODS AND USE OF THE WORD "FREE":

A. It is an unfair and deceptive practice to use the word "free" or words of similar meaning, or to represent bargain offers, including "buy one - get one free," "buy one - get one at half price," "two for one" and "one cent sale," when describing a good to be given to a customer who purchases other goods, if the seller recovers, in whole or in part, the cost of the free or bargain good by marking up the price of the item which must be purchased, by substituting an inferior item, or otherwise.

B. It is an unfair and deceptive practice to represent that another good is being offered free or at a bargain price with the sale if the advertised good can be purchased from the seller at a lesser price without the free or bargain good.

[7/15/98; 12.2.7.15 NMAC - Rn, 1 NMAC 2.7.15, 02/14/08]

12.2.7.16 USE OF SALE TERMINOLOGY:

A. It is an unfair and deceptive practice for a seller to use terms such as "sale," "sale price," "now only \$_____ " or other words and phrases that imply a price savings unless the price of the good is reduced by no less than 10% from the former price of the good. If the seller reduces the price by 10% or more from the former or regular price, a rebuttable presumption exists that the price reduction was of a reasonable amount.

B. The term "sale" may be used in an advertisement where not all goods are offered at a reduction from the former or regular price if the goods to which the sale applies are clearly and conspicuously identified.

C. It is an unlawful and deceptive trade practice for a seller to use such terms as "sale" or "sale price," unless the goods offered have been offered to the public openly and honestly, in good faith, for a reasonably substantial period of time, at a former price of at least 10% more than the "sale price".

D. No sale which is legitimate under these rules shall exceed 30 consecutive days in length, except for a going-out-of-business sale which complies with the requirements of the New Mexico Distress Sales Act, Section 57-10-1 NMSA 1978 (1967) et seq. Comment: Because other provisions of this rule require that sellers offer goods at the regular retail price for a "reasonably substantial period of time" prior to placing them on sale, an attempt to circumvent Subsection D of 12.2.7.16 NMAC, by offering goods at the regular retail price for a short period of time (e.g., one week) following a sale, and then putting them back on sale, will constitute a violation of this rule.

E. A seller who conducts a sale which complies with 12.2.7.16 NMAC herein shall not be required to re-mark or relabel the prices of all items placed on sale (see Subsection A of 12.2.7.8 NMAC) during the term of the sale; provided that, if, following the completion of a legitimate sale, the seller wishes to permanently reduce the price of sales merchandise which was not sold, the seller must re-mark and re-label all such inventory to reflect the new, lower retail price.

[7/15/98; 12.2.7.16 NMAC - Rn, 1 NMAC 2.7.16, 02/14/08]

12.2.7.17 EVIDENCE OF ADVERTISED VALUE OR BARGAIN REQUIRED:

Any seller who makes a comparison price advertisement or other savings claim must retain any and all documents evidencing the basis for the comparison or other savings claim for a period of at least two years after the last date on which the advertisement was made. It is an unfair or deceptive practice for any seller who advertises using a reference or comparison price, or other savings claim, to fail to retain any and all

documents evidencing the basis for the comparison claim or other savings claim for a period of not less than two years after the last date on which the claim is made.

[7/15/98; 12.2.7.17 NMAC - Rn, 1 NMAC 2.7.17, 02/14/08]

12.2.7.18 USE OF THE TERM "WHOLESALE":

It is an unfair and deceptive practice to advertise the phrase "wholesale to the public," or any similar term or phrase or to otherwise state or imply that the public is able to buy merchandise at "wholesale" prices, unless the seller is, in fact, a wholesaler, and unless the seller sells to the general public at exactly the same prices as he or she sells to retailers who are buying merchandise intended for resale to the public at a higher retail price.

[7/15/98; 12.2.7.18 NMAC - Rn, 1 NMAC 2.7.18, 02/14/08]

12.2.7.19 SEVERABILITY:

If any part of these regulations is held invalid, the remainder and the application thereof shall not be affected.

[7/15/98; 12.2.7.19 NMAC - Rn, 1 NMAC 2.7.19, 02/14/08]

12.2.7.20 [RESERVED]

[7/15/98; 12.2.7.20 NMAC - Rn & Repealed, 1 NMAC 2.7.20, 02/14/08]

PART 8: CHARITABLE SOLICITATIONS REQUIREMENTS [RESERVED]

PART 9: NEGOTIATING A SALE IN A LANGUAGE OTHER THAN ENGLISH [REPEALED]

[This part was repealed on August 30, 2012]

PART 10: EXTENSION OF CREDIT FOR SMALL LOANS [REPEALED]

[This part was repealed on August 31, 2006]

PART 11: AUTOMATIC RENEWAL OF SERVICE CONTRACTS

12.2.11.1 ISSUING AGENCY:

Office of the New Mexico Attorney General.

[12.2.11.1 NMAC - N, 9/15/09]

12.2.11.2 SCOPE:

Service contracts which contain automatic renewal clauses.

[12.2.11.2 NMAC - N, 9/15/09]

12.2.11.3 STATUTORY AUTHORITY:

The New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-1, et seq. (1967).

[12.2.11.3 NMAC - N, 9/15/09]

12.2.11.4 DURATION:

Permanent.

[12.2.11.4 NMAC - N, 9/15/09]

12.2.11.5 EFFECTIVE DATE:

September 15, 2009, unless a later date is cited at the end of a section.

[12.2.11.5 NMAC - N, 9/15/09]

12.2.11.6 OBJECTIVE:

The purpose of this rule is to deter unfair and deceptive practices that result in economic harm to consumers in transactions involving service contracts which contain automatic renewal clauses.

[12.2.11.6 NMAC - N, 9/15/09]

12.2.11.7 DEFINITIONS:

A. "Automatic renewal provision" means a provision under which a service contract is renewed for a specified period if:

(1) the renewal causes the service contract to continue in effect more than two months after the end of the term of the original contract; and

(2) the renewal is effective unless the consumer gives notice to the seller of the consumer's intention to terminate the service contract.

B. "Seller" means a person providing service, maintenance, or repair under a service contract.

C. "Service contract" means any contract for service, maintenance or repair.

[12.2.11.7 NMAC - N, 9/15/09]

12.2.11.8 AUTOMATIC CANCELLATION PROVISIONS:

A. It is an unfair or deceptive trade practice for any consumer service contract to contain an automatic renewal provision unless the contract provision is set forth in a clear and conspicuous manner in at least 10 point type and includes the notice requirements and specific procedure by which the consumer may cancel the contract at the end of the initial contract term and the terms of the automatic renewal in the event that notice of cancellation is not given at the end of the initial contract term;

B. It is an unfair or deceptive trade practice for any consumer service contract to contain an automatic renewal provision unless the seller provides the consumer written notice prior to the end of the initial term of the contract or prior to the end of any renewal term of the contract consistent with Subsection (C) of 12.2.11.8 NMAC herein.

C. It is an unfair and deceptive trade practice for any service contract that contains an automatic renewal provision to:

(1) fail to provide written notice to the consumer specifying the procedure by which the consumer may cancel the contract and set forth in a clear and conspicuous manner, in at least 10 point type, and served on the consumer either by certified mail or on the first page of a monthly statement at least 30 days before the last day on which the consumer may give notice of the consumer's intention to terminate the contract, but not sooner than 60 days before the last day on which the consumer may give notice;

(2) fail to allow a minimum of thirty (30) calendar days after the receipt of the seller's notice pursuant to Paragraph (1) of Subsection C of 12.2.11.8 NMAC herein for the consumer to give notice of the consumer's intent to terminate the contract at the end of the initial term or at the end of any additional renewal term;

(3) fail to honor a written notice sent via fax, U.S. mail, email or any other means upon which a consumer can reasonably rely to deliver such notice and postmarked, time stamped or otherwise electronically date stamped within the 30 calendar days provided for the consumer to give notice;

(4) fail to honor a written notice timely sent, mailed, emailed or otherwise transmitted in a manner upon which the consumer can reasonably rely to deliver such notice but received by the seller after the expiration of the notice period;

(5) fail to allow termination of the contract at the end of the initial term or at the end of any additional renewal term without additional cost or penalty.

[12.2.11.8 NMAC - N, 9/15/09]

12.2.11.9 SEVERABILITY:

If any portion of this rule is held invalid, the remainder of the rule and application thereof shall remain unaffected.

[12.2.11.9 NMAC - N, 9/15/09]

PART 12: COLLECTION OF TIME-BARRED DEBT

12.2.12.1 ISSUING AGENCY:

Office of the New Mexico Attorney General.

[12.2.12.1 NMAC - N, 12/15/10]

12.2.12.2 SCOPE:

Disclosure of time-barred debt.

[12.2.12.2 NMAC - N, 12/15/10]

12.2.12.3 STATUTORY AUTHORITY:

The New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-1, et seq. (1967).

[12.2.12.3 NMAC - N, 12/15/10]

12.2.12.4 DURATION:

Permanent.

[12.2.12.4 NMAC - N, 12/15/10]

12.2.12.5 EFFECTIVE DATE:

December 15, 2010, unless a later date is cited at the end of a section.

[12.2.12.5 NMAC - N, 12/15/10]

12.2.12.6 OBJECTIVE:

The purpose of this rule is to ensure a uniform understanding and practice within the debt collection industry regarding what information is required to be provided to consumers when a debt that the debt collector, acting in the regular course of his or her trade or commerce, is attempting to collect is unenforceable in judicial proceedings due to the running of the applicable statute of limitation. The implementation of the notices

required in this rule will obviate an industry-wide practice that tends to or does mislead or deceive by failing to provide material information to consumers. NMSA 1978, Section 57-12-2(D)(14).

[12.2.12.6 NMAC - N, 12/15/10]

12.2.12.7 DEFINITIONS:

A. "Collection of debt" means any effort by any person acting in the regular course of his or her trade or commerce, including, but not limited to, the original lender or obligee, or any assignee of the original lender or obligee, or any assignee of any owner of the debt other than the original lender or obligee, or any third party attempting to collect the debt on behalf of the debt owner, to obtain payment of all or any part of the debt from the person who owes the debt.

B. "Clear and conspicuous" has the same meaning as the term "conspicuous" defined at NMSA 1978, Section 55-1-201(b)(10) (1961), of the New Mexico Commercial Code; EXCEPT that it shall exclude the requirement that all words be in capitalized lettering.

C. "Debt" means any obligation owed or alleged to be owed by one person to another.

D. "Debt collector" means any person who, in the regular course of the person's trade or commerce, collects or attempts to collect a debt owed or alleged to be owed by any person in New Mexico, including, but not limited to, the original lender or obligee, any assignee of the original owner, and third party collectors who are "debt collectors" as defined by the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692a(6).

E. "Good faith" means an honest, fair and reasonable belief that rests on a reasonable assessment of those facts reasonably and fairly available, and not necessarily limited only to those facts actually in possession. "Good faith" may require a fair and reasonable inquiry of others in possession of information known or believed to be relevant to the matter at issue. See, in part, *State v. Sanchez*, 88 N.M. 378, 382, 540 P.2d 858 (Ct.App. 1975); rev.'d, other grds., 88 N.M. 402, 540 P.2d 1291 (1975); NMSA 1978, Section 55-1-201(b)(20) (1961).

F. "Least sophisticated consumer" means the standard for evaluating truth and deception under the federal Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq., as summarized in *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168 (11th Cir. 1985).

G. "Person" means natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates.

H. "Statute of limitation" means the time period established by law in which an aggrieved party may bring a cause of action in judicial proceedings; e.g., NMSA 1978,

Sections 37-1-3 (six years for written contracts), 37-1-4 (four years for unwritten contracts and accounts), or 55-2-725 (four years for breach of contract for sale of goods).

I. "Time-barred debt" means any debt that is not enforceable in a judicial proceeding because the applicable statute of limitation has run.

[12.2.12.7 NMAC - N, 12/15/10]

12.2.12.8 DUTY TO DETERMINE IF DEBT IS TIME-BARRED:

Every debt collector attempting to collect a debt in the state of New Mexico has a duty to determine, in good faith, whether each debt it is attempting to collect is or is not time-barred.

[12.2.12.8 NMAC - N, 12/15/10]

12.2.12.9 UNFAIR OR DECEPTIVE PRACTICES; REQUIRED DISCLOSURES:

A. It is an unfair or deceptive trade practice for any debt collector acting in the regular course of his or her trade or commerce, whether directly or indirectly, by letter, telephone, electronically or by any other means, to collect or to attempt to collect from any person any payment of any debt that the debt collector knows or has reason to know is a time-barred debt, or to seek or obtain from any person any payment, admission, affirmation, acknowledgement of a debt, or new promise to pay, or any waiver of legal rights or defenses with regard to any debt, that the debt collector knows or has reason to know is a time-barred debt unless the debt collector discloses the following information:

(1) the disclosure is prefaced with the following statement: "We are required by New Mexico Attorney General rule to notify you of the following information. This information is not legal advice.";

(2) either that the debt is unenforceable through a lawsuit because the time for filing has expired, or that it may be unenforceable through a lawsuit because the time for filing may have expired;

(3) if the debt is time-barred, the person cannot be required to pay the debt through a lawsuit;

(4) the person is not required by the law: to sign any admission, affirmation or acknowledgement of, or new promise to pay the debt; or to make any payment on the debt; or to waive any of his or her rights with regard to the effect of the running of the applicable statute of limitation;

(5) an explanation of the consequences pursuant to NMSA 1978, Section 37-1-16, with regard to the revival of the statute of limitation resulting from: any payment on the debt; any signed admission, affirmation or acknowledgement of the debt; any signed new promise to pay the debt; any waiver of the debtor's legal rights resulting from the unenforceability of the debt due to the running of the applicable statute of limitation.

B. A debt collector who makes the following disclosure shall be deemed to have complied with the requirements of Subsection A of 12.2.12.9 NMAC: "We are required by New Mexico Attorney General rule to notify you of the following information. This information is not legal advice: This debt may be too old for you to be sued on it in court. If it is too old, you can't be required to pay it through a lawsuit. You can renew the debt and start the time for the filing of a lawsuit against you to collect the debt if you do any of the following: make any payment of the debt; sign a paper in which you admit that you owe the debt or in which you make a new promise to pay; sign a paper in which you give up ("waive") your right to stop the debt collector from suing you in court to collect the debt."

C. The disclosures required by Subsection A of 12.2.12.9 NMAC shall be in plain language, and shall be designed to reasonably and fairly inform the least sophisticated consumer.

D. If the demand for payment is in a language other than English, the debt collector shall give the disclosures required by Subsection A of 12.2.12.9 NMAC in that language.

E. In the case of written communications, the disclosures required by Subsection A of 12.2.12.9 NMAC or Subsection B of 12.2.12.9 NMAC shall be clear and conspicuous and shall be placed on the front page.

F. In the case of oral communications, the disclosures required by Subsection A of 12.2.12.9 NMAC or Subsection B of 12.2.12.9 NMAC shall be made immediately before or immediately after the first statement requesting payment, or, if no request for payment is made, no later than immediately after reference to the debt is first made.

G. The disclosures required by Subsection A of 12.2.12.9 NMAC shall be given only to those debtors whom the debt collector reasonably and in good faith determines owes a debt that is time-barred.

H. It is a defense to the requirements of Subsection A of 12.2.12.9 NMAC, Subsection B of 12.2.12.9 NMAC, and Subsection G of 12.2.12.9 NMAC if, in making the erroneous determination, the debt collector exercised reasonable efforts to determine whether the debt was time-barred or not and made the error in good faith, as supported by the debt collector's documentation. The absence of any documentation creates a rebuttable presumption of the lack of reasonable efforts and good faith.

[12.2.12.9 NMAC - N, 12/15/10]

12.2.12.10 VIOLATION OF THE UNFAIR PRACTICES ACT:

Violation of this rule constitutes a violation of the New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-1 et seq.

[12.2.12.10 NMAC - N, 12/15/10]

12.2.12.11 SEVERABILITY:

If any portion of this rule is held invalid, the remainder of the rule and the applications thereof shall remain unaffected.

[12.2.12.11 NMAC - N, 12/15/10]

PART 13: REQUIREMENTS FOR SPOT DELIVERY OF MOTOR VEHICLES

12.2.13.1 ISSUING AGENCY:

Office of the New Mexico Attorney General.

[12.2.13.1 NMAC - Rp/E, 12.2.13.1 NMAC, 8/1/2012]

12.2.13.2 SCOPE:

Motor vehicle dealers.

[12.2.13.2 NMAC - Rp/E, 12.2.13.2 NMAC, 8/1/2012]

12.2.13.3 STATUTORY AUTHORITY:

New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq.

[12.2.13.3 NMAC - Rp/E, 12.2.13.3 NMAC, 8/1/2012]

12.2.13.4 DURATION:

Permanent.

[12.2.13.4 NMAC - Rp/E, 12.2.13.4 NMAC, 8/1/2012]

12.2.13.5 EFFECTIVE DATE:

August 1, 2012, unless a later date is cited at the end of a section.

[12.2.13.5 NMAC - Rp/E, 12.2.13.5 NMAC, 8/1/2012]

12.2.13.6 OBJECTIVE:

A. The purpose of this rule is to accomplish two principal objectives:

(1) deter unfair business practices in the sale of motor vehicles that result in economic harm, and

(2) provide clear legal standards for the sale of motor vehicles where the sale of the vehicle is contingent upon approval of financing of the vehicle.

B. The attorney general's office has received numerous complaints from consumers where the motor vehicle dealer asserts that the transaction is contingent upon financing of the vehicle or approval of financing, but where adequate disclosure of this contingency is not made in a timely manner, where the dealer asserts the right to cancel the contract based on a failure of this contingency or right to unilaterally renegotiate the terms of the sale, or where the dealer sells the consumer's trade-in vehicle prior to confirmation of financing and finalization of the transaction thus converting the use and possession of the consumer's trade-in vehicle.

[12.2.13.6 NMAC - Rp/E, 12.2.13.6 NMAC, 8/1/2012]

12.2.13.7 DEFINITIONS:

The following terms have the meanings set forth herein.

A. "Motor vehicle dealer" means:

(1) any person who sells or solicits or advertises the sale of new, demonstration or used motor vehicles and who is licensed pursuant to the motor vehicle code; or

(2) any person who sells four or more motor vehicles in a calendar year whether licensed or not.

B. "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries. This includes but is not limited to automobiles, trucks of all varieties, motor cycles, recreational vehicles, reconstructed motor vehicles, specialty constructed motor vehicles, road tractors, all of which may be for personal, household, or commercial use.

C. "Purchase price" means the actual price before the deduction of the value of any trade-in and shall not include such charges as taxes, registration fees, extended warranties, service contracts, credit disability insurance, or any other charges incidental to the purchase.

D. "Revocation" means the cancellation, voiding or annulment of the contract or withdrawing of acceptance to purchase the motor vehicle.

E. "Spot delivery" means a contingent motor vehicle sale transaction by which the buyer is allowed to take possession of the motor vehicle pending the finalization of financing.

[12.2.13.7 NMAC - Rp/E, 12.2.13.7 NMAC, 8/1/2012]

12.2.13.8 SPOT DELIVERY GENERALLY:

In a sale conditioned on financing, it is an unfair trade practice for a motor vehicle dealer who delivers a new, demonstration or used motor vehicle to a buyer to.

A. Orally or in writing represent to the buyer at the time of signing the purchase order agreement or sales transaction document that the sale is final and complete if the financing contingency is unmet.

B. Refuse to void and nullify the contract if financing is not finalized within 20 calendar days from the date of delivery of the motor vehicle.

C. Fail to return to the buyer, within a reasonable time, all sums of money paid or collateral including a trade-in provided by the buyer and held by the motor vehicle dealer.

D. Accept a trade-in and then sell or remove the trade-in from the lot where the transaction occurred before the financing of the purchased motor vehicle has been finalized and the sale completed.

E. Fail to pay the retail value of the trade-in vehicle or the assigned value of the trade-in itself, as well as all other monies or things due the buyer should the motor vehicle dealer sell or remove the trade-in from the lot before the financing has been finalized. The risk of loss during the period shall be assessed against the motor vehicle dealer.

F. Fail to timely pay the lender the monthly scheduled payment, should a payment become due before the sale is final. The buyer will reimburse the dealer for such a payment if the contract is rightfully revoked in accordance with this rule.

G. Charge the buyer for any costs associated with the refurbishing, repair or maintenance of the trade-in or for any sums paid by the motor vehicle dealer to pay off the outstanding debt owed on the trade-in. However, should the buyer rightfully revoke the contract, buyer will reimburse the motor vehicle dealer for payments made on the outstanding balance of the trade in.

H. Fail to include the following statement in no less than bold 12 point type, conspicuously placed on the purchase order agreement or sales transaction document and signed ONLY by the buyer subject to the financing contingency: **SPOT DELIVERY:** Buyer has the right to void this purchase if financing is not approved within 20 calendar days after delivery of vehicle. Buyer has the right to the return of any trade-in and all money paid by buyer, if buyer voids this contract under this paragraph. To exercise this right, buyer must return the vehicle to the dealer in the same condition as received (normal wear and tear excepted), within 48 hours of receipt of notice that financing was not approved. Dealer shall not charge any fees as long as the vehicle is returned as provided in this paragraph.

I. Charge any usage fee or any other type of surcharge to the buyer in association with the rightful revocation of the purchase order agreement or sales transaction document as provided by this rule.

J. Fail to maintain for a period of three years in the dealer file jacket the following documents regardless of whether the sales transaction is finalized:

(1) copies of all credit applications, transmittals sent to or received from any lender, or any documents related to the approval or denial of financing, offers or counteroffers of financing, or requests for additional information related to a request for financing;

(2) copies of every signed purchase agreement or sales transaction document; and

(3) a log recording the date the dealership notified the buyer of the changes to the contract, with a detailed description of the changes to the terms and conditions of the sale of the vehicle, and the date upon which the purchaser agreed to each of the changes.

K. Fail to provide a copy of every signed purchase order agreement or sales transaction document to the buyer at the time of signing.

L. Make any statement or representation to the buyer, orally or in writing, either before or after the purchase order agreement or sales transaction document is signed, that misleads the buyer as to his rights of revocation under this rule, including but not limited to, misrepresenting to the buyer his right to revoke acceptance of the contract and "walk away" without incurring any legal obligation should the motor vehicle dealer fail to meet the contingency financing agreement.

[12.2.13.8 NMAC - Rp/E, 12.2.13.8 NMAC, 8/1/2012]

12.2.13.9 SEVERABILITY:

If any portion of this rule is held invalid, the remainder of the rule and application thereof shall remain unaffected.

[12.2.13.9 NMAC - Rp/E, 12.2.13.9 NMAC, 8/1/2012]

PART 14: MISREPRESENTATION OF AGE AND CONDITION OF MOTOR VEHICLES

12.2.14.1 ISSUING AGENCY:

Office of the New Mexico Attorney General.

[12.2.14.1 NMAC - N, 4/1/2014]

12.2.14.2 SCOPE:

Misrepresentation of age and condition of motor vehicles.

[12.2.14.2 NMAC - N, 4/1/2014]

12.2.14.3 STATUTORY AUTHORITY:

The New Mexico Unfair Practices Act, Section 57-12-13 NMSA 1978.

[12.2.14.3 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.4 DURATION:

Permanent.

[12.2.14.4 NMAC - N, 4/1/2014]

12.2.14.5 EFFECTIVE DATE:

April 1, 2014, unless a later date is cited at the end of a section.

[12.2.14.5 NMAC - N, 4/1/2014]

12.2.14.6 OBJECTIVE:

A. This purpose of this rule is to:

(1) deter misrepresentation of the age or condition of used motor vehicles in retail motor vehicle sale transactions;

(2) protect retail buyers in motor vehicle sale transactions through uniform disclosure of material information concerning the age or condition of used motor vehicles; Subsection A of Section 57-12-6 NMSA 1978;

(3) provide sellers clear legal standards as to what constitutes "to the best of seller's knowledge" when selling used motor vehicles to retail buyers: Paragraph (2) of Subsection B of Section 57-12-6 NMSA 1978;

(4) establish standards for used motor vehicle damage inspections; and

(5) establish standards for disclosure of used motor vehicle alteration or damage inspection results to motor vehicle buyers.

B. This rule is not intended to restrict or limit claims to Section 57-12-6 NMSA 1978 that may be alleged under other provisions of the Unfair Practices Act, Section 57-12-1 NMSA 1978 *et seq.*

C. The alteration or damage inspection and disclosure standards in this rule for used motor vehicles are not intended to negate or limit obligations of sellers to disclose damage to new motor vehicles. See *Hale v. Basin Motor Co.*, 110 N.M. 314 (N.M. 1990).

D. Nothing in this rule is intended to increase, decrease or otherwise in any way affect the rights or responsibilities of motor vehicle manufacturers or sellers under federal motor vehicle safety laws or regulations, or under New Mexico or other state products liability laws, principles or case law.

E. The attorney general has concluded that this rule is in the best interest of the health, safety and general welfare of the citizens of New Mexico.

[12.2.14.6 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.7 DEFINITIONS:

A. "Alteration" shall mean damage to, repair or modification of a motor vehicle's cab, chassis, or body which materially diminishes the value of the motor vehicle; the alteration may but need not necessarily be the result of wreck damage; goods are altered if, as measured against reasonable expectations of a consumer, the characteristics or value of a motor vehicle are diminished in a meaningful way. See *Hale v. Basin Motor Co.*, 110 N.M. 314 (N.M. 1990).

B. "Body" shall mean the external structure of the motor vehicle, exclusive of the cab and chassis.

C. "Cab" shall mean the compartment of a motor vehicle where the driver and passengers sit.

D. "Chassis" shall mean the frame, structural components of the motor vehicle and suspension.

E. "Flat rate manual cost" shall mean estimated cost of repair as indicated by a nationally recognized manual commonly used in the industry.

F. "Good faith estimate of cost" for alteration or repair shall mean a good faith estimate of the flat rate manual cost of prior alteration or repair discovered in the used motor vehicle alteration or damage inspection contemplated by this rule, and disclosed in substantially the manner shown in the model inspection report which accompanies this rule, but "good faith estimate of cost" shall not be interpreted as a warranty as to actual cost which is unknown to the seller, nor is "good faith estimate of cost" intended to be a substitute for disclosure of actual cost if known to the seller.

G. "Inspection" or "reasonable inspection" shall mean an investigation of the age and condition of a motor vehicle for evidence of prior alteration or prior repair due to alteration or wreck damage. Inspections shall be consistent with 12.2.14.10 NMAC.

H. "Inspection report" shall mean the inspection report provided for in 12.2.14.10 NMAC or equivalent form, including the model inspection report form which accompanies this rule.

I. "Qualified person" shall mean a person who is qualified by an industry recognized program or who possesses the requisite knowledge, skill or experience to perform the used motor vehicle inspection required by this rule and by the accompanying model inspection report form, in order to find evidence of:

- (1) painting and refinishing;
- (2) structural and non-structural damage repair;
- (3) repair of motor vehicle, cab, chassis and body; or
- (4) previous alteration.

J. "Repair or repairing" shall mean to restore or attempt to restore a motor vehicle's cab, chassis, or body to industry standards.

K. "Retail buyer" or "buyer" shall mean a person who is not in the business of buying and selling motor vehicles and who buys or agrees to buy a motor vehicle from a retail seller.

L. "Retail seller" or "seller" shall mean natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates who is licensed pursuant to Section 66-4-1 NMSA 1978 or who

regularly and principally engages in the business of selling motor vehicles to retail buyers for profit, but does not include selling motor vehicles:

(1) to a lessee pursuant to a purchase option under a motor vehicle lease agreement;

(2) to other motor vehicle dealers licensed with the New Mexico New Mexico motor taxation and revenue department-motor vehicle division pursuant to Subsection A of Section 66-4-1 NMSA 1978; or

(3) to persons, other than retail buyers, licensed or regulated by another state or jurisdiction.

M. "Sales price" shall mean the actual stated price on the contract before the deduction of the value of any trade-in and shall not include such charges as taxes, registration fees, extended warranties, service contracts, credit of disability insurance, or any other charges incidental to the sale.

N. "Unibody" shall mean a motor vehicle construction technique in which the body is integrated into a single unit with the chassis rather than having a separate body-on-frame.

O. "Used" motor vehicle shall mean a used motor vehicle as defined in 12.2.4.7 NMAC.

[12.2.14.7 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.8 AFFIDAVIT REQUIRED:

A. A seller of a motor vehicle shall furnish at the time of sale of a motor vehicle an affidavit that states to the best of the seller's knowledge whether there has been an alteration or chassis repair due to wreck damage, except where not required. Subsections B and C of Section 57-12-6 NMSA 1978.

B. When a seller in good faith:

(1) conducts a motor vehicle inspection in compliance with 12.2.14.10 NMAC;

(2) completes an inspection report pursuant to 12.2.14.11 NMAC;

(3) provides the inspection report to the buyer; and

(4) maintains the inspection report in seller's records for four years,

the seller may be deemed to have complied with Section 57-12-6 NMSA 1978.

C. When a seller determines that an affidavit is required pursuant to Subsection B of Section 57-12-6 NMSA 1978, the seller shall attach a report which substantially complies with 12.2.14.11 NMAC to the affidavit to disclose the prior alteration or repair.

D. When unsafe alterations or repairs are identified or discovered by an inspector during the inspection, the unsafe alterations or repairs shall be disclosed in the inspection report provided for in 12.2.14.11 NMAC, and a copy of the inspection report shall be provided to the buyer.

E. A seller shall not represent to the buyer that the absence of any information or condition of the motor vehicle on a Carfax, Autocheck or other motor vehicle history report is proof that the motor vehicle has never been altered or repaired.

F. When a seller determines that an affidavit is required pursuant to Subsection B of Section 57-12-6 NMSA 1978, a copy of the affidavit shall also be maintained by the seller for four years.

G. Nothing in this regulation shall limit the obligation of a seller of a motor vehicle to make required disclosures pursuant to Section 57-12-6 NMSA 1978, of alteration or chassis repair due to wreck damage discovered by or previously known to the seller.

[12.2.14.8 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.9 [RESERVED]

[12.2.14.9 NMAC - N, 4/1/2014; Repealed, 8/31/2016]

12.2.14.10 REASONABLE INSPECTION:

The following motor vehicle inspection shall be conducted by qualified persons and shall be deemed reasonable pursuant to Subsection B of Section 57-12-6 NMSA 1978 by:

A. inspecting the motor vehicle for evidence of repainting such as:

- (1)** differences in paint color or texture;
- (2)** mismatched sizes of metallic sparkle in the paint;
- (3)** embedded dirt or deep scratches in the top coat of the paint; and
- (4)** uneven paint thickness;

B. inspecting the motor vehicle for evidence of any repair or alteration, with the inspection involving only minimal disassembly, for:

- (1) uneven gaps between sheet metal panels;
- (2) differences between the headlamps;
- (3) paint overspray on moldings and trim;
- (4) paint tape edges in the jams;
- (5) hammer damage;
- (6) replaced body panels due to impact;
- (7) holes drilled and plugged in jams or shell of the motor vehicle;
- (8) damage inside the trunk or under the spare tire; and
- (9) signs of corrosion or lack of corrosion protection;

C. inspecting the motor vehicle chassis for evidence of such things as:

- (1) pinched weld flange underneath the motor vehicle;
- (2) weld sites;
- (3) signs of repair to unibody structural parts;
- (4) signs of buckles or non-original equipment manufacturer ("OEM") welding repair to unibody structural parts;
- (5) signs of corrosion, or lack of corrosion protection; and
- (6) other non-OEM alteration or repair that may have been performed to the chassis;

D. inspecting the motor vehicle's caulking and seam sealer for differences and inconsistencies;

E. inspecting the motor vehicle's identification number tags;

F. inspecting the motor vehicle parts for labels that say replacement department of transportation "(R-DOT)";

G. inspecting the motor vehicle for alterations or repairs not consistent with repair industry standards; and

H. performing reasonable additional inspection or inquiry into the age and condition of the motor vehicle when reasonably necessary to assure compliance with this rule.

[12.2.14.10 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.11 PREVIOUS WRECK DAMAGE OR ALTERATION INSPECTION REPORT:

The seller's inspection report shall be in substantially the form which accompanies this rule and shall include the following information:

- A. seller's name;
- B. address, including city, state, and zip code;
- C. the year, make and model of the motor vehicle;
- D. the motor vehicle identification number;
- E. the exterior color of the motor vehicle;
- F. an odometer reading of the motor vehicle;

G. a "yes" and "no" check box to indicate any discovered safety issues revealed by the inspection; if "yes" is checked, the inspection report shall identify such issues with particularity;

H. a "yes" and "no" check box to indicate any discovered chassis or structural damage revealed by the inspection; if "yes" is checked, the inspection report shall identify such damage with particularity;

I. a "yes" and "no" check box to indicate any discovered non industry-standard repair revealed by the inspection; if "yes" is checked, the inspection report shall identify such repair with particularity;

J. a "yes" and "no" check box to indicate any discovered unrepaired damage revealed by the inspection; if "yes" is checked, the inspection report shall identify such damage with particularity;

K. whether a good faith estimate of the cost of prior alteration or damage repair discovered on inspection exceeds six percent of the estimated sales price of the motor vehicle;

L. date of inspection;

M. cost for the inspection;

N. contact information for the business/individual who performed the inspection, including city, state, and zip code and telephone number;

O. the printed or typed name of the qualified person who performed the inspection;

P. the signature of the qualified person who conducted the inspection; and

Q. a statement to the effect that "prior damage/repair inspection is based on good faith observation, minimal disassembly and without use of computerized measuring system(s)," that the inspection report is not a warranty, and containing a citation to this rule, 12.2.14.1 NMAC;

R. the seller's inspection report may also include:

(1) a statement whether the motor vehicle was placed on a lift to inspect the chassis as part of the inspection;

(2) a statement whether a paint mil thickness gauge was used to measure paint thickness as part of the inspection; or

(3) reasonable additional detail about the condition of the chassis, body panels and paint of the motor vehicle which was revealed by the inspection and is believed by the inspector to be useful to a buyer.

[12.2.14.11 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.12 DISCLOSURE IN LIEU OF INSPECTION FOR HIGH MILEAGE/AGED MOTOR VEHICLES:

In lieu of the used motor vehicle damage inspection contemplated by 12.2.14.9 NMAC and the used motor vehicle damage inspection report contemplated by 12.2.14.11 NMAC, the seller of a motor vehicle which either: is 10 or more years old based on its model year or has more than 125,000 odometer miles, may provide the buyer of such a motor vehicle with a conspicuous written disclosure on a separate form containing a statement to the effect that "because of age in excess of 10 years or mileage in excess of 125,000 this motor vehicle has not received a used motor vehicle damage inspection pursuant to 12.2.14.1 NMAC, *et seq.*, and buyer may obtain an independent inspection of the motor vehicle at buyer's own expense before purchase, if buyer so chooses." Seller of a motor vehicle subject to this section is nonetheless obligated to make required disclosures pursuant to Section 57-12-6 NMSA 1978. Should the seller of such a high mileage/aged vehicle nevertheless choose to obtain a damage inspection and report on such a motor vehicle, the seller shall provide the inspection report and any applicable affidavit to the buyer as with any other used motor vehicle.

[12.2.14.12 NMAC - N, 8/31/2016]

12.2.14.13 SEVERABILITY:

If any part of this rule is held invalid, the remainder of the rule and applications thereof shall remain unaffected.

[12.2.14.13 NMAC - N, 4/1/2014; Rn, 12.2.14.12 NMAC, 8/31/2016]

12.2.14.14 USED MOTOR VEHICLE ALTERATION OR DAMAGE INSPECTION FORM:

Seller Name and Contact Information:

Year _____ Make _____ Model _____
_Color_____

VIN _____ Odometer _____

None

page if needed).

Noted Yes

Describe, if yes (attach separate

DISCOVERED SAFETY ISSUES _____

CHASSIS OR STRUCTURAL DAMAGE _____

NON INDUSTRY-STANDARD REPAIR _____

UNREPAIRED DAMAGE _____

CHASSIS INSPECTION None

Noted Yes

Location – Details, if yes

Frame/Unibody Repair/Welds _____

Frame Machine Pinch Marks _____

Good faith estimate whether discovered prior alteration/damage/repair cost exceeds six percent of sales_Price: __Yes__ No

Cost of Inspection: \$ _____
Inspection: _____

Date of

Inspector Name: _____

Inspector Contact
Information: _____

Inspector Signature: _____

PRIOR ALTERATION/DAMAGE/REPAIR INSPECTION IS BASED ON GOOD FAITH OBSERVATION, MINIMAL DISASSEMBLY AND WITHOUT USE OF COMPUTERIZED MEASURING SYSTEM(S). See NMAC 12.2.14.1, et seq., (NOT A WARRANTY.)

[12.2.14.14 NMAC - N, 8/31/2016]

PART 15: SALE OF RECYCLED METALS

12.2.15.1 ISSUING AGENCY:

New Mexico Regulation and Licensing Department.

[12.2.15.1 NMAC - Rp, 12.2.15.1 NMAC, 8/12/12]

12.2.15.2 SCOPE:

This part sets forth definitions to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.15.2 NMAC - Rp, 12.2.15.3 NMAC, 8/12/2012; A, 10/10/2023]

12.2.15.3 STATUTORY AUTHORITY:

These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.15.3 NMAC - Rp, 12.2.15.2 NMAC, 8/12/2012; A, 10/10/2023]

12.2.15.4 DURATION:

Permanent.

[12.2.15.4 NMAC - Rp, 12.2.15.4 NMAC, 8/12/12]

12.2.15.5 EFFECTIVE DATE:

August 12, 2012 unless a later date is cited at the end of a section.

[12.2.15.5 NMAC - Rp, 12.2.15.5 NMAC, 8/12/12]

12.2.15.6 OBJECTIVE:

The purpose of this part is to define language required pursuant to Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.15.6 NMAC - Rp, 12.2.15.6 NMAC, 8/12/2012; A, 10/10/2023]

12.2.15.7 DEFINITIONS:

A. "Secondhand metal dealer": means a scrap metal processor in the business of operating or maintain a scrap metal yard in a physical location in which scrap metal or cast-off regulated material is purchased for shipment, sale or transfer.

B. "Aluminum material": means a product made from aluminum, an aluminum alloy or an aluminum byproduct. Aluminum material includes an aluminum beer keg but does not include other types of aluminum cans used to contain a food or beverage.

C. "Bronze material": means a cemetery vase, receptacle or memorial made from bronze; bronze statuary; or material readily identifiable as bronze.

D. "Copper or brass material": means insulated or non-insulated copper wire, hardware or cable of the type used by a public utility, commercial mobile radio service carrier or common carrier that consists of at least twenty-five percent copper; or a copper or brass item of a type commonly used in construction or by a public utility, commercial mobile radio service carrier or common carrier.

E. "Lead material" means:

- (1) a lead-acid battery; or

(2) material readily identifiable as being made of or containing lead:

F. "Business day": means any calendar day except Sunday and following holidays: New Year's day, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, Christmas day, Martin Luther King Jr.'s birthday and any other legal public holiday of the state of New Mexico or the United States.

G. "Department": means the regulation and licensing department.

H. "Superintendent": means the superintendent of the regulation and licensing.

I. "Peace officer": means any full-time salaried and commissioned or certified law enforcement officer of a police or sheriff's department that is part of or administered by the state or a political subdivision of the state.

J. "Personal identification document": means a driver's license; a military identification card; or a passport issued by the United States or by another country and recognized by the United States.

K. "Additional documentation": means documentation required from the seller to prove the seller's ownership of material that is the subject of a restricted transaction under Paragraph (7) of Subsection B of Section 57-30-5 NMSA 1978 of the Sale of Recycled Metals Act.

L. "Regulated material": means aluminum material; bronze material; copper or brass material; steel material; lead material; a utility access cover; a water meter cover; a road or bridge guard rail; a highway or street sign; a traffic directional or control sign or signal; or a catalytic converter that is not part of an entire motor vehicle. Catalytic converter includes any portion thereof.

M. "Restricted transaction": means any purchase of regulated material listed in Paragraphs (1) through (10) of Subsection A of Section 57-30-2.4 NMSA 1978 of the Sale of Recycled Metals Act.

N. "Steel material": means a product made from an alloy of iron, chromium, nickel or manganese, including stainless steel beer kegs.

O. "Military service member": has the same meaning as set forth in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

P. "Veteran": means a person who has received an honorable discharge or separation from military service.

[12.2.15.7 NMAC - Rp, 12.2.15.7 NMAC, 8/12/2012; A, 4/22/2022; A, 10/10/2023]

PART 16: APPLICATION FOR REGISTRATION

12.2.16.1 ISSUING AGENCY:

New Mexico Regulation and Licensing Department.

[12.2.16.1 NMAC - N, 8/12/12]

12.2.16.2 SCOPE:

This part sets forth application procedures to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.16.2 NMAC - N, 8/12/2021; A, 10/10/2023]

12.2.16.3 STATUTORY AUTHORITY:

These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.16.3 NMAC - N, 8/12/2021; A, 10/10/2023]

12.2.16.4 DURATION:

Permanent.

[12.2.16.4 NMAC - N, 8/12/12]

12.2.16.5 EFFECTIVE DATE:

August 12, 2012 unless a later date is cited at the end of a section.

[12.2.16.5 NMAC - N, 8/12/12]

12.2.16.6 OBJECTIVE:

The purpose of this part is to register secondhand metal dealers pursuant to Section 57-30-2.1 NMSA 1978.

[12.2.16.6 NMAC - N, 8/12/2021; A, 10/10/2023]

12.2.16.7 DEFINITIONS:

[RESERVED]

[12.2.16.7 NMAC - N, 8/12/12]

12.2.16.8 APPLICATION REQUIREMENTS:

A. Effective July 1, 2012, all secondhand metal dealers shall not buy or sell regulated material without a valid registration issued by the department.

B. Applications for registration shall be completed on a form provided by the department.

C. Electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section 14-16-21 NMSA 1978.

D. Information submitted shall include:

- (1) the full name and business address of the applicant;
- (2) the location at which the applicant engages or will engage in the business of buying or selling regulated material;
- (3) a non-refundable registration fee as set forth in 12.2.16.9 NMAC;
- (4) affirmation of compliance with all federal requirements;
- (5) affirmation of registration with metal theft alert system as described in Subsection C of 12.2.18.8 NMAC.

E. Any occupational or professional registration pursuant to these rules shall be issued as soon as practicable, but no later than 30 days after a military service member or a veteran as defined in these rules submits an application, pays any required fees, and provides a background check if required.

[12.2.16.8 NMAC - N, 8/12/2021; A, 4/22/2022; A, 10/10/2023]

12.2.16.9 FEES:

A. The fee for application registration is twenty-five dollars (\$25.00).

B. The fee for renewal of registration is twenty-five dollars (\$25.00).

C. A military service member or veteran as defined in these rules shall not be charged a registration fee for the first three years a registration issued under these rules is valid.

[12.2.16.9 NMAC - N, 8/12/2021; A, 4/22/2022]

12.2.16.10 RENEWAL REQUIREMENTS:

A. Original and renewed registrations shall be valid for a period of three years from the date of issuance, unless the registration is suspended or revoked.

B. Prior to the expiration of the license, a registered secondhand metal dealer shall apply for registration renewal and shall pay the renewal fee as set forth in 12.2.16.9 NMAC.

C. A current registration shall be posted in the business of operation.

[12.2.16.10 NMAC - N, 8/12/2021; A, 10/10/2023]

PART 17: REPORTING REQUIREMENTS

12.2.17.1 ISSUING AGENCY:

New Mexico Regulation and Licensing Department.

[12.2.17.1 NMAC - N, 8/12/12]

12.2.17.2 SCOPE:

This part sets forth reporting procedures to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.17.2 NMAC - N, 8/12/2012; A, 10/10/2023]

12.2.17.3 STATUTORY AUTHORITY:

These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.17.3 NMAC - N, 8/12/2012; A, 10/10/2023]

12.2.17.4 DURATION:

Permanent.

[12.2.17.4 NMAC - N, 8/12/12]

12.2.17.5 EFFECTIVE DATE:

August 12, 2012 unless a later date is cited at the end of a section.

[12.2.17.5 NMAC - N, 8/12/12]

12.2.17.6 OBJECTIVE:

The purpose of this part is to standardize the reporting procedures to the department required pursuant to 57-30-8 NMSA 1978.

[12.2.17.6 NMAC - N, 8/12/12]

12.2.17.7 DEFINITIONS:

[RESERVED]

[12.2.17.7 NMAC - N, 8/12/12]

12.2.17.8 REPORTING REQUIREMENTS:

A. All secondhand metal dealers are required to report all transactions of regulated material. Reports of such transaction shall be made on a purchase record form designed and provided or approved by the department and shall be uploaded to the database maintained by the department.

B. Reports shall be in English and shall include:

- (1) the place and date of the purchase;
- (2) the name and address of each person from whom the regulated material is purchased or obtained;
- (3) the identifying number of the personal identification document of each person from whom the regulated material is purchased or obtained;
- (4) the year, make, model and license plate number of the motor vehicle used to transport the regulated material;
- (5) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased; and
- (6) affirmation under penalty of perjury that the seller is the legal owner of or is lawfully entitled to sell the regulated material offered for sale as required by Paragraph (2) of Subsection A of Section 57-30-4 NMSA 1978 of the Sale of Recycled Metals Act.

C. Restricted transactions require the secondhand metal dealer to obtain from the seller additional documentation on a form designed and provided by the department and to upload the additional documentation with the purchase record.

- (1) For each restricted transaction in which a secondhand metal dealer purchases any item listed in Paragraphs (1) through (10) of Subsection A of Section 57-30-2.4 NMSA 1978 of the Sale of Recycled Metals Act the dealer shall obtain from the

seller one or more of the following types of documentation as provided in the additional documentation form:

(a) a police report;

(b) a fire report;

(c) a contract with bulk or other vendor;

(d) a letter from a governmental or other entity on entity letterhead and signed by a person authorized to dispose of the material, containing language sufficient to reasonably determine that the seller by way of such transfer has become the rightful owner of the material;

(e) any other document with language sufficient to reasonably determine that the seller is the rightful owner of the material, provided that any signature appearing on the document is notarized;

(2) For each restricted transaction in which a secondhand metal dealer purchases a catalytic converter, the dealer shall obtain from the seller in addition to the documentation listed in this section the following types of documentation required by Paragraphs (1) and (2) of Subsection D of Section 57-30-2.4 NMSA 1978 of the Sale of Recycled Metals Act and as more specifically set forth in the additional documentation form:

(a) a photocopy or digital image of the seller's or offeror's personal identification document;

(b) the date and time of the transaction;

(c) the name, address, telephone number and signature of the seller or offeror;

(d) the license plate number and vehicle identification number of the vehicle used to transport the catalytic converter to the secondhand metal dealer, if applicable;

(e) an original, a photocopy or a digital image of the title or registration of the motor vehicle from which the catalytic converter was removed showing the seller as the owner of the motor vehicle, or a notarized statement demonstrating ownership by the seller or offeror;

D. A secondhand metal dealer may use in place of the purchase record form designed and provided by the department any electronic program or software that contains and uploads the information required. Such electronic record must be printable at the request of the department or peace officer.

E. After January 2014 secondhand metal dealers will be required to submit their data in the format(s) specified by the department for direct loading into its database.

F. The department will specify the acceptable format(s) of data for electronic submission to the department's database. Data submitted electronically after January 2014 will be transferred directly into the department's database via a web interface or other electronic system maintained by the department.

G. Secondhand metal dealers will be responsible for correcting any formatting errors or data validation errors that occur during the transfer of data or the loading of data into the database. Secondhand metal dealers will be responsible for re-submitting corrected data to the department.

H. A secondhand metal dealer shall comply with the waiting period for disposal of regulated material.

I. A person attempting to sell regulated material to a secondhand metal dealer:

(1) shall sign under penalty of perjury a written statement provided by the secondhand metal dealer that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale or transfer.

(2) shall not with intent to deceive display to a secondhand metal dealer a false or invalid personal identification document or false or fraudulent additional documentation in connection with the person's attempted sale of regulated material.

J. A secondhand metal dealer may take a digital photograph, with a date and time stamp, of:

(1) the seller of the regulated material, and

(2) the regulated material in the form in which it was purchased or obtained by the secondhand metal dealer.

[12.2.17.8 NMAC - N, 8/12/2012; A, 10/10/2023]

12.2.17.9 [RESERVED]

[12.2.17.9 NMAC - N, 8/12/2012; Repealed, 10/10/2023]

PART 18: DUTIES AND RESPONSIBILITIES

12.2.18.1 ISSUING AGENCY:

New Mexico Regulation and Licensing Department.

[12.2.18.1 NMAC - N, 8/12/12]

12.2.18.2 SCOPE:

This part sets forth application procedures to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.18.2 NMAC - N, 8/12/2012; A, 10/10/2023]

12.2.18.3 STATUTORY AUTHORITY:

These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.18.3 NMAC - N, 8/12/2012; A, 10/10/2023]

12.2.18.4 DURATION:

Permanent.

[12.2.18.4 NMAC - N, 8/12/12]

12.2.18.5 EFFECTIVE DATE:

August 12, 2012 unless a later date is cited at the end of a section.

[12.2.18.5 NMAC - N, 8/12/12]

12.2.18.6 OBJECTIVE:

The purpose of this part is to facilitate compliance of all registered secondhand metal dealers pursuant to Sections 57-30-1 through 57-30-14 NMSA 1978.

[12.2.18.6 NMAC - N, 8/12/2012; A, 10/10/2023]

12.2.18.7 DEFINITIONS:

[RESERVED]

[12.2.18.7 NMAC - N, 8/12/12]

12.2.18.8 DUTIES:

Effective July 1, 2012, all secondhand metal dealers shall maintain a valid registration issued by the department.

A. A current registration certificate must be posted in the business of operation or posted in a physical location of a registrant who maintains a scrap metal yard in which scrap metal or cast-off regulated material is purchased for shipment, sale or transfer.

B. Comply with all federal requirements for scrap metal dealers, including maintain storm water permits.

C. Register for the metal theft alert system, maintained by the institute of scrap recycling industries or its successor organization.

[12.2.18.8 NMAC - N, 8/12/12]

12.2.18.9 RESPONSIBILITIES:

A. A secondhand metal dealer or the dealer's agent shall visually verify the accuracy of the personal identification document and vehicle identification presented by the seller at the time of the dealer's purchase or acquisition. The dealer shall not substitute or rely upon information existing in the dealer's records system in place of such visual verification at the point of each sale.

B. A secondhand metal dealer who becomes aware that the dealer is in possession of regulated material that was stolen or unlawfully obtained shall not remove the material from the dealer's premises and shall report the same to a local law enforcement agency within 24 hours.

C. A secondhand metal dealer must inform all employees who are involved in the purchasing or receiving of regulated material of alerts received on theft of regulated material in the geographic area.

D. A secondhand metal dealer shall maintain an accurate and legible written record, in a form approved by the department, of each purchase made in the course of the dealer's business of regulated material.

E. A secondhand metal dealer shall preserve each record required until the first anniversary of the date the record was made, except for any record for the purchase of a catalytic converter, which shall be kept until the third anniversary of the date the record was made.

F. A secondhand metal dealer shall produce to a peace officer or compliance officer upon request the requested record of purchase.

[12.2.18.9 NMAC - N, 8/12/2012; A, 10/10/2023]

12.2.18.10 [RESERVED]

[12.2.18.10 NMAC - N, 8/12/2012; Repealed, 10/10/2023]

12.2.18.11 CIVIL PENALTY, SUSPENSION OR REVOCATION OF REGISTRATION:

A. A person who violates any provision of the Sale of Recycled Metals Act may be assessed a civil penalty by the superintendent not to exceed one thousand dollars (\$1,000) per violation.

B. The superintendent may suspend or revoke the registration of a secondhand metal dealer when the superintendent finds that the dealer has intentionally violated a provision of the Sale of Recycled Metals Act.

C. Prior to the imposition of a civil penalty or the suspension or revocation of a registration, the superintendent shall provide notice and an opportunity to be heard pursuant to the pertinent notice and hearing provisions of the Uniform Licensing Act.

[12.2.18.11 NMAC - N, 8/12/12]

CHAPTER 3: BUSINESS ASSOCIATIONS

PART 1: GENERAL PROVISIONS

12.3.1.1 ISSUING AGENCY:

New Mexico Public Regulation Commission.

[12.3.1.1 NMAC - N, 7-15-05]

12.3.1.2 SCOPE:

This rule applies to all domestic and foreign corporations, limited liability companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations and foreign business trusts, unless exempted by law.

[12.3.1.2 NMAC - N, 7-15-05]

12.3.1.3 STATUTORY AUTHORITY:

NMSA 1978 Sections 8-8-4, 14-15-1 to 14-15-6, 14-16-1 to 14-16-19, 39-3-1.1, 53-2-11, 53-18-1, and 53-19-66.

[12.3.1.3 NMAC - N, 7-15-05; A/E, 3-25-10]

12.3.1.4 DURATION:

Permanent.

[12.3.1.4 NMAC - N, 7-15-05]

12.3.1.5 EFFECTIVE DATE:

July 15, 2005, unless a later date is cited at the end of a section.

[12.3.1.5 NMAC - N, 7-15-05; A/E, 3-25-10]

12.3.1.6 OBJECTIVE:

The purpose of this rule is to set forth general provisions governing corporate and certain legislatively mandated entities in New Mexico.

[12.3.1.6 NMAC - N, 7-15-05]

12.3.1.7 DEFINITIONS:

In addition to the definitions in NMSA 1978 Sections 3-29-2, 53-4-1, 53-7-19, 53-8-2, 53-11-2, 53-19-2, 53-20-2, as used in these rules:

- A. biennial** means every other year;
- B. bureau** means the corporations bureau of the public regulation commission;
- C. commission** means the public regulation commission;
- D. director** means the director of the administrative services division or his designee;
- E. division** means the administrative services division of the public regulation commission;
- F. person** means an individual, general partnership, limited liability company, limited partnership, trust, estate, association, corporation or any other legal entity;
- G. these rules** means the rules adopted by the commission in Title 12, Chapter 3 of the New Mexico Administrative Code.

[12.3.1.7 NMAC - N, 7-15-05]

12.3.1.8 COMPLIANCE WITH LAW:

All corporations and other regulated entities shall comply with these rules and all applicable state laws and rules.

[12.3.1.8 NMAC - N, 7-15-05]

12.3.1.9 REQUIREMENTS FOR FILED DOCUMENTS:

In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the commission shall be filed with the bureau as follows.

A. Address for filing documents.

(1) Documents filed by mail shall be sent to the New Mexico Public Regulation Commission Corporations Bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person or by delivery service shall be delivered to the New Mexico Public Regulation Commission, Corporations Bureau Filing Desk, P.E.R.A. Building, Room 346, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501.

(3) The commission's official website shall include a list of the types of documents that may be filed electronically and shall, when feasible, include forms for such documents.

B. Required format. All reports, articles, applications and other documents filed with the commission shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink. The bureau will accept for filing documents or certificates provided by foreign jurisdictions on paper that is of another size.

C. Good standing required. A corporation or other legal entity may not file, and the bureau will not accept, any document unless the corporation or entity is in good standing. For purposes of this subsection, good standing means the corporation or entity has timely filed all required reports and has paid all assessed fees, penalties, and interest.

D. Electronic filing and requests by facsimile. Documents filed electronically will be accepted as long as the commission's web-posted list includes the type of document being filed electronically, the document being filed electronically originated as a form on the commission's official website, and the filing is made through the commission's official website, at www.nmprc.state.nm.us. Any person may obtain a current telephone number for facsimile filing, and may make requests, by calling the bureau at 505-827-4508. The bureau will accept documents filed by facsimile or electronic means in the following situations:

(1) when a certificate of good standing and compliance is received from the appropriate official of another state or country, for the purpose required by NMSA 1978 Sections 53-8-69, 53-17-6, and 53-19-48, provided that the certificate is sent directly to the bureau by the appropriate official;

(2) requests for certificates, certified copies, or other documents pursuant to 12.3.1.13 NMAC; and

(3) requests for forms pursuant to 12.3.1.10 NMAC.

E. Date of filing. The commission shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the bureau, unless the document is returned pursuant to 12.3.1.11 NMAC except that:

(1) if a report required by the Corporate Reports Act, NMSA 1978 Sections 53-5-1 through 53-5-9, is mailed to the commission, the commission shall add three days to the postmark date for purposes of NMSA 1978 Section 53-5-7; and

(2) if the commission receives a document after regular business hours, the commission shall stamp and consider it received on the next regular business day.

F. Filing fees. The commission shall not accept any document for filing unless it is accompanied by the appropriate filing fee, paid as required by 12.3.1.14 NMAC.

G. Expedited filing fees.

(1) **Expedited request form required.** Each application for expedited filing shall be accompanied by an expedited request form provided by the bureau.

(2) **Nonrefundable separate payment required.** All expedited filing fees are nonrefundable. Each nonrefundable expedited filing fee shall be paid by separate payment in addition to all other filing fees required by law.

(3) **Expedited filing fee schedule.** The commission shall accept applications for expedited filing according to the following fee schedule.

(a) **Same business day filing.** For a \$150.00 expedited filing fee, the commission shall process an application for an expedited filing on the same business day the application is received by the bureau if the application is received by the bureau before 2:00 p.m. If an application for an expedited filing fee is received by the bureau after 2:00 p.m., the commission shall process the application for expedited filing by the end of the next business day for the same \$150.00 expedited filing fee.

(b) **Two business days filing.** For a \$100.00 expedited filing fee, the commission shall process an application for an expedited filing within two business days of the date on which the application for expedited filing is received by the bureau.

(4) **Refund for failure to timely process.** If the bureau is unable to provide the requested expedited filing service, the bureau shall return the expedited filing fee to the applicant for expedited filing services.

H. Required addresses. All reports filed by corporations and other regulated entities shall include the street address of the registered office and addresses for each of the entity's directors and officers. The report shall clearly indicate the titles of all officers and directors.

I. Electronic signature. A person submitting an electronic filing shall verify at the time of submission the complete name and title of the person filling out the form, a statement that such person has lawful authority to submit the report, a statement that the report is true and correct under penalty of perjury, and the date the report is submitted.

[12.3.1.9 NMAC - N, 7-15-05; A, 12-15-09; A/E, 3-25-10; A, 11-30-11]

12.3.1.10 COMMISSION-PRESCRIBED FORMS:

A. Use required. The commission has prescribed forms required by law to carry out certain requirements of these rules. The most current version of a commission-prescribed form must be used when a form exists for that purpose, unless these rules state otherwise or the commission waives this requirement. When a document is filed electronically, the form provided by the commission on its website must be used.

B. Use optional. The commission has available for use optional forms that may be used to comply with the requirements of these rules and strongly prefers the use of such forms for ease and consistency of data entry. However, except when electronic filing is used, a corporation or other entity may instead file the information and documents required by these rules in the order in which they are listed in the applicable statute or these rules.

C. How to obtain. Interested parties may obtain copies of commission-prescribed forms and other optional forms:

- (1) on the commission's website at www.nmprc.state.nm.us;
- (2) by electronic request to the bureau on the commission's website, by clicking on "corporations" and then "corporations inquiry;"
- (3) by calling the bureau at 505-827-4508; or
- (4) by writing to the New Mexico public regulation commission, corporations bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269

[12.3.1.10 NMAC - N, 7-15-05; A/E, 3-25-10]

12.3.1.11 INCOMPLETE FILINGS:

A. Criteria. A filing will be considered incomplete if:

- (1) it is unsigned;
- (2) it omits any information required by law or commission rule or order;
- (3) it is not submitted on a commission-prescribed form and a form is required for that purpose;
- (4) it is not accompanied by the appropriate filing fee, paid as required by 12.3.1.14 NMAC; or
- (5) the commission determines the filing is otherwise insufficient.

B. Return of incomplete filings. The director shall return an incomplete filing with a statement indicating the nature of the insufficiency to:

- (1) the address on any cover letter included with the form or document;
- (2) if no cover letter was included, then to the return address on the envelope in which the document or form was received;
- (3) if no cover letter or envelope return address were included, then to the address on any check delivered with the form or document for filing; and
- (4) if none of the above were included, then to any other address in the file for the entity involved.

[12.3.1.11 NMAC - N, 7-15-05]

12.3.1.12 REVIEW OF DOCUMENTS:

Any person who wishes to inspect public records or other documents relating to corporations or other regulated legal entities shall file a written request to the bureau as provided in 12.3.1.9 NMAC. The request shall meet the requirements of the Inspection of Public Records Act, NMSA 1978 Section 14-2-8 and shall follow the procedure required by that law.

[12.3.1.12 NMAC - N, 7-15-05]

12.3.1.13 REQUESTS FOR COPIES AND RECORD SEARCHES:

A. Types of documents available. The bureau may provide the following:

- (1) a certificate of good standing and compliance;
- (2) a miscellaneous certificate as requested by a corporation or other regulated legal entity;

(3) certified copies of reports, instruments or other documents relating to a corporation or other regulated legal entity;

(4) non-certified copies of reports, instruments or other documents relating to a corporation or other regulated legal entity; or

(5) reports of record searches for categories of documents or other types of information.

B. Filing of request. A person shall make a request in writing for copies of a document or a record search report and shall list all documents or information requested. A request may be mailed or delivered to the bureau, or faxed or filed electronically pursuant to **12.3.1.9** NMAC. If a person cancels a request within twenty-four (24) hours, the bureau shall not assess any fees.

C. Estimate of fees. When the bureau receives a request, the bureau shall issue an informal estimate of fees.

(1) The estimate of fees for copies shall be as prescribed in NMSA 1978 Section 53-2-1.

(2) The fee for a record search report shall be a minimum of sixty dollars (\$60.00) pursuant to the fee schedule approved by the department of finance and administration.

D. Completion of request.

(1) If the person approves the estimate, the bureau shall prepare the copies or record search report within ten (1) business days. The director may approve expedited requests on a showing of good cause.

(2) When the requested documents are ready, the bureau shall provide a written or electronic statement of fees due and shall release the copies or record search report electronically, by email or in hard copy, as requested, upon payment of all fees due.

[12.3.1.13 NMAC - N, 7-15-05]

12.3.1.14 PAYMENT OF FEES:

A person shall pay fees charged by the commission by paper instrument or money order, or electronic check, from funds on deposit with a United States financial institution, made payable to the New Mexico public regulation commission. The commission may permit, subject to appropriate approvals from the New Mexico state treasurer or the New Mexico board of finance as appropriate, payments by debit card or credit card, plus a convenience fee as may be required by law. Any convenience fee to

be charged to the commission by the commission's designated fiscal agent shall be passed through to the person submitting the filing.

[12.3.1.14 NMAC - N, 7-15-05; A/E, 3-25-10]

12.3.1.15 PROCEDURES FOR CHOOSING A NAME:

Corporations and other regulated legal entities shall comply with statutory name requirements, and may use the procedures in this section for checking the availability of a name, reserving a name, or applying for a corporate or company name.

A. Informal inquiry about name availability. A corporation or other regulated legal entity may informally request, orally or in writing, that the bureau determine whether a proposed name is available. The bureau shall search its records to determine whether the proposed name is the same as, or confusingly similar to, the name of another corporation or other regulated entity previously on file, reserved, or registered with the commission.

B. Formal application for a name. The bureau shall not make a final determination of whether a proposed name is available until the corporation or other entity files with the bureau an application to reserve a specified name, articles of incorporation, an application for a certificate of authority, or other organizational documents.

C. Reserving a name. A corporation or other legal entity may file an application with the bureau to reserve a proposed name. If the bureau determines the name is available, it shall reserve the name for the corporation or other legal entity for one hundred twenty (120) days. An applicant may not extend the time period of a name reservation.

D. Registering a name. A foreign profit corporation may register its name by complying with NMSA 1978 Section 53-11-9, and may renew its name registration by meeting the requirements of NMSA 1978 Section 53-11-10.

E. Administrative revocation and reserving a name. If the commission administratively revokes a corporation or other legal entity, it shall reserve its name for the period allowed by law for reinstatement. If a corporation or other legal entity that has been administratively revoked applies for reinstatement in compliance with applicable requirements, the commission shall grant reinstatement and restore the entity's exclusive right to its name.

F. Waiver of right to a name. A corporation or other legal entity may waive its right to its name by filing a statement with the commission that the entity waives its exclusive right to its name. Once the commission receives such a waiver, it may release the name of the corporation or other legal entity for use by another. If the original corporation or other legal entity then wants to reinstate, it must do so under another name.

[12.3.1.15 NMAC - N, 7-15-05]

12.3.1.16 RULES OF PROCEDURE:

In all matters before the commission involving corporations or other legislatively mandated entities, the commission shall follow the commission rules of procedure. A specific provision in these rules shall control over a conflicting general provision in the commission rules of procedure.

[12.3.1.16 NMAC - N, 7-15-05]

12.3.1.17 APPEALS:

A person, corporation or other legal entity aggrieved by any decision of the bureau, director, or commission made pursuant to these rules may appeal the decision to district court in accordance with NMSA 1978 Section 39-3-1.1 except that appeals concerning the Corporate Reports Act shall be made pursuant to NMSA 1978 Section 53-5-7.

[12.3.1.17 NMAC - N, 7-15-05]

PART 2: PROFIT CORPORATIONS

12.3.2.1 ISSUING AGENCY:

New Mexico Public Regulation Commission.

[12.3.2.1 NMAC - Rp, 12.3.2.1 NMAC, 12-15-09]

12.3.2.2 SCOPE:

This rule applies to all domestic and foreign profit corporations, unless exempted by law.

[12.3.2.2 NMAC - Rp, 12.3.2.2 NMAC, 12-15-09]

12.3.2.3 STATUTORY AUTHORITY:

NMSA 1978 Sections 8-8-4 and 53-18-1.

[12.3.2.3 NMAC - Rp, 12.3.2.3 NMAC, 12-15-09]

12.3.2.4 DURATION:

Permanent.

[12.3.2.4 NMAC - Rp, 12.3.2.4 NMAC, 12-15-09]

12.3.2.5 EFFECTIVE DATE:

December 15, 2009, unless a later date is cited at the end of a section.

[12.3.2.5 NMAC - Rp, 12.3.2.5 NMAC, 12-15-09]

12.3.2.6 OBJECTIVE:

The purpose of this rule is to facilitate the formation and continuation of profit corporations as provided by law.

[12.3.2.6 NMAC - Rp, 12.3.2.6 NMAC, 12-15-09]

12.3.2.7 DEFINITIONS:

See 12.3.1.7 NMAC.

[12.3.2.7 NMAC - Rp, 12.3.2.7 NMAC, 12-15-09]

12.3.2.8 DOMESTIC PROFIT CORPORATIONS:

A domestic profit corporation shall comply with the requirements of the Business Corporations Act, NMSA 1978, Chapter 53, Articles 11 through 18.

A. Filing requirements. A domestic profit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-2-1.

B. Name. A domestic profit corporation shall comply with the name requirements in NMSA 1978 Section 53-11-7 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name. A corporation in existence on June 17, 1983 is deemed to be in compliance with the requirements of NMSA 1978 Section 53-11-7 for a separate word or abbreviation describing the type of corporation named.

C. Filing year. A domestic profit corporation shall file biennial reports and supplemental reports with the bureau:

(1) for even-numbered taxable year ends if the last digit of its New Mexico certificate of incorporation number is an even number;

(2) for odd-numbered taxable year ends if the last digit of its New Mexico certificate of incorporation number is an odd number;

(3) for the calendar year determined by the bureau if it was assigned a duplicate number before 1980; the bureau shall notify the corporation of the appropriate filing years.

D. Taxable year. For a new domestic corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31. If a new domestic profit corporation selects a different end date for its taxable year, it shall so inform the commission.

E. Required documents.

(1) Articles of incorporation. A domestic profit corporation shall adopt and file with the commission articles of incorporation that comply with NMSA 1978 Sections 53-12-2 and 53-12-3. The corporation may amend or restate the articles as provided in NMSA 1978 Sections 53-13-1 through 53-13-12.

(2) **Statement designating registered agent and office.** A domestic profit corporation shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 53-11-11, 53-11-12, and 53-11-13.

F. Merger and consolidation. Two or more domestic corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Sections 53-14-1 through 53-14-7 and shall file articles of merger, consolidation, or exchange as required by NMSA 1978 Sections 53-14-4 and 53-14-5. Shareholders may convert a domestic profit corporation into a limited liability company by complying with NMSA 1978 Section 53-19-60.

G. Dormant status. A domestic profit corporation that meets the requirements of NMSA 1978 Section 53-5-9 for dormant status, may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 53-5-9.

H. Dissolution. A domestic profit corporation seeking voluntary dissolution shall comply with the requirements for dissolution provided in NMSA 1978 Sections 53-16-1 through 53-16-24, and file a statement of intent to dissolve as required by NMSA 1978 Section 53-16-4, and articles of dissolution that comply with NMSA 1978 Sections 53-16-11 and 53-16-12. A domestic profit corporation may revoke voluntary dissolution proceedings as provided in NMSA 1978 Sections 53-16-7 and 53-16-8 by filing a statement of revocation required by NMSA 1978 Section 53-16-9.

I. Administrative revocation and reinstatement. The commission may administratively revoke a domestic profit corporation by issuing a certificate of revocation under the circumstances and following the process provided in NMSA 1978 Section 53-11-12. A corporation may apply to the commission for reinstatement

following the process and within the time period provided in NMSA 1978 Section 53-11-12.

[12.3.2.8 NMAC - Rp, 12.3.2.8 NMAC, 12-15-09]

12.3.2.9 FOREIGN PROFIT CORPORATIONS:

A foreign profit corporation shall comply with the applicable requirements of the Business Corporations Act, NMSA 1978, Chapter 53, Articles 11 through 18.

A. Filing requirements. A foreign profit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-2-1.

B. Name. A foreign profit corporation shall comply with the name requirements in NMSA 1978 Section 53-17-3 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, registering, formally applying for, or reinstating a name. A corporation in existence on June 17, 1983 is deemed to be in compliance with the requirement of NMSA 1978 Section 53-11-7 for a separate word or abbreviation describing the type of corporation named.

C. Filing year. A foreign profit corporation shall file biennial corporate reports and supplemental reports with the bureau:

(1) for even-numbered taxable year ends if the last digit of its New Mexico certificate of authority number is an even number;

(2) for odd-numbered taxable year ends if the last digit of its New Mexico certificate of authority number is an odd number;

(3) for the calendar year determined by the bureau if it was assigned a duplicate number before 1980; the bureau shall notify the corporation of the appropriate filing years.

D. Taxable year. For a new foreign profit corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31. If a new foreign profit corporation selects a different end date for its taxable year, it shall so inform the commission.

E. Required documents.

(1) **Certificate of authority.** Before transacting business in New Mexico, a foreign profit corporation shall obtain a certificate of authority from the commission pursuant to NMSA 1978 Section 53-17-1 by filing an application containing the information and supporting documents required in NMSA 1978 Sections 53-17-5

through 53-17-7. A foreign profit corporation shall amend its certificate of authority as provided in NMSA 1978 Section 53-17-14.

(2) Statement designating registered agent and office. A foreign profit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-17-9 and 53-17-10.

F. Merger and conversion. A foreign profit corporation that is a party to a statutory conversion or merger shall comply with, and file articles of merger or conversion as required by, NMSA 1978 Section 53-17-13.

G. Dormant status. A foreign profit corporation that meets the requirements of NMSA 1978 Section 53-5-9 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 53-5-9.

H. Withdrawal. A foreign profit corporation seeking to withdraw from doing business in New Mexico may procure a certificate of withdrawal from the commission by filing an application for withdrawal that complies with the requirements of NMSA 1978 Section 53-17-15 and 53-17-16.

I. Administrative revocation and reinstatement. The commission may revoke a foreign profit corporation's certificate of authority for the reasons provided in NMSA 1978 Section 53-17-17 by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-17-18. A foreign profit corporation may apply to the commission for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-17-18.

[12.3.2.9 NMAC - Rp, 12.3.2.11 NMAC, 12-15-09]

12.3.2.10 FIRST REPORT:

A domestic or foreign profit corporation shall file an initial report on the schedule prescribed by and as required by NMSA 1978 Section 53-5-2 through 53-5-9 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.2.10 NMAC - Rp, 12.3.2.9 & 12.3.2.12 NMAC, 12-15-09]

12.3.2.11 BIENNIAL REPORT AND SUPPLEMENTAL REPORT:

A domestic or foreign profit corporation shall file biennial and supplemental reports as required by NMSA 1978 Section 53-5-2 through 53-5-9 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.2.11 NMAC - Rp, 12.3.2.10 & 12.3.2.13 NMAC, 12-15-09]

12.3.2.12 REQUIRED FORMS:

A domestic or foreign profit corporation shall file initial, biennial and supplemental reports as required by NMSA 1978 Section 53-5-2 through 53-5-9 on the commission-prescribed form available as provided in 12.3.1 NMAC.

A. First reports, biennial reports and supplemental reports shall contain:

- (1)** exact corporate name and U.S. mailing address;
- (2)** principal place of business in New Mexico;
- (3)** principal office outside of New Mexico for a foreign corporation;
- (4)** NMPRC certificate of incorporation/authority number;
- (5)** for foreign corporations: registered place of business in New Mexico if different from registered office;
- (6)** state or country of incorporation;
- (7)** registered agent and office located within New Mexico for service or process;
- (8)** names and addresses of all directors and officers;
- (9)** date and signature and title of an authorized officer or agent; and
- (10)** filing fees.

B. Filing fees, report due date, late filing penalty.

(1) Filing fees. A \$25.00 filing fee is due and payable to the commission at the time of filing of each domestic or foreign first report, biennial report and supplemental report.

(2) Report due dates.

(a) First report. A domestic or foreign first report shall be filed within thirty days of the date of incorporation or qualification in New Mexico.

(b) Biennial report. A domestic or foreign biennial report shall be filed on or before the fifteenth day of the third month following the end of the corporation's taxable year. Biennial means every other year, not twice a year for filing purposes required

report based on the last digit of the number referred to in Paragraph (4) of Subsection A of 12.3.2.12 NMAC, i.e., even number will file its biennial report for its even numbered taxable year-end.

(c) Supplemental report. A domestic or foreign supplemental report shall be filed within thirty days if, after the filing of the biennial report, a change is made in:

(i) the mailing address, street address, rural route number and box number or the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;

(ii) the name or address or any of the directors or officers of the corporation or the date when the term of office of each expires; or

(iii) its principal place of business within or without the state.

(3) Late filing penalty. A \$200.00 late filing penalty is required if a report is filed untimely.

C. Instructions.

(1) Enter exact corporate name and complete mailing address must be given to meet postal delivery requirements..

(2) Enter principal place of business in New Mexico. Enter "NONE," if applicable.

(3) Enter principal office outside of New Mexico, if different from the registered office in state or country of incorporation. Enter "NONE," if applicable.

(4) Enter original NMPRC certificate of incorporation/authority number issued by the corporations bureau or as assigned by computer pre-printed information.

(5) Enter foreign corporation's registered address in state or country of incorporation which may be different from the address referred to in Paragraph (3) of Subsection A of 12.3.2.12 NMAC on principal office outside of New Mexico.

(6) Enter corporation's state or country of incorporation unless pre-printed or as corrected.

(7) Enter registered agent and address located in New Mexico. Each corporation shall have and continuously maintain in New Mexico:

(a) a registered office which may be, but need not be, the same as its place of business;

(b) a registered agent, which agent may be either an individual resident in New Mexico whose business office is identical with the registered office, or a domestic corporation, or a foreign corporation authorized to transact business in New Mexico having a business office identical with the registered office; and

(c) an agent's address must be acceptable for service of process purposes; a post office box is unacceptable.

(8) Officers and directors are as set forth in NMSA 1978 Sections 53-8-18, 53-8-23, 53-8-83, 53-2-10, 53-11-35, and 53-11-48. Enter all officers and directors with respective addresses. Each New Mexico corporation shall have officers, with titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as many officers as may be necessary to enable the corporation to sign instruments required under the Business Corporation Act.

(a) The number of directors of a New Mexico corporation shall consist of one or more members.

(b) Each director shall hold office for the term for which he/she is elected and until his or her successor has been elected and qualified.

(9) NMSA 1978 section 53-2-10 private remedy.

(a) Any person who suffers any loss of money or property as a result of being designated a director of a corporation without giving his consent may bring an action against the designating corporation to recover actual damages or one thousand dollars (\$1,000), whichever is greater.

(b) The court may award attorneys' fees and costs to the party injured as a result of the director designation if he prevails. The court may award attorney's fees to the corporation charged if the court finds that the action brought against the corporation was groundless.

(c) The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

(10) NMSA 1978 section 53-5-5 corporate reports, affirmation, penalty.

(a) All reports required to be filed with the commission pursuant to the Corporate Reports Act shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statement, and that all statements contained therein are true and correct."

(b) Any person who makes and subscribes any report required under the Corporate Reports Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

(c) The report shall be signed and sworn to by the chairman of the board, president, vice president, secretary, principal accounting officer or authorized agent of the corporation.

(11) Application for period extension. Any corporation may, upon application to the commission by the due date upon which a report is required to be filed, petition the commission for an extension of time. The commission may, for good cause, extend for no more than a total of twelve months the date on which the payment of any fee is required. A copy of a commission extension shall be attached to the required report.

(12) Mandatory IRS extension. The commission shall, when an extension of time has been granted a corporation under the United States Internal Revenue Code for the time in which to file a report, grant the corporation the same extension of time provided that a copy of the approved (signed) federal extension of time (IRS 7004 or 7005) is attached to the corporation's report. However, the bureau will acknowledge and approve the extension upon receiving a copy of a valid IRS extension prior to the filing of a corporate report.

[12.3.2.12 NMAC - Rp, 12.3.2.10 & 12.3.2.13 NMAC, 12-15-09]

PART 3: NONPROFIT CORPORATIONS

12.3.3.1 ISSUING AGENCY:

New Mexico Public Regulation Commission.

[12.3.3.1 NMAC - Rp, 12.3.3.1 NMAC, 12-15-09]

12.3.3.2 SCOPE:

This rule applies to all domestic and foreign nonprofit corporations, unless exempted by law.

[12.3.3.2 NMAC - Rp, 12.3.3.2 NMAC, 12-15-09]

12.3.3.3 STATUTORY AUTHORITY:

NMSA 1978 Sections 8-8-4, 3-29-20, 53-8-7, 53-8-7.1, 53-8-8, 53-8-9, 53-8-31, 53-8-32, 53-8-35 through 53-8-45, 53-8-47 through 53-8-49, 53-8-50 through 53-8-54, 53-8-60, 53-8-64, 53-8-66 through 53-8-69, 53-8-71, 53-8-72, 53-8-75 through 53-8-80, 53-8-82, 53-8-83, 53-8-85, 53-8-88.1 and 53-19-60.

[12.3.3.3 NMAC - Rp, 12.3.3.3 NMAC, 12-15-09]

12.3.3.4 DURATION:

Permanent.

[12.3.3.4 NMAC - Rp, 12.3.3.4 NMAC, 12-15-09]

12.3.3.5 EFFECTIVE DATE:

December 15, 2009, unless a later date is cited at the end of a section.

[12.3.3.5 NMAC - Rp, 12.3.3.5 NMAC, 12-15-09]

12.3.3.6 OBJECTIVE:

The purpose of this rule is to facilitate the formation and continuation of nonprofit corporations as provided by law.

[12.3.3.6 NMAC - Rp, 12.3.3.6 NMAC, 12-15-09]

12.3.3.7 DEFINITIONS:

See 12.3.1.7 NMAC.

[12.3.3.7 NMAC - Rp, 12.3.3.7 NMAC, 12-15-09]

12.3.3.8 DOMESTIC NONPROFIT CORPORATIONS:

A domestic nonprofit corporation shall comply with the applicable requirements of the Nonprofit Corporation Act, NMSA 1978 Sections 53-8-1 through 53-8-99.

A. Filing requirements. A domestic nonprofit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-8-85.

B. Name. A domestic nonprofit corporation shall comply with name requirements of NMSA 1978 Sections 53-8-7 and 53-8-7.1, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Taxable year determination.

(1) When a domestic nonprofit corporation has a taxable year which is less than twelve (12) months, the corporation shall file satisfactory proof with, and notify the bureau, of its 12-month taxable year reporting period for purposes of corporate reports.

Satisfactory proof shall include appropriately authenticated copies of internal revenue service approval of the short taxable year and of the corporation's taxable year end.

(2) For a new domestic nonprofit corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31 and that the corporation will report on a calendar-year basis. When a new nonprofit corporation determines the end of its first taxable year, the corporation will notify the bureau within thirty (30) days.

(3) For a domestic nonprofit corporation, for which no taxable year has been determined because it is exempt from reporting to the internal revenue service or otherwise, the bureau will presume that the corporation's taxable year for reporting purposes ends on December 31 and the corporation will report on a calendar-year basis.

D. Documents required. All corporate reports shall include the street address of the business office of the registered agent and addresses for each of the corporation's directors and officers.

(1) Articles of incorporation. A domestic nonprofit corporation shall adopt and file with the commission articles of incorporation that comply with NMSA 1978 Sections 53-8-31 and 53-8-32. The corporation may amend or restate its articles as provided in NMSA 1978 Sections 53-8-35 through 53-8-39.

(2) Statement designating registered agent and office. A domestic nonprofit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-8-8 and 53-8-9.

E. Merger and consolidation.

(1) Merger of domestics. Two or more domestic nonprofit corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Sections 53-8-40 through 53-8-45 and shall file articles of merger or articles of consolidation as required by NMSA 1978 Section 53-8-43.

(2) Merger or consolidation of foreign and domestic. One or more foreign nonprofit corporations and one or more domestic nonprofit corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Section 53-8-45 and shall file articles of merger or articles of consolidation as required by NMSA 1978 Section 53-8-43.

(3) Reorganization as sanitary projects act association. A nonprofit corporation may reorganize under the Sanitary Projects Act by complying with NMSA 1978 Section 3-29-20.

F. Dormant status. A domestic nonprofit corporation that meets the requirements of NMSA 1978 Section 5-8-88.1 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 5-8-88.1.

G. Dissolution. A domestic nonprofit corporation shall comply with the requirements for dissolution provided in NMSA 1978 Sections 53-8-47 through 53-8-49 and file articles of dissolution that comply with NMSA 1978 Sections 53-8-51 and 53-8-52. A domestic nonprofit corporation may cancel voluntary dissolution proceedings as provided in NMSA 1978 Section 53-8-50.

H. Administrative revocation and reinstatement. The commission may revoke a domestic nonprofit corporation's certificate of incorporation for the reasons provided in NMSA 1978 Section 53-8-53, by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-8-54. A nonprofit corporation may apply for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-8-54.

[12.3.3.8 NMAC - Rp, 12.3.3.8 NMAC, 12-15-09]

12.3.3.9 FOREIGN NONPROFIT CORPORATIONS:

A foreign nonprofit corporation shall comply with the applicable requirements of the Nonprofit Corporation Act, NMSA 1978 Section 53-8-1 through 53-8-99.

A. Filing requirements. A foreign nonprofit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-8-85.

B. Name. A foreign nonprofit corporation shall comply with the name requirements in NMSA 1978 Sections 53-8-66 and 53-8-67 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Required documents.

(1) Certificate of authority. A foreign nonprofit corporation shall obtain a certificate of authority from the commission pursuant to NMSA 1978 Section 53-8-64 before conducting affairs in New Mexico, by filing an application containing the information and supporting documents required in NMSA 1978 Sections 53-8-68 and 53-8-69. A foreign nonprofit corporation may obtain an amended certificate of authority by meeting the requirements of NMSA 1978 Section 53-8-76.

(2) Statement designating registered agent and office. A foreign nonprofit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-8-71 and 53-8-72.

D. Merger. A foreign nonprofit corporation may merge in compliance with NMSA 1978 Section 53-8-75 and shall file articles of merger as required by NMSA 1978 Section 53-8-75.

E. Dormant status. A foreign nonprofit corporation that meets the requirements of NMSA 1978 Section 53-8-88.1 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 53-8-88.1.

F. Withdrawal. A foreign nonprofit corporation seeking to withdraw from doing business in New Mexico may procure a certificate of withdrawal from the commission by filing an application for withdrawal that complies with the requirements of NMSA 1978 Sections 53-8-77 and 53-8-78.

G. Administrative revocation and reinstatement. The commission may revoke a foreign nonprofit corporation's certificate of authority for the reasons provided in NMSA 1978 Section 53-8-79, by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-8-80.

[12.3.3.9 NMAC - Rp, 12.3.3.11 NMAC, 12-15-09]

12.3.3.10 FIRST REPORT:

A domestic or foreign nonprofit corporation shall file an initial report complying with the schedule and requirements of NMSA 1978 Sections 53-8-82 and 53-8-83 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.3.10 NMAC - Rp, 12.3.3.9 & 12.3.3.12 NMAC, 12-15-09]

12.3.3.11 ANNUAL REPORT AND SUPPLEMENTAL REPORT:

A domestic or foreign nonprofit corporation shall file annual and supplemental reports as required by NMSA 1978 Sections 53-8-82 and 53-8-83 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.3.11 NMAC - Rp, 12.3.3.10 & 12.3.3.13 NMAC, 12-15-09]

12.3.3.12 REQUIRED FORMS:

A domestic or foreign nonprofit corporation shall file initial, annual and supplemental reports as required by NMSA 1978 Sections 53-8-82 and 53-8-83 on the commission-prescribed form available as provided in 12.3.1 NMAC.

A. First reports, annual reports and supplemental reports shall contain:

- (1) exact corporate name and U.S. mailing address;
- (2) principal place of business in New Mexico;
- (3) principal office outside of New Mexico for a foreign corporation;
- (4) NMPRC certificate of incorporation/authority number;
- (5) for foreign corporations: registered place of business in New Mexico if different from registered office;
- (6) state or country of incorporation;
- (7) registered agent and office located within New Mexico for service or process;
- (8) names and addresses of all directors and officers;
- (9) date and signature and title of an authorized officer or agent; and
- (10) filing fees.

B. Filing fees, report due dates, late filing penalty.

(1) **Filing fees.** A \$10.00 filing fee is due and payable to the commission at the time of filing of each domestic or foreign first report, annual report and supplemental report.

(2) **Report due dates.**

(a) **First report.** A domestic or foreign first report shall be filed within thirty days of the date of incorporation or qualification in New Mexico.

(b) **Annual report.** A domestic or foreign annual report shall be filed on or before the fifteenth day of the fifth month following the end of the corporation's taxable year.

(c) **Supplemental report.** A domestic or foreign supplemental report shall be filed within thirty days if, after the filing of the annual report, a change is made in:

(i) the mailing address, street address, rural route number and box number or the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;

(ii) the name or address or any of the directors or officers of the corporation or the date when the term of office of each expires; or

(iii) its principal place of business within or without the state.

(3) **Late filing penalty.** A \$10.00 late filing penalty is required if a report is filed untimely.

C. Instructions.

(1) Enter exact corporate name and complete mailing address must be given to meet postal delivery requirements.

(2) Enter principal place of business in New Mexico. Enter "NONE," if applicable.

(3) Enter principal office outside of New Mexico, if different from the registered office in state or country of incorporation. Enter "NONE," if applicable.

(4) Enter original NMPRC certificate of incorporation/authority number issued by the corporations department or as assigned by computer pre-printed information.

(5) Enter foreign corporation's registered address in state or country of incorporation which may be different from item no. 3 on principal office outside of New Mexico.

(6) Enter corporation's state or country of incorporation unless pre-printed or as corrected.

(7) Enter registered agent and address located in New Mexico. Each corporation shall have and continuously maintain in New Mexico:

(a) a registered office which may be, but need not be, the same as its place of business;

(b) a registered agent, which agent may be either an individual resident in New Mexico whose business office is identical with the registered office, or a domestic corporation, or a foreign corporation authorized to transact business in New Mexico having a business office identical with the registered office; and

(c) an agent's address must be acceptable for service of process purposes; a post office box is unacceptable.

(8) Officers and directors are as set forth in NMSA 1978 Sections 53-8-18, 53-8-23, 53-8-83 and 53-2-10. Enter all officers and directors with respective addresses. Each New Mexico corporation shall have officers, with title and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as many officers as may be necessary to enable the corporation to sign instruments required under the Nonprofit Corporation Act.

(a) One of the officers shall have the duty to record the proceedings of the meetings of the members and directors in a book to be kept for that purpose.

(b) In the absence of any provision, all officers shall be elected or appointed annually by the board of the directors. If the bylaws so provide, any two or more offices may be held by the same person.

(c) Officers and directors shall be identified accordingly, i.e., identified if an officer is also a director to meet statutory requirements. Two authorized officers are required to sign documents for filing purposes under the Nonprofit Corporations Act.

(d) The number of directors of a New Mexico corporation shall be not less than three. Each director shall hold office for the terms for which he/she is elected and appointed until his or her successor shall have been elected and qualified.

(9) NMSA 1978 section 53-2-10 private remedy.

(a) Any person who suffers any loss of money or property as a result of being designated a director of a corporation without giving his consent may bring an action against the designating corporation to recover actual damages or one thousand dollars (\$1,000), whichever is greater.

(b) The court may award attorneys' fees and costs to the party injured as a result of the director designation if he prevails. The court may award attorney's fees to the corporation charged if the court finds that the action brought against the corporation was groundless.

(c) The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

(10) NMSA 1978 section 53-8-9 corporate reports, affirmation, penalty.

(a) All reports required to be filed with the commission pursuant to the Nonprofit Corporations Act shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statement, and that all statements contained therein are true and correct."

(b) Any person who makes and subscribes any report required under the Nonprofit Corporations Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

(c) The report shall be signed and sworn to by any two of its directors or officers. If the corporation is in the hands of a receiver or trustee, the report shall be

executed on behalf of the corporation by the receiver or trustee. A copy of the report shall be maintained at the corporation's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

(11) Application for period extension. Any corporation may, upon application to the commission by the due date upon which a report is required to be filed, petition the commission for an extension of time. The commission may, for good cause, extend for no more than a total of twelve months the date on which the payment of any fee is required. A copy of a commission extension shall be attached to the required report.

(12) Mandatory IRS extension. The commission shall, when an extension of time has been granted a nonprofit corporation under the United States Internal Revenue Code for the time in which to file a report, grant the corporation the same extension of time provided that a copy of the approved (signed) federal extension of time (IRS 2758) is attached to the corporation's report.

[12.3.3.12 NMAC - Rp, 12.3.3.10, 12.3.3.12 & 12.3.3.13 NMAC, 12-15-09]

PART 4: OTHER BUSINESS ENTITIES

12.3.4.1 ISSUING AGENCY:

New Mexico Public Regulation Commission.

[12.3.4.1 NMAC - N, 7-15-05]

12.3.4.2 SCOPE:

This rule applies to certain legislatively mandated legal entities, unless exempted by law.

[12.3.4.2 NMAC - N, 7-15-05]

12.3.4.3 STATUTORY AUTHORITY:

NMSA 1978 Sections 3-29-16, 3-29-17, 3-29-17.1, 3-29-17.2, 3-29-17.4, 3-29-17.5, 3-29-19, 3-29-20, 8-8-4, 53-2-1, 53-4-5, 53-4-6, 53-4-6.1, 53-4-6.2, 53-4-7, 53-4-34 through 53-4-37, 53-4-40, 53-4-41, 53-7-35, 53-7-36, 53-7-39, 53-7-42, 53-19-66, 53-20-3 through 53-20-15, 53-20-17, 62-2-1 through 62-2-3, 62-2-13, and 75-5-2 through and 75-5-5.

[12.3.4.3 NMAC - N, 7-15-05]

12.3.4.4 DURATION:

Permanent.

[12.3.4.4 NMAC - N, 7-15-05]

12.3.4.5 EFFECTIVE DATE:

July 15, 2005.

[12.3.4.5 NMAC - N, 7-15-05]

12.3.4.6 OBJECTIVE:

The purpose of this rule is to facilitate the formation and continuation of certain legislatively mandated entities as provided by law.

[12.3.4.6 NMAC - N, 7-15-05]

12.3.4.7 DEFINITIONS:

See 12.3.1.7 NMAC.

[12.3.4.7 NMAC - N, 7-15-05]

12.3.4.8 BUSINESS DEVELOPMENT CORPORATIONS:

A business development corporation shall comply with the requirements of the Business Development Corporation Act, NMSA 1978 Sections 53-7-18 through 53-7-46.

A. Filing requirements. A business development corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and pay all filing fees required by NMSA 1978 Section 53-2-1.

B. Documents required.

(1) Articles of incorporation. Stockholders and members shall file articles of incorporation that meet the requirements for incorporation in NMSA 1978 Section 53-7-23. The corporation may amend the articles by complying with NMSA 1978 Sections 53-7-35 and 53-7-36.

(2) Reports. A business development corporation shall file annual reports on its general financial condition with the director of the financial institutions division of the regulation and licensing department and the commission, pursuant to NMSA 1978 Section 53-7-39.

C. Dissolution. Upon following dissolution requirements of NMSA 1978 Section 53-7-42, the corporation may petition the director of the financial institutions division of the

regulation and licensing department for its dissolution. If the director of the financial institutions division of the regulation and licensing department approves the petition, the corporation may file with the commission documentation approving the petition.

[12.3.4.8 NMAC - N, 7-15-05]

12.3.4.9 COOPERATIVE ASSOCIATIONS:

A cooperative association shall comply with the requirements of the Cooperative Associations Act, NMSA 1978 Sections 53-4-1 through 53-4-45. Once properly formed, a cooperative association shall be deemed a nonprofit corporation as provided in NMSA 1978 Section 53-4-1.

A. Filing requirements. A cooperative association shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and pay all filing fees required.

B. Name. A cooperative association shall comply with the name requirements in NMSA 1978 Section 53-4-37, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required.

(1) Articles of incorporation. A cooperative association formed in compliance with the Cooperative Associations Act, NMSA 1978 Sections 53-4-1 through 53-4-45, shall file articles of incorporation that meet the requirements of NMSA 1978 Section 53-4-5 with the fee required in NMSA 1978 Section 53-4-6. An association may file amendments to its articles of incorporation with the filing fee as provided in NMSA 1978 Section 53-4-7.

(2) Certificate of authority. A foreign cooperative association that meets the requirements of NMSA 1978 Section 53-4-41 may request that the commission issue a certificate of authority to do business in New Mexico.

(3) Statement designating registered agent and office. A cooperative association shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 53-4-6.1 and 53-4-6.2, and shall pay the fee provided in NMSA 1978 Section 53-2-1 for filing the required notice.

(4) Reports. A cooperative association shall file annual reports and supplemental reports and pay the filing fee as required by NMSA 1978 Section 53-4-34, and is subject to the forfeiture and penalty requirements of NMSA 1978 Section 53-4-35 for failure to report.

D. Merger and conversion.

(1) Converting to cooperative association. Any group incorporated under the laws of New Mexico may convert to a cooperative association by complying with, and filing amended articles as required by, NMSA 1978 Section 53-4-40.

(2) Reorganizing under sanitary projects act. A cooperative association may reorganize as a sanitary projects act association by complying with, and filing a certificate of association as required by, NMSA 1978 Section 3-29-20.

E. Dissolution. A cooperative association may voluntarily dissolve by complying with NMSA 1978 Section 53-4-36, and may file with the commission a statement indicating compliance.

F. Administrative revocation and forfeiture. The commission may administratively revoke a cooperative association by sending a notice of forfeiture under the circumstances provided in, and following the requirements of, NMSA 1978 Section 53-4-35. If the commission administratively revokes a cooperative association, the association may apply for reinstatement by complying with the applicable requirements in NMSA 1978 Section 53-4-35.

[12.3.4.9 NMAC - N, 7-15-05]

12.3.4.10 FOREIGN BUSINESS TRUSTS:

A foreign business trust shall comply with the requirements of the Foreign Business Trust Registration Act, NMSA 1978 Sections 53-20-1 through 53-20-17.

A. Filing requirements. A foreign business trust shall file all documents required by this section in compliance with the 12.3.1 NMAC, General Provisions, and shall pay filing fees required by NMSA 1978 Section 53-20-17.

B. Name. A foreign business trust shall meet the requirements for names in NMSA 1978 Sections 53-20-4 and 53-20-5, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required.

(1) Certificate of authority. In order to transact business in New Mexico, a foreign business trust must obtain a certificate of authority by complying with the application requirements and process in NMSA 1978 Sections 53-20-6 and 53-20-7. A foreign business trust may amend or change its certificate of authority by filing the documents required by NMSA 1978 Section 53-20-8.

(2) Statement designating registered agent and office. A foreign business trust shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements in NMSA 1978 Sections 53-20-9, 53-20-10, and 53-20-11.

D. Withdrawal. A foreign business trust authorized to do business in New Mexico may withdraw by obtaining a certificate of withdrawal from the commission following the process required by NMSA 1978 Sections 53-20-12 and 53-20-13.

E. Administrative revocation. The commission may revoke the certificate of authority for a foreign business trust for the reasons listed and following the process provided in NMSA 1978 Sections 53-20-14 and 53-20-15.

[12.3.4.10 NMAC - N, 7-15-05]

12.3.4.11 DOMESTIC LIMITED LIABILITY COMPANIES:

A domestic limited liability company shall comply with the requirements of the Limited Liability Company Act, NMSA 1978 Sections 53-19-1 through 53-19-74.

A. Filing requirements. A domestic limited liability company shall file all documents required by this section in compliance with NMSA 1978 Section 53-19-9 and 12.3.1 NMAC, General Provisions, and pay applicable fees required in NMSA 1978 Section 53-19-63.

B. Name. A domestic limited liability company shall meet the requirements for names in NMSA 1978 Sections 53-19-3 and 53-19-4, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required. A domestic limited liability company shall execute the documents required by this section in compliance with the general provisions in NMSA 1978 53-19-12.

(1) Articles of organization. A person may form a limited liability company by complying with the requirements of NMSA 1978 Section 53-19-7 and filing articles of organization required by NMSA 1978 Sections 53-19-8, 53-19-9, and 53-19-10. A domestic limited liability company may amend or restate its articles of organization by complying with NMSA 1978 Section 53-19-11.

(2) Statement designating registered agent and office. A domestic limited liability company shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 53-19-5.

D. Conversion and merger.

(1) Converting to corporation, partnership, or limited partnership. Members or managers may convert a domestic limited liability company to a corporation, partnership or limited partnership by meeting the requirements in, and filing a statement, articles of incorporation or a certificate as required by, NMSA 1978 Section 53-19-60.1.

(2) Converting to limited liability company. Shareholders or partners may convert a corporation, partnership, or limited partnership into a domestic limited liability company by complying with, and filing articles of organization as required by, NMSA 1978 Section 53-19-60.

(3) Merging with other entities. A domestic limited liability company may merge with or into one or more domestic limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities by meeting the requirements of NMSA 1978 Section 53-19-61 and 53-19-62 and shall file articles of merger as required by NMSA 1978 Section 53-19-62.1.

E. Dissolution. A domestic limited liability company is dissolved when any of the events listed in NMSA 1978 Section 53-19-39 occur. On dissolution, persons designated with authority in NMSA 1978 Section 53-19-42 shall file, and may amend, articles of dissolution as required by NMSA 1978 Section 53-19-41. A person authorized in the articles of dissolution may revoke the articles of dissolution by filing a revocation statement in compliance with NMSA 1978 Section 53-19-41.

F. Administrative revocation and reinstatement. The commission may administratively revoke a domestic limited liability company by issuing a certificate of revocation under the circumstances provided in NMSA 1978 Section 53-19-66.1. If the commission administratively revokes a domestic limited liability company, it shall notify the company of its right to reinstatement. A domestic limited liability company may apply to the commission for reinstatement following the process, and within the time period provided, in NMSA 1978 Section 53-19-66.2.

[12.3.4.11 NMAC - N, 7-15-05]

12.3.4.12 FOREIGN LIMITED LIABILITY COMPANIES:

A foreign limited liability company shall comply with the applicable requirements of the Limited Liability Company Act, NMSA 1978 Section 53-19-1 through 53-19-74.

A. Filing requirements. A foreign limited liability company shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and pay applicable fees required in NMSA 1978 Section 53-19-63.

B. Name. A foreign limited liability company shall comply with name requirements in NMSA 1978 Section 53-19-50, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required.

(1) Certificate of registration. Before transacting business in New Mexico, a foreign limited liability company shall register with the commission as required by NMSA

1978 Sections 53-19-48 and 53-19-49, and may amend its certificate of registration pursuant to NMSA 1978 Section 53-19-51.

(2) Statement designating registered agent and office. A foreign limited liability company shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 53-19-5.

D. Cancellation of registration. A foreign limited liability company may cancel its registration by complying with the requirements of NMSA 1978 Section 53-19-52.

E. Merger and conversion. A foreign limited liability company may file with the commission a certified copy of merger or conversion documents filed and approved in its state of organization and the filing fee required in NMSA 1978 Section 53-19-63.

F. Administrative revocation and reinstatement. The commission may administratively revoke a foreign limited liability company by issuing a certificate of revocation under the circumstances provided in NMSA 1978 Section 53-19-66.1. If the commission administratively revokes a foreign limited liability company, it shall notify the company of its right to reinstatement. A foreign limited liability company may apply to the commission for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-19-66.2.

[12.3.4.12 NMAC - N, 7-15-05]

12.3.4.13 SANITARY PROJECTS ACT ASSOCIATIONS:

A Sanitary Projects Act association shall comply with the requirements of the Sanitary Projects Act, NMSA 1978 Sections 3-29-1 through 3-29-20.

A. Filing requirements. A sanitary projects act association shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions.

B. Name. A sanitary projects act association shall not use a name that is the same as, or confusingly similar to, the name of another association or corporation in New Mexico, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Documents required.

(1) Certificate of association. A sanitary projects act association shall file a certificate of association that meet the requirements of NMSA 1978 Sections 3-29-16 and 3-29-17 with a filing fee of twenty-five dollars (\$25.00). A sanitary projects act association may file amendments to its articles of incorporation as provided in NMSA 1978 Section 53-29-19 with a filing fee of twenty dollars (\$20.00).

(2) Statement designating registered agent and office. A sanitary projects act association shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 3-29-17.1 and 3-29-17.2.

D. Dissolution. A sanitary projects act association may voluntarily dissolve by complying with the requirements for amending its certificate of association provided in Subsection C of this section.

[12.3.4.13 NMAC - N, 7-15-05]

12.3.4.14 SANITARY PROJECTS ACT ASSOCIATION ANNUAL AND SUPPLEMENT REPORT:

A sanitary projects act association shall file, together with a filing fee of ten dollars (\$10.00), annual and supplemental reports as required by NMSA 1978 Sections 3-29-17.4 and 3-29-17.5 on the following commission-prescribed form available as provided in 12.3.1 NMAC.

RETURN TO: **SANITARY PROJECTS ACT ASSOCIATION**
 NM PUBLIC REGULATION **ANNUAL REPORT**____
 COMMISSION
 CORPORATIONS BUREAU SUPPLEMENTAL REPORT____
 P.O. BOX 1269 For taxable year ending____/____/_____
 SANTA FE NM 87504-1269

Please see instructions on back of page.

1	State or country of incorporation	
2	EXACT	Name
	ASSOCIATION	Address

	NAME AND U.S. MAILING ADDRESS	City, State, Zip	
3	REGISTERED AGENT AND OFFICE LOCATION WITHIN NEW MEXICO FOR SERVICE OF PROCESS		
	(Filing corporation cannot be its own agent)		
	Name		
	Street Address		
	City, Zip		
4	BRIEF STATEMENT OF CHARACTER OF AFFAIRS BEING CONDUCTED		
5	DIRECTORS AND OFFICERS List the names and addresses of ALL the directors and officers and identify every title each director holds. The association's board of directors shall have 5 members.		
	Office/Title	Name	Address (optional) Additional Titles
	Director		
	Director		
	President		
	Vice President		
	Secretary-Treasurer		
	<i>Attach schedule of additional directors and officers if needed</i>		
6	SIGNATURES Under penalties of perjury, we declare and affirm that we have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct.		
	Date	Printed Name	Signature Title
7	PAYMENT OF FILING FEE AND LATE FILING PENALTY		NMPRC USE ONLY

a	Report filing fee	\$ 10.00		
b	Late filing penalty (\$10.00) <i>IRS or PRC extension, if any, must be submitted with this report</i>		Amount Remitted	Postmark Date
c	TOTAL AMOUNT DUE with corporate report (lines a + b)	\$		
	PLEASE DO NOT SUBMIT CASH FOR PAYMENT			

INSTRUCTIONS

This report is required by, and must comply with the requirements of, NMSA 1978 Sections 3-29-17.4 and 3-29-17.5 and 12.3.4.14 NMAC. At the top right of the form, indicate whether the report is an annual report or a supplemental report. If an annual report, fill in the closing date of the taxable year for the report.

1. Indicate the state or country in which the Sanitary Projects Act association was formed and filed its certificate of association. For further instructions regarding New Mexico associations, consult NMSA 1978 Sections 3-29-15, 3-29-16, and 3-29-17.
2. Provide the exact name of the association. If available, attach a mailing label from the Public Regulation Commission.
3. Indicate the address of the registered office of the association in New Mexico, and the name of its registered agent at that address. For additional information on the requirements for registered office and agent, see NMSA 1978 Sections 3-29-17.1 and 3-29-17.2. If within a municipality, the address must be a street address; if outside a municipality, you must include geographic location, including well-known landmarks.
4. Provide a brief statement of the character of the affairs that the association is actually conducting. Attach additional pages if necessary.
5. Indicate the names and respective addresses of the directors and officers of the association. You must indicate who is the President, Vice President, and Secretary-Treasurer. If the association's certificate of association or by-laws confer additional titles on the officers, you may provide these in the right column, but this is not required.
6. Any two of the members of the association, or a receiver or trustee if the association is in the hands of a receiver or trustee, must sign and swear to the statements in the report.
7. An annual report is due on or before the fifteenth day of the fifth month following the end of the association's taxable year; a supplemental report is due within thirty (30)

days of a change listed in NMSA 1978 Section 3-29-17.5. If not filed by this date, you owe a late penalty of ten dollars (\$10.00), unless the Commission granted an extension pursuant to the terms of NMSA 1978 Section 3-29-17.5. If the report is late and the Commission did not grant an extension, insert ten dollars (\$10.00) into box 7b and total the fees owed. Payment of fees must accompany this report or the Commission will not accept it for filing. You may pay by check or money order made out to the New Mexico Public Regulation Commission. If the Commission granted an extension, you must attach at copy of the extension to this report.

[12.3.4.14 NMAC - N, 7-15-05]

12.3.4.15 WATER USERS ASSOCIATIONS:

A water users association shall comply with the requirements in NMSA 1978 Sections 73-5-1 through 73-5-9.

A. Filing requirements. A water users association shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions.

B. Name. A water users association shall comply with the name requirements of NMSA 1978 Section 73-5-2, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Certificate of organization required. A water users association shall file a certificate of organization that meets the requirements of NMSA 1978 Section 73-5-2 in accordance with NMSA 1978 Section 73-5-3 with a filing fee of twenty-five dollars (\$25.00). An association may file amendments to its certificate of organization as provided in NMSA 1978 Section 73-5-5 with a filing fee of twenty dollars (\$20.00).

D. Dissolution. A water users association may voluntarily dissolve by complying with the requirements for amending its certificate of organization provided in Subsection C of this section.

[12.3.4.15 NMAC - N, 7-15-05]

12.3.4.16 WATERWORKS CORPORATIONS:

A waterworks corporation shall comply with the requirements of NMSA 1978 Sections 62-2-1 through 62-2-22.

A. Filing requirements. A waterworks corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions.

B. Required articles of incorporation. A waterworks corporation shall file articles of incorporation that meet the requirements of NMSA 1978 Sections 62-2-1, 62-2-2, and

62-2-3 with the fees required in NMSA 1978 Section 53-2-1, which may be amended by filing in the same manner as the original articles were filed.

C. Dissolution. A waterworks corporation shall comply with the requirements for dissolution provided in NMSA 1978 Sections 62-2-13, and may file the court order or decree of dissolution with the commission, for which no filing fee is required.

[12.3.4.16 NMAC - N, 7-15-05]

The material in this part was derived from that previously filed with the State Records Center:

Docket No. 83-1-CORP, In the Matter of Rules and Regulations for the Corporation and Franchise Tax Department, 2-22-83.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department, 3-15-84.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department, 11-8-84.

History of Repealed Material.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84), repealed 7-15-05.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84), repealed 7-15-05.

Other History.

Only those applicable portions of SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84) were replaced by 12.3.4 NMAC, Other Business Entities, effective 7-15-05.

CHAPTER 4: PARTNERSHIPS [RESERVED]

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: REGISTRATION OF LIMITED PARTNERSHIPS [RESERVED]

PART 3: REGISTRATION OF LIMITED LIABILITY PARTNERSHIPS [RESERVED]

CHAPTER 5: COOPERATIVE ASSOCIATIONS [RESERVED]

CHAPTER 6: BUSINESS PRACTICES - UNIFORM COMMERCIAL CODE

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: FILING PROVISIONS

12.6.2.1 ISSUING AGENCY:

Office of the Secretary of State

[12.6.2.1 NMAC - N, 7/1/2001]

12.6.2.2 SCOPE:

All individuals or business entities who file or access Uniform Commercial Code (UCC) records.

[12.6.2.2 NMAC - N, 7/1/2001]

12.6.2.3 STATUTORY AUTHORITY:

Section 55-9-526 NMSA 1978 (Chapter 139, Laws of 2001).

[12.6.2.3 NMAC - N, 7/1/2001]

12.6.2.4 DURATION:

Permanent.

[12.6.2.4 NMAC - N, 7/1/2001]

12.6.2.5 EFFECTIVE DATE:

July 1, 2001.

[12.6.2.5 NMAC - N, 7/1/2001]

12.6.2.6 OBJECTIVE:

The objective of this rule is to establish standards for uniform requirements to file UCC records. The office of the secretary of state recognizes that the administration of the UCC has an important impact on the economy and upon the rights of the public, in this state and in the United States. The volume of international, interstate and multi-state transactions pursuant to the UCC requires that the administration of the UCC be conducted in a manner that promotes both local and multi-jurisdictional commerce by striving for uniformity in policies and procedures among the various states. As provided in Section 55-9-526 NMSA 1978, the interpretation and implementation of the filing office's duties and responsibilities shall be expressed in a written set of administrative rules. Such rules have the following purposes:

- A. to simplify and improve the administration of the UCC by promoting uniform UCC filing procedures in this state and in the nation;
- B. to simplify the public's ability to discover and understand the UCC filing procedures of the various states by establishing a uniform framework for describing the procedures;
- C. to increase public access to information; and
- D. to increase public accountability of the filing office.

[12.6.2.6 NMAC - N, 7/1/2001]

12.6.2.7 DEFINITIONS:

The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

- A. "Amendment" means a UCC document that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.
- B. "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.
- C. "Continuation" means an amendment that continues the effectiveness of a financing statement.
- D. "Information statement" means a UCC document that indicates that a financing statement is inaccurate or wrongfully filed.
- E. "File number" means the unique identifying information assigned to a financing statement by the filing officer for the purpose of identifying the financing statement and UCC documents relating to the financing statement in the filing officer's information

management system. For a financing statement with an initial financing statement filed prior to July 1, 2001, the file number consists of a 2 digit year, 2 digit month, 2 digit day, and a 3 digit sequential number (yymmddXXX). For a financing statement with an initial financing statement filed after June 30, 2001 but before March 26, 2003, the file number consists of a 4 digit year, 2 digit month, 2 digit day, 3 digit sequential number, and 2 digit check number (yyyymmddXXXcc). For a financing statement with an initial financing statement filed on or after March 26, 2003, the number includes three segments; the year of filing expressed as a four digit number, followed by a unique seven digit number assigned to financing statement by the filing office and ending with a one digit verification alphabetic character assigned by the filing office but mathematically derived from the numbers in the first two segments. The same file format will be used for amendments as initial filing statements, including the verification alphabetic character. Though the verification alphabetic character is not as important here, it guarantees the integrity of the file number. The filing number bears no relation to the time of filing and is not an indicator of priority.

F. "Filing office" and "filing officer" mean the secretary of state's office, operations division.

G. "Filing officer statement" means a statement entered into the filing office's information system to correct an error by the filing office.

H. "Financing statement" means a record or records composed of an initial financing statement and any filed record(s) relating to the initial financing statement.

I. "Individual debtor name" means any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

J. "Initial financing statement" means a UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by Sections-55-9-512, 55-9-513, 55-9-514 or 55-9-518 NMSA 1978.

K. "Organization" means a legal person who is not an individual as defined in item H of this section.

L. "Remitter" means a person who tenders a UCC document to the filing office for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

M. "Secured party of record" means, with respect to a financing statement, a person whose name is provided as the name of a secured party or a representative of the

secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Chapter 55, Article 9 Section 514(a) NMSA 1978, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 55-9-514(b) NMSA 1978, the assignee named in the amendment is a secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

N. "Termination" means an amendment intended to indicate that the related financing statement has ceased to be effective with respect to the secured party authorizing the termination.

O. "UCC" means the Uniform Commercial Code as adopted in this state and in effect from time to time.

P. "UCC document" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a information statement. The word "document" in the term "UCC document" shall not be deemed to refer exclusively to paper or paper-based writings; it being understood that UCC documents may be expressed or transmitted electronically or through media other than such writings. (Note: this definition is used for the purpose of these rules only. The use of the term "UCC document" in these rules has no relation to the definition of the term "document" in Section 55-9-102(a)(30) NMSA 1978.)

[12.6.2.7 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011; A, 7/31/2013]

12.6.2.8 SINGULAR AND PLURAL FORMS:

Singular nouns shall include the plural form, and plural nouns shall include the singular form, unless the context otherwise requires.

[12.6.2.8 NMAC - N, 7/1/2001]

12.6.2.9 PLACE TO FILE:

The filing office is the office for filing UCC documents relating to all types of collateral except for timber to be cut, as-extracted collateral (Section 55-9-102(a)(6) NMSA 1978) and, when the relevant financing statement is filed as a fixture filing, goods which are or are to become fixtures. Regardless of the nature of the collateral, the filing office is the office for filing all UCC documents where the debtor is a transmitting utility.

[12.6.2.9 NMAC - N, 7/1/2001]

12.6.2.10 FILING OFFICE IDENTIFICATION:

In addition to the promulgation of these rules, the filing office will disseminate information of its location, mailing address, telephone and fax numbers, and its internet and other electronic "addresses" through usual and customary means.

A. Addresses to file.

(1) Via postal service: Office of the Secretary of State, State Capitol North - Suite 300, 325 Don Gaspar, Santa Fe, New Mexico 87501.

(2) Via courier service: Office of the Secretary of State, State Capitol North - Suite 300, 325 Don Gaspar, Santa Fe, New Mexico 87501.

B. On-line information service. The filing office offers on-line information services on its web site at www.sos.state.nm.us.

[12.6.2.10 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011]

12.6.2.11 OFFICE HOURS:

Although the filing office maintains regular office hours, it receives transmissions electronically and by telefacsimile 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service. Electronic communications may be retrieved and processed periodically (but no less often than once each day the filing office is open for business) on a batch basis.

[12.6.2.11 NMAC - N, 7/1/2001]

12.6.2.12 UCC DOCUMENT DELIVERY:

UCC documents may be tendered for filing at the filing office as follows:

A. Personal delivery, at the filing office's street address. The file time for a UCC document delivered by this method is the time of delivery of the UCC document to the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will be given the same file time as UCC documents retrieved at the U.S. postal service on the next day the filing office is open for business.

B. Courier delivery, at the filing office's street address. The file time for a UCC document delivered by this method is the time of delivery of the UCC document to the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will be given the same file time as UCC documents retrieved at the U.S. postal service on the next day the filing office is open for business.

C. Postal service delivery, to the filing office's mailing address. Because mail addressed to the filing office is not delivered by the U.S. postal service to the filing office but must be retrieved by the filing office at the postal service, the file time for a UCC document delivered by this method is 8:00 a.m. (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will be given the same filing time as UCC documents retrieved at the U.S. postal service on the next day the filing office is open for business.

[12.6.2.12 NMAC - N, 7/1/2001; A, 7/1/2003]

12.6.2.13 [RESERVED]

12.6.2.14 APPROVED FORMS:

National standard forms for UCC documents as approved by the international association of corporation administrators (IACA) are designated as the standard forms for filing a written financing statement and amendment. These standard forms are provided in Section 55-9-521 NMSA 1978 and are available to the public at the filing office's web site at www.sos.state.nm.us.

[12.6.2.14 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.15 [RESERVED]

12.6.2.16 FORMS SUPPLIERS:

The filing office will make lists of forms suppliers available to prospective filers and remitters upon request.

[12.6.2.16 NMAC - N, 7/1/2001]

12.6.2.17 FILING FEES:

The fees to file UCC documents as set forth in Chapter 55, Article 9, Section 525 NMSA 1978 are as follows.

A. For UCC documents communicated in writing on a form prescribed by the filing office, the fee for filing and indexing a UCC document of one, two or three pages is \$20.00. For a UCC document of at least 4 pages but no more than 25 pages, the fee is \$40.00. If the total number of pages exceeds 25 pages, the fee is \$100.00 plus \$5.00 for each page which exceeds 25 pages. For filings transmitted electronically, the fee is \$10.00 if the record consists of fifteen thousand or fewer bytes. If the record exceeds fifteen thousand bytes, the fee is \$20.00.

B. For UCC documents communicated in writing but not on a form prescribed by the filing office, the fee is double those identified in Subsection A of this section for a record of the same length.

C. Additional fees. In addition to the fees set forth in Subsections A and B of this section, a fee of \$100.00 shall be paid for an initial financing statement that indicates that it is filed in connection with a manufactured-home transaction, and a fee of \$100.00 shall be paid for an initial financing statement that indicates that a debtor is a transmitting utility.

D. An information statement is treated as information to an initial financing statement and is subject to the fees set forth in Subsections A, B and C of this section.

E. Copies. In addition to the fees identified in this section which are established by statute, the fee for copies of UCC records ordered from and provided by the filing office is \$1.00 per page.

[12.6.2.17 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011; A, 7/31/2013]

12.6.2.18 [RESERVED]

12.6.2.19 METHODS OF PAYMENT:

Filing fees and fees for public records services may be paid by the following methods.

A. Cash. The filing officer discourages cash payment unless made in person at the filing office.

B. Checks. Checks made payable to the 'office of the secretary of state', including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, will be accepted for payment. Although, if previous checks were returned unpaid, future payments from the same party must be made by cashiers checks, certified checks, or money orders.

C. Electronic funds transfer. The filing office will accept payment via electronic funds transfer under national automated clearing house association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

D. Prepaid deposit account. A remitter may open an account for prepayment of filing fees. The filing officer will issue an account number to be used by a remitter who chooses to pay filing fees in advance. The filing officer shall deduct filing fees from the remitter's prepaid deposit account when authorized to do so by the remitter.

[12.6.2.19 NMAC - N, 7/1/2001; A, 7/1/2003]

12.6.2.20 OVERPAYMENT AND UNDERPAYMENT POLICIES:

A. Overpayment. The filing office will not refund any amount of overpayment.

B. Underpayment. Upon receipt of a document with an insufficient fee, the filing officer will do one of the following.

(1) A notice of the deficiency will be sent to the remitter and the document shall be held for a period of 10 days from the date of the notice, in anticipation of receipt of the fee. Upon receipt of the fee, the document will be filed as of the time and date of receipt of the full filing fee. If the fee has not been received within 10 days of the date of the notice, the document will be returned to the remitter with a written explanation for the refusal to accept the document; or

(2) The document and the partial payment will be returned to the remitter as provided in 12.6.2.31 NMAC. If necessary, a refund of a partial payment will be delivered at a later date.

[12.6.2.20 NMAC - N, 7/1/2001]

12.6.2.21 PUBLIC RECORDS SERVICES:

Public records services are provided on a non-discriminatory basis to any member of the public on the terms described in these rules. The following methods are available for obtaining copies of UCC documents and copies of data from the UCC information management system.

A. Individually identified documents. Copies of individually identified UCC documents are available in the following forms.

(1) By written request identifying the file number (plus microfilm number for records filed prior to January 1, 2001). The filing office will provide a form to request copies of filings on its web site.

(2) The filing office will provide scanned images of UCC records filed after June 30, 1998 on its web site at no charge.

(3) Bulk copies of documents. Bulk copies of UCC documents are available in the following forms.

(a) TIF images of records filed after June 30, 1998 are available on CD-rom at \$100.00 per disc.

(b) Indexed data are available on disc at \$.10 per record.

B. Data from the information management system. A list of available data elements from the UCC information management system, and the file layout of the data elements, is available from the filing officer upon request. Data from the information management system is available as follows.

(1) Full extract. A bulk data extract of information from the UCC information management system is available on a monthly basis.

(2) Update extracts. Updates of information from the UCC information management system are available on a monthly basis.

(3) Format. Extracts from the UCC information management system are available on CD-rom or on floppy disc for small data extracts.

[12.6.2.21 NMAC - N, 7/1/2001; A, 6/30/2011]

12.6.2.22 FEES FOR PUBLIC RECORDS SERVICES:

Fees for public records services are established as follows.

A. Paper copies of individual documents.

(1) Regular delivery method - \$1.00 per page.

(2) Fax delivery - \$1.00 per page.

B. Data from information management system.

(1) Full extract - \$.10 per record on floppy disc or \$100.00 for one month of TIF images on CD-rom.

(2) Update extracts - \$.10 per record on floppy disc or \$100.00 for one month of TIF images on CD-rom.

[12.6.2.22 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.23 NEW PRACTICES AND TECHNOLOGIES:

The filing officer is authorized to adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to, Article 9 filing data by means of electronic, voice, optical and/or other technologies, and, without limiting the foregoing, to maintain and operate, in addition to or in lieu of a paper-based system, a non-paper-based revised Article 9 filing system utilizing any of such technologies.

[12.6.2.23 NMAC - N, 7/1/2001]

12.6.2.24-12.6.2.25 [RESERVED]

12.6.2.26 ACCEPTANCE AND REFUSAL OF DOCUMENTS - POLICY STATEMENT:

The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC document pursuant to these rules, the filing officer does none of the following:

- A. Determine the legal sufficiency or insufficiency of a document.
- B. Determine that a security interest in collateral exists or does not exist.
- C. Determine that information in the document is correct or incorrect, in whole or in part.
- D. Create a presumption that information in the document is correct or incorrect, in whole or in part.

[12.6.2.26 NMAC - N, 7/1/2001]

12.6.2.27 DUTY TO FILE:

Provided that there is no ground to refuse acceptance of the document as described in 12.6.2.28 NMAC, a UCC document is filed upon its receipt by the filing officer with the correct filing fee and the filing officer will promptly assign a file number to the UCC document and index it in the information management system.

[12.6.2.27 NMAC - N, 7/1/2001]

12.6.2.28 GROUNDS FOR REFUSAL OF UCC DOCUMENT:

The following grounds are the sole grounds for the filing officer's refusal to accept a UCC document for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

- A. Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and address for a debtor, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such an amendment. If the document contains more than one debtor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document, identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were not indexed.

B. Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual or an organization, if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization.

C. Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, shall be refused if the document fails to include a legible secured party (or assignee in the case of an assignment) name and address. If the document contains more than one secured party (or assignee) name or address and some names or addresses are missing or illegible, the filing officer shall refuse the UCC document.

D. Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

E. Identifying information. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by Chapter 55, Article 9, Sections 512, 513, 514 or 518 NMSA 1978, is an initial financing statement.

F. Timeliness of continuation. A continuation shall be refused if it is not received during the six month period concluding on the day upon which the related financing statement would lapse. In the event that the day upon which the related financing statement would lapse falls on a day on which the filing office is not open, the last day is then the first business day immediately preceding the day that the office is closed. A postmark stamped on an envelope by the U.S. postal service does not cause timely filing of the continuation if the continuation is received by the filing office after the last day upon which the related financing statement would lapse.

(1) First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse, although filing by certain means may not be possible on such date if the filing office is not open on such date.

(2) Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

G. Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered by a method described in 12.6.2.19 NMAC. In the event that

more than one filing is submitted with one payment for all filings and one or more filings are refused pursuant to this rule, the filing office will file the accepted filings and receipt the payment received (if the payment is not less than the full filing fee for the total of the accepted filings) for the filings which were acceptable without a refund or credit for the payment due for the unaccepted filing(s) unless the filer demonstrates that the rejected filings should not have been refused under this rule. Otherwise, the filer must correct and resubmit the rejected filing(s) with a new payment.

H. Means of communication. UCC documents communicated to the filing office by a means of communication not authorized by the filing officer for the communication of UCC documents shall be refused.

I. Non-UCC filings not accepted. Filings (such as those pursuant to the Farm Products Secured Interest Act or federal tax liens) which are not included in Chapter 55, Article 9 NMSA 1978 (Chapter 139, Laws of 2001) but submitted on forms prescribed in 12.6.2.14 NMAC will be refused and returned without processing.

J. Transmitting utility debtors. For records that contain a debtor identified as a transmitting utility, the filing officer may require proof of the debtor's authority to operate as a transmitting utility.

[12.6.2.28 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011; A, 7/31/2013]

12.6.2.29 GROUNDS NOT WARRANTING REFUSAL:

The sole grounds for the filing officer's refusal to accept a UCC document for filing are enumerated in 12.6.2.28 NMAC. The following are examples of defects that do not constitute grounds for refusal to accept a document. These are not a comprehensive enumeration of defects outside the scope of permitted grounds for refusal to accept a UCC document for filing.

A. Errors. The UCC document contains or appears to contain a misspelling or other apparently erroneous information.

B. Incorrect names.

(1) The UCC document appears to identify a debtor incorrectly.

(2) The UCC document appears to identify a secured party or a secured party of record incorrectly.

C. Extraneous information. The UCC document contains additional or extraneous information of any kind.

D. Insufficient information. The UCC document contains less than the information required by

Chapter 55, Article 9 NMSA 1978; provided that the document contains the information required in Subsections A through E of 12.6.2.28 NMAC.

E. Collateral description. The UCC document incorrectly identifies collateral, or contains an illegible or unintelligible description of collateral, or appears to contain no such description.

F. Excessive fee. The document is accompanied by funds in excess of the full filing fee.

[12.6.2.29 NMAC - N, 7/1/2001]

12.6.2.30 TIME LIMIT:

The filing officer shall determine whether criteria exist to refuse acceptance of a UCC document for filing not later than the third business day after the date the document would have been filed had it been accepted for filing and shall index a UCC document not so refused within the same time period.

[12.6.2.30 NMAC - N, 7/1/2001]

12.6.2.31 PROCEDURE UPON REFUSAL:

If the filing officer finds grounds under 12.6.2.28 NMAC to refuse acceptance of a UCC document, the filing officer shall return the document, if written, to the remitter along with the filing fee. The filing office shall send a notice that contains the date and time the document would have been filed had it been accepted for filing (unless such date and time are stamped on the document), and a brief description of the reason for refusal to accept the document under 12.6.2.28 NMAC. The notice shall be sent to a secured party or the remitter as provided in Subsection C of 12.6.2. 200 NMAC no later than the third business day after the filing office receives the document.

[12.6.2.31 NMAC - N, 7/1/2001]

12.6.2.32 ACKNOWLEDGMENT:

The filing officer shall submit to the filer or remitter a filing acknowledgment which contains the file number of the filing, the date and time of filing, the lapse date, and the names and addresses for debtors and secured parties as data entered by the filing officer.

[12.6.2.32 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011]

12.6.2.33 OTHER NOTICES:

Nothing in these rules prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC document, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. THE RESPONSIBILITY FOR THE LEGAL EFFECTIVENESS OF FILING RESTS WITH FILERS AND REMITTERS AND THE FILING OFFICE BEARS NO RESPONSIBILITY FOR SUCH EFFECTIVENESS.

[12.6.2.33NMAC - N, 7/1/2001]

12.6.2.34 REFUSAL ERRORS:

If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC document that was refused for filing should not have been refused under 12.6.2.28 NMAC, the filing officer will file the UCC document as provided in these rules with a filing date and time assigned when such filing occurs. The filing officer will also file a filing officer statement (and such demonstration of error shall constitute the secured party's authorization to do so) that states that the effective date and time of filing is the date and time the UCC document was originally tendered for filing, and sets forth such date and time.

[12.6.2.34 NMAC - N, 7/1/2001]

12.6.2.35-12.6.2.126 [RESERVED]

12.6.2.127 UCC INFORMATION MANAGEMENT SYSTEM - POLICY STATEMENT:

The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors named on financing statements which have not lapsed. The rules in this section describe the UCC information management system.

[12.6.2.127 NMAC - N, 7/1/2001]

12.6.2.128 PRIMARY DATA ELEMENTS:

The primary data elements used in the UCC information management system are the following.

A. Identification numbers.

(1) Each initial financing statement is identified by its file number as described in Subsection E of 12.6.2.7 NMAC. Identification of the initial financing statement is entered on written UCC documents or otherwise permanently associated with the record maintained for UCC documents in the UCC information management system. A record is created in the information management system for each initial financing

statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the initial financing statement.

(2) A UCC document other than an initial financing statement is identified by a unique file number assigned by the filing officer. In the information management system, records of all UCC documents other than initial financing statements are linked to the record of their related initial financing statement.

B. Type of document. The type of UCC document from which data is transferred is identified in the information management system from information supplied by the remitter.

C. Filing date and filing time. The filing date and filing time of UCC documents are stored in the information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

D. Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC documents to the UCC information management system using one or more data entry or transmittal techniques.

E. Status of financing statement. In the information management system, each financing statement has a status of active or inactive.

F. Page count. The total number of pages in a UCC document is maintained in the information management system.

G. Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in 12.6.2.202 NMAC.

[12.6.2.128 NMAC - N, 7/1/2001]

12.6.2.129 NAMES OF DEBTORS WHO ARE INDIVIDUALS:

For the purpose of these rules, an "individual debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

A. Individual name. Individual debtor names are stored in files that include only the individual debtor names, and not organization debtor names. Separate data entry fields are established for surnames (last or family names), first personal names (given), and additional name(s) or initial(s) of individuals. The name of a debtor with a single name (e.g., "Cher") is treated as a surname and shall be entered in the individual's surname field. The filing officer assumes no responsibility for the accurate designation of the

components of a name but will accurately enter the data in accordance with the filer's designations.

B. Titles and prefixes before names. Titles and prefixes, such as "doctor," "reverend," "Mr.," and "Ms.," should not be entered in the UCC information management system. However, as provided in Subsection B of 12.6.2.205 NMAC, when a UCC document is submitted with designated name fields, the data will be entered in the UCC information management system exactly as it appears.

C. Titles and suffixes after names. Titles or indications of status such as "M.D." and "esquire" are not part of an individual's name and should not be provided by filers in UCC documents. Suffixes that indicate which individual is being named, such as "senior," "junior," "I," "II," and "III," are appropriate. In either case, as provided in 12.6.2.205 NMAC, they will be entered into the information management system exactly as received.

D. Extended debtor name field. If any portion of the individual debtor name is too long for the corresponding field, the filer is instructed to check the box that indicates the name was too long and enter the name in Item 10 of the addendum Form UCC1AD. A filing officer shall not refuse to accept a financing statement that lacks the debtor's identifying information, provided the record includes this information in an addendum form.

E. Truncation - individual names. For records filed after June 30, 2001 but before March 26, 2003, personal name fields in the UCC database are fixed in length. Although filers provided full names on their UCC documents, a name that exceeded the fixed length was entered as presented to the filing officer, up to the maximum length of the data entry field. The length of data entry name fields are as follows.

- (1) first name: 40 characters.
- (2) middle name: 30 characters.
- (3) last name: 80 characters.
- (4) suffix: 10 characters.

F. For UCC records filed on or after March 26, 2003, name fields in the UCC data base are not fixed in length.

[12.6.2.129 NMAC - N, 7/1/2001; A, 7/1/2003; A, 7/31/2013]

12.6.2.130 NAMES OF DEBTORS THAT ARE ORGANIZATIONS:

This rule applies to the name of an organization who is a debtor or a secured party on a UCC document.

A. Single field. The names of organizations are stored in files that include only the names of organizations and not the names of individuals. A single field is used to store an organization name.

B. Truncation - organization names. The organization debtor field in the UCC database is fixed in length. The maximum length is 160 characters. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field.

[12.6.2.130 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.131 COLLATERAL BEING ADMINISTERED BY A DECEDENT'S PERSONAL REPRESENTATIVE:

The debtor name to be provided on a financing statement when the collateral is being administered by a decedent's personal representative is the name of the relevant decedent. In order for the information management system to function in accordance with the usual expectations of filers and searchers, the filer should provide the debtor name as an individual debtor name. However, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

[12.6.2.131 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.132 COLLATERAL HELD IN A TRUST:

The debtor name to be provided when the collateral is held in a trust that is not a registered organization is the name of the trust as set forth in its organic record(s), if the trust has such a name or, if the trust is not so named, the name of the trust's settlor. In order for the information management system to function in accordance with the usual expectations of filers and searchers, the name of a trust or of a settlor that is an organization should be provided as an organization debtor name, in each case without regard to the nature or character of the debtor. Notwithstanding the foregoing, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

[12.6.2.132 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.133 INITIAL FINANCING STATEMENT:

Upon the filing of an initial financing statement the status of the parties and the status of the financing statement shall be as follows.

A. Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC document names

an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

B. Status of debtor. The status of a debtor named on the document shall be active and shall continue as active until one year after the financing statement lapses.

C. Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless the initial financing statement indicates that it is filed with respect to a manufactured-home transaction, in which case the lapse date shall be thirty years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

[12.6.2.133 NMAC - N, 7/1/2001; A, 6/30/2011]

12.6.2.134 AMENDMENT:

Upon the filing of an amendment the status of the parties and the status of the financing statement shall be as follows.

A. Status of secured party and debtor. An amendment shall affect the status of its debtor(s) and secured party(ies) as follows:

(1) Collateral amendment or address change. An amendment that amends only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by less than all of the secured parties (or, in the case of an amendment that adds collateral, less than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor).

(2) Debtor name change. An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the related initial financing statement and all UCC documents that include an identification of such initial financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal such initial financing statement and such related UCC documents. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

(3) Secured party name change. An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name is added to the index as if it were a new secured party of record.

(4) Addition of a debtor. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except the new debtor

name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.

(5) Addition of a secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.

(6) Deletion of a debtor. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.

(7) Deletion of a secured party. An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.

B. Status of financing statement. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

C. Multiple actions are permissible on an amendment in any combination (such as a debtor name change and a continuation) except for an amendment that is filed to continue and terminate a filing. There is no additional fee for amendments with multiple actions.

D. When an amendment is filed to change the name(s) of the debtor(s) and/or secured party(ies) or their respective addresses, the filing office will add to the record new debtor(s) or secured party(ies) as presented on the amendment. The filing office will not change the spelling of a debtor(s) or secured party(ies) or addresses that exist on the record to conform to the spelling presented on the amendment.

[12.6.2.134 NMAC - N, 7/1/2001]

12.6.2.135 ASSIGNMENT OF POWERS OF SECURED PARTY OF RECORD:

A. Status of the parties. An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record.

B. Status of financing statement. An assignment shall have no effect upon the status of the financing statement.

[12.6.2.135 NMAC - N, 7/1/2001]

12.6.2.136 CONTINUATION:

A. Continuation of lapse date. Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five years.

B. Status of parties. The filing of a continuation shall have no effect upon the status of any party to the financing statement.

C. Status of financing statement. Upon the timely filing of a continuation statement, the status of the financing statement remains active.

[12.6.2.136 NMAC - N, 7/1/2001]

12.6.2.137 TERMINATION:

A. Status of parties. The filing of a termination shall have no effect upon the status of any party to the financing statement.

B. Status of financing statement. A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active in the information management system until one year after it lapses, unless the termination relates to a financing statement that indicates it is filed against a transmitting utility, in which case the financing statement will become inactive one year after it is terminated with respect to all secured parties of record.

[12.6.2.137 NMAC - N, 7/1/2001]

12.6.2.138 INFORMATION STATEMENT:

A. Status of parties. The filing of an information statement shall have no effect upon the status of any party to the financing statement.

B. Status of financing statement. An information statement shall have no effect upon the status of the financing statement.

C. Filing information not affected. An information statement is only made a part of the record for informational purposes and cannot be used to amend or otherwise change filing information.

[12.6.2.138 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.139 PROCEDURE UPON LAPSE:

If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date but no action is then taken by the filing office. On the first anniversary of such lapse date, the information management system renders or is caused to render the financing statement inactive and the financing

statement will no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.

[12.6.2.139 NMAC - N, 7/1/2001]

12.6.2.140-12.6.2.166 [RESERVED]

12.6.2.167 XML DOCUMENTS:

A remitter may be authorized for XML transmission upon the written authorization of the filing officer. The filing officer may authorize a remitter to engage in XML transmissions if the remitter holds an account for the billing of fees by the filing officer and the filing officer determines, after appropriate testing of transmissions in accordance with the filing officer's specifications, that the remitter is capable of transmitting XML documents in a manner that permits the filing officer to receive, index, and retrieve the XML documents. The filing officer may suspend or revoke the authorization when, in the filing officer's sole discretion, it is determined that a remitter's transmissions are incompatible with the filing officer's XML system. A request to be authorized to transmit XML documents shall be in writing and delivered to the filing officer. Upon receipt of a request for authorization, the filing officer shall provide the remitter with necessary information on the requirements for XML transmission, including format, address for transmission, and other necessary specifications.

[12.6.2.167 NMAC - N, 7/1/2003]

12.6.2.168-12.6.2.175 [RESERVED]

12.6.2.176-12.6.2.195 EDI DOCUMENTS:

[RESERVED]

12.6.2.196-12.6.2.198 DIRECT ON-LINE (NON-XML OR EDI) DATA ENTRY PROCEDURES:

[RESERVED]

12.6.2.199 POLICY STATEMENT:

Sections 12.6.2.199 NMAC through 12.6.2.215 NMAC contain rules describing the filing procedures of the filing officer upon and after receipt of a UCC document. It is the policy of the filing officer to promptly file a document that conforms to these rules. Except as provided in these rules, data are transferred from a UCC document to the information management system exactly as the data are set forth in the document. No effort is made to detect or correct errors of any kind.

[12.6.2.199 NMAC - N, 7/1/2001; A, 6/30/2011]

12.6.2.200 DOCUMENT INDEXING AND OTHER PROCEDURES BEFORE ARCHIVING:

A. Date and time stamp. The date and time of receipt are noted on the document or otherwise permanently associated with the record maintained for a UCC document in the UCC information management system at the earliest possible time.

B. Cash management. Transactions necessary to payment of the filing fee are performed.

C. Document review. The filing office determines whether a ground exists to refuse the document under 12.6.2.28.

(1) File stamp. If there is no ground for refusal of the document, the document is deemed filed and a unique identification number is entered on the document or permanently associated with the record of the document maintained in the UCC information management system. The sequence of the identification number is not an indication of the order in which the document was received.

(2) Correspondence. If there is a ground for refusal of the document, notification of refusal to accept the document is prepared as provided in 12.6.2.31 NMAC. If there is no ground for refusal of the document, an acknowledgment of filing is prepared as provided in 12.6.2.31 NMAC. If the UCC document was tendered by EDI transmission or on-line access, such notice or acknowledgment is transmitted to the remitter by EDI transmission or on-line response by transmitting an identification known to the remitter of the UCC document filed as well as the information required by 12.6.2.30 NMAC or 12.6.2.31 NMAC. Acknowledgment of filing or notice of refusal of a UCC document tendered by means other than personal delivery, EDI transmission or on-line transmission is sent to the secured party (or the first secured party if there are more than one) named on the UCC document or to the remitter if the remitter so requests by regular mail or by overnight courier if the remitter provides a prepaid waybill or access to the remitter's account with the courier.

D. Data entry. Data entry and indexing functions are performed as described in 12.6.2.205 NMAC and 12.6.2.206 NMAC.

[12.6.2.200 NMAC - N, 7/1/2001]

12.6.2.201 FILING DATE AND FILING TIME:

The filing date and filing time of a UCC document is determined by 12.6.2.12 NMAC.

[12.6.2.201 NMAC - N, 7/1/2001]

12.6.2.202 LAPSE DATE AND TIME:

A lapse date is calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if a timely continuation statement is filed, but if the initial financing statement indicates that it is filed with respect to a manufactured-home transaction, the lapse date is the same date of the same month as the filing date in the thirtieth year after the filing date. The lapse takes effect at midnight at the end of the lapse date. The relevant anniversary for a February 29 filing date shall be the March 1 in the fifth year following the year of the filing date.

[12.6.2.202 NMAC - N, 7/1/2001; A, 6/30/2011]

12.6.2.203 ERRORS OF THE FILING OFFICE:

The filing office may correct the errors of filing office personnel in the UCC information management system at any time. If the correction is made after the filing office has issued a through date for verification of the key entry that includes the filing date of a corrected document, the filing office shall enter a record (such as a filing officer statement) relating to the relevant initial financing statement which will be placed in the UCC information management system stating the date of the correction and explaining the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system. When correcting errors made by filing office personnel, the filing office will correct the error(s) that were brought to the attention of the filing office and identify the error(s) which were corrected in the filing officer statement (the filing office will not add new data to the record unless the error(s) brought forward to the filing office was due to data not indexed which was included on the original financing statement or an amendment).

[12.6.2.203 NMAC - N, 7/1/2001]

12.6.2.204 ERRORS OTHER THAN FILING OFFICE ERRORS:

An error by a filer is the responsibility of such filer. It can be corrected by filing an amendment or it can be disclosed by an information statement.

[12.6.2.204 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.205 DATA ENTRY OF NAMES - DESIGNATED FIELDS:

A filing should designate whether a name is a name of an individual or an organization and, if an individual, also designates the individual's surname, first personal name, additional name(s) or initial(s) and suffix. When this is done, the following rules shall apply.

A. Organization names. Organization names are entered into the UCC information management system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an organization name.

B. Individual names. On a form that designates separate fields for individual's surname, first personal name, additional name(s) or initial(s) and suffix, the filing officer enters the names into the individual's surname, first personal name, additional name(s) or initial(s) and suffix fields in the UCC information management system exactly as set forth on the form.

C. Designated fields encouraged. The filing office encourages the use of forms that designate separate fields for individual and organization names and separate fields for individual's surname, first personal name, additional name(s) or initial(s) and suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office may cause filings to be ineffective. All documents submitted through direct data entry or through EDI will be required to use designated name fields.

[12.6.2.205 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.206 DATA ENTRY OF NAMES NO DESIGNATED FIELDS:

A UCC document that is an initial financing statement or an amendment that adds a debtor to a financing statement and that fails to specify whether the debtor is an individual or an organization will be refused by the filing office. However, if it is accepted for filing in error, the following rules shall apply.

A. Identification of organizations. When not set forth in a field designated for individual names, a name is treated as an organization name if it contains words or abbreviations that indicate status such as the following and similar words or abbreviations in foreign languages: association, church, college, company, co., corp., corporation, inc., limited, ltd., club, foundation, fund, L.L.C., limited liability company, institute, society, union, syndicate, GmbH, S.A. de C.V., limited partnership, L.P., limited liability partnership, L.L.P., trust, business trust, co-op, cooperative and other designations established by statutes to indicate a statutory organization. In cases where organization or individual status is not designated by the filer and is not clear, the filing office will use its own judgment.

B. Identification of individuals. A name is entered as the name of an individual and not the name of an organization when the name is followed by a title substantially similar to one of the following titles, or the equivalent of one of the following titles in a foreign language: proprietor, sole proprietor, proprietorship, sole proprietorship, partner, general partner, president, vice president, secretary, treasurer, M.D., O.D., D.D.S., attorney at law, Esq., accountant, CPA. In such cases, the title is not entered.

C. Individual and organization names on a single line. Where it is apparent that the name of an individual and the name of an entity are stated on a single line and not in a designated individual name field, the name of the individual and the name of the entity shall be entered as two separate debtors, one as an individual and one as an entity.

D. Individual names. The failure to designate the individual's surname of an individual debtor in an initial financing statement or an amendment adding such debtor to a financing statement will cause a filing to be refused. If the filing is accepted in error, or if only the individual's surname is designated, the following data entry rules apply.

(1) Freestanding initials. An initial in the first position of the name is treated as a first personal name. An initial in the second position of the name is treated as additional name(s) or initial(s).

(2) Combined initials and names. An initial and a name to which the initial apparently corresponds is entered into one name field only [e.g. "D. (David)" in the name "John D. (David) Rockefeller" is entered as "John" (first personal name); "D. (David)" (additional name(s) or initial(s)); "Rockefeller" (individual's surname)].

(3) Multiple individual names on a single line. Two individual names contained in a single line are entered as two, different debtors on separate debtor lines [e.g. the debtor name "John and Mary Smith" is entered as two debtors: "John Smith", and "Mary Smith"]. Otherwise, more than one debtor in a single line will cause the filing to be refused pursuant to Subsection A of 12.6.2.28 NMAC [e.g. the debtor names "John Smith dba Smith Auto Sales"].

(4) One word names. A one word name is entered as a individual's surname [e.g. "Cher" is treated as a individual's surname].

(5) Nicknames. A nickname is entered in the name field together with the name preceding the nickname, or if none, then as the first personal name (e.g., "William (Bill) Jones").

[12.6.2.206 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.207 VERIFICATION OF DATA ENTRY:

The filing officer uses the following procedures to verify the accuracy of data entry tasks. Visual inspection and dual data entry of data entry is employed for data in the following fields except that dual data entry is only utilized for debtor name fields.

- A. Document identification fields.
- B. Document type fields.
- C. Name fields.

D. Address fields.

[12.6.2.207 NMAC - N, 7/1/2001; A, 7/1/2003]

12.6.2.208 INITIAL FINANCING STATEMENT:

A new record is opened in the UCC information management system for each initial financing statement that bears the file number of the financing statement and the date and time of filing.

A. The name and address of each debtor that are legibly set forth in the financing statement are entered into the record of the financing statement. Each such debtor name is included in the searchable index and is not removed until at least one year after the financing statement lapses. The filing office may choose to make debtor names which have lapsed by more than a year available in the search index.

B. The name and address of each secured party that are legibly set forth in the financing statement are entered into the record of the financing statement.

C. The record is indexed according to the name of the debtor(s) and is maintained for public inspection.

D. A lapse date is established for the financing statement, unless the initial financing statement indicates it is filed against a transmitting utility, and the lapse date is maintained as part of the record.

E. In accordance with this rule, a record that is presented for filing and is identified as an "in lieu of" filing is processed the same as an initial financing statement.

[12.6.2.208 NMAC - N, 7/1/2001]

12.6.2.209 AMENDMENT:

A record is created for the amendment that bears the file number for the amendment and the date and time of filing.

A. The record of the amendment is associated with the record of the related initial financing statement in a manner that causes the amendment to be retrievable each time a record of the financing statement is retrieved.

B. The name and address of each additional debtor and secured parties are entered into the UCC information management system in the record of the financing statement. Each such additional debtor name is added to the searchable index and are not removed until at least one year after the financing statement lapses. The filing office may choose to make debtor names which have lapsed by more than a year available in the search index.

C. If the amendment is a continuation, a new lapse date is established for the financing statement and maintained as part of its record.

[12.6.2.209 NMAC - N, 7/1/2001]

12.6.2.210 INFORMATION STATEMENT:

A record is created for the information statement that bears the file number for the information statement and the date and time of filing. The record of the information statement is associated with the record of the related initial financing statement in a manner that causes the information statement to be retrievable each time a record of the financing statement is retrieved.

[12.6.2.210 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.211 GLOBAL FILINGS:

[RESERVED]

12.6.2.212 ARCHIVES – GENERAL:

A. Paper UCC documents.

(1) Storage. Paper UCC records are stored offsite at the state records center and archives.

(2) Retention. Six years after record is filed.

B. Reductions.

(1) Storage. Paper UCC records received prior to January 1, 2001 are microfilmed. Paper UCC records received after June 30, 1998 are scanned to optical disc.

(2) Retention. Filing office has a copy of all microfilm rolls created since 1986 as well as all optical discs created since July, 1998.

C. Databases. UCC data are copied to tape nightly and backup tapes are stored at the state records center and archives.

[12.6.2.212 NMAC - N, 7/1/2001; A, 6/30/2011]

12.6.2.213 ARCHIVES - DATA RETENTION:

All active data in the UCC information management system relating to financing statements is retained offsite at the state records center and archives and are retrievable.

[12.6.2.213 NMAC - N, 7/1/2001]

12.6.2.214 ARCHIVAL SEARCHES:

All UCC data in the information management system is available for search on a computer work station located in the filing office or on the agency's web site (www.sos.state.nm.us).

[12.6.2.214 NMAC - N, 7/1/2001]

12.6.2.215 NOTICE OF BANKRUPTCY:

The filing officer takes no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system. Accordingly, financing statements will lapse as scheduled unless properly continued.

[12.6.2.215 NMAC - N, 7/1/2001]

12.6.2.216-12.6.2.297 [RESERVED]

12.6.2.298 SEARCH REQUESTS AND REPORTS:

The filing officer maintains for public inspection a searchable index for all records of UCC documents that provides for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement to which the record relates and which associates with one another each initial financing statement and each filed UCC document relating to the initial financing statement.

[12.6.2.298 NMAC - N, 7/1/2001]

12.6.2.299 SEARCHES OF UCC RECORDS NOT CONDUCTED BY FILING OFFICE:

- A. Search requests received by the filing office will be returned without processing.
- B. The filing office will provide a search engine on its web site (www.sos.state.nm.us) for use by anyone wanting a search of a record. There is no fee for unlimited use of the search engine. The search logic utilized by the search engine is provided in 12.6.2.300 NMAC and on the agency's web site.

C. The filing office also provides on its web site a search engine that provides non-standard search options. This non-standard search engine and its search results do not meet standard Revised Article 9 search logic and are merely provided for the convenience of the searcher.

[12.6.2.299 NMAC - N, 7/1/2001; A, 7/1/2003]

12.6.2.300 RULES APPLIED TO SEARCH REQUESTS:

Search results are created by applying standardized search logic to the name entered into the search program. Human judgment does not play a role in determining the results of the search. The following, and only the following rules are applied to searches conducted by the filing office search engine.

A. There is no limit to the number of matches that may be returned in response to the search criteria.

B. No distinction is made between upper and lower case letters.

C. Punctuation marks and accents are disregarded.

D. Words and abbreviations at the end of a name that indicate the existence or nature of an organization as set forth in the "Ending Noise Words" list as promulgated and adopted by the international association of corporation administrators as from time to time, are disregarded (e.g., company, limited, incorporated, corporation, limited partnership, limited liability company or abbreviations of the foregoing).

E. The word "the" at the beginning of the search criteria is disregarded.

F. All spaces are disregarded. For first personal name and additional name(s) or initial(s) of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or "J." as the first personal name, "Smith" as the individual's surname, and with the initial "A" or any name beginning with "A" in the additional name(s) or initial(s) field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with "John" or "J." as the first personal name, "Smith" as the surname and with any name or initial or no name or initial in the middle name field.

G. After taking the preceding rules into account to modify the name of the debtor requested to be searched and to modify the names of debtors contained in active financing statements in the UCC information management system, the search will reveal only names of debtors that are contained in active financing statements (unless

inactive records are requested) and, as modified, exactly match the name requested, as modified.

[12.6.2.300 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.301-12.6.2.394 [RESERVED]

12.6.2.395 FILING OFFICE RULES:

The filing officer shall adopt rules of practice describing their objective, the nature and requirements of formal and informal procedures to file UCC records, including an identification of the forms required to file UCC documents, and methods available to access UCC records.

[12.6.2.395 NMAC - N, 7/1/2001]

12.6.2.396 PROCEDURE FOR ADOPTION OF RULES:

Pursuant to the adoption, amendment, or repeal of these rules, the filing officer shall comply with all rules and procedures promulgated by the New Mexico State Records Center and Archives.

[12.6.2.396 NMAC - N, 7/1/2001]

12.6.2.397 AUTHORITY TO ADOPT RULES:

Rules on the administration of the UCC are adopted pursuant to Section 55-9-526 NMSA 1978 and are intended to implement Section 55-9-501 through Section 55-9-526 NMSA 1978.

[12.6.2.397 NMAC - N, 7/1/2001]

12.6.2.398-12.6.2.488 [RESERVED]

CHAPTER 7: COMMERCIAL INSTRUMENTS AND TRANSACTIONS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: CENTRAL FILING OF SECURITY INTERESTS FOR AGRICULTURAL PRODUCTS

12.7.2.1 ISSUING AGENCY:

Office of the Secretary of State.

[1/1/88; Recompiled 10/15/01]

12.7.2.2 SCOPE:

Agricultural lenders and agricultural buyers.

[8/1/98; Recompiled 10/15/01]

12.7.2.3 STATUTORY AUTHORITY:

Food Security Act (USDA), New Mexico Farm Products Secured Interests Act, Sections 56-13-1 to 56-13-14 NMSA 1978.

[8/1/98; Recompiled 10/15/01]

12.7.2.4 DURATION:

Permanent.

[8/1/98; Recompiled 10/15/01]

12.7.2.5 EFFECTIVE DATE:

August 1, 1998, unless a different date is cited at the end of a section or paragraph.

[8/1/98; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.7.2.6 OBJECTIVE:

The development of a statewide centralized system for the filing of effective financing statements or notices of such financing statements with the office of the secretary of state. As required by New Mexico law, the secretary of state shall design and implement the central filing system and shall function as the system operator. Therefore, in conjunction with the implementation of the central filing system and to ensure proper usage and maintenance of the system (as intended by federal and state law), the secretary of state issues the following rules and regulations.

[1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.7 DEFINITIONS:

A. "Buyer in the ordinary course of business" means a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products.

B. "Central filing system" means the system for filing effective financing statements established by the secretary of state pursuant to Section 4 [56-13-4 NMSA 1978] of the Farm Products Secured Interest Act.

C. "Commission merchant" means any person engaged in the business of receiving any farm product for sale, on commission or for or on behalf of another person.

D. "Crop year" for crops grown in soil is the year in which the crop(s) are harvested or are to be harvested. The crop year for animals is the calendar year in which they are born or acquired. The crop year for poultry and eggs is the year in which they are sold or are to be sold.

E. "Debtor" means the person subjecting a farm product to a security interest.

F. "Effective financing statement"

(1) means a statement that:

(a) is an original or reproduced copy thereof;

(b) is signed and filed by the secured party in the office of the secretary of state;

(c) is signed by the debtor;

(2) An effective financing statement must include the following information:

(a) the name and address of the secured party;

(b) the name and address of the debtor;

(c) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of such debtor;

(d) a description of the farm products subject to the security interest;

(e) a list of each county in New Mexico where the farm product is used or produced or to be used or produced;

(f) the crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest;

(g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person but not subject to the particular security interest; and

(h) such other information that the secretary of state may require to comply with Section 1324 of the Food Security Act of 1985, Public Law 99-198 [7 U.S.C. Section 1631] or to more efficiently carry out the secretary of state's duties under the Farm Products Secured Interest Act [56-13-1 to 56-13-14 NMSA 1978];

(3) shall be amended in writing within three months, similarly signed and filed, to reflect material changes;

(4) remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refiling or filing a continuation statement within six months before the expiration of the five-year period;

(5) lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;

(6) is accompanied by the requisite filing fee set pursuant to Section 6 [56-13-6 NMSA 1978] of the Farm Products Secured Interest Act; and

(7) substantially complies with the requirements of this section even though it contains minor errors that are not seriously misleading; provided, however, for the purpose of this paragraph, errors in social security numbers and internal revenue service taxpayer identification numbers do not constitute minor errors. An effective financing statement may for any given debtor cover more than one farm product located in more than one county.

G. "Farm product" means an agricultural commodity, as species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations and includes a list of farm products that are covered by this general definition as prepared by the secretary of state.

H. "Person" means any individual, partnership, corporation, trust or any other business entity, and the singular includes the plural.

I. "Security interest" means an interest in farm products that secures payment or performance of an obligation.

J. "Selling agent" means any person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farming operations.

K. "System operator" means the operations division within the office of the secretary of state.

[8/1/98; Recompiled 10/15/01]

12.7.2.8 FILING AN EFFECTIVE FINANCING STATEMENT:

A. An effective financing statement (form EFS-1) must be filed with the office of the secretary of state. Upon receipt, the EFS-1 will be stamped with the date and time received which will be used as the date of filing. The fee for filing an effective financing statement is eleven dollars and fifty cents (\$11.50) if filed on the form prescribed by the secretary of state. The fee for the use of non-standard forms is an additional three dollars (\$3.00). In addition, the fee for attachments to an effective financing statement submitted for filing is fifty cents (\$.50) per page. An EFS-1 must be signed by the debtor(s) and the secured party or parties.

B. Effective financing statements may only be used to file a security interest only on a farm product(s) produced in New Mexico. The county in which the farm product(s) is produced must be identified on the EFS-1. A code identifying the county must be provided as well as the name of the county.

C. The crop year for each product must be identified on the EFS-1. If no crop year is identified, then all years covered by the filing will be presumed.

[1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.9 AMENDING AN EFFECTIVE FINANCING STATEMENT:

A. An existing EFS-1 may be amended by filing an amended effective financing statement (form EFS-2) with the office of the secretary of state. The fee for filing form EFS-2 is eleven dollars and fifty cents (\$11.50) if the form prescribed by the secretary of state is utilized. An additional three dollars (\$3.00) will be charged for non-standard forms. The fee for attachments filed with an EFS-2 is fifty cents (\$.50) per page. An amendment requires the signatures of the debtor(s) and the secured party or parties.

B. If a written explanation is not submitted with the amendment identifying what portion of the original filing is being amended or the reason for the amendment, then the amendment as submitted will replace the original filing in its entirety.

[1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.10 CONTINUING OR TERMINATING AN EFFECTIVE FINANCING STATEMENT:

A. Form EFS-3 (continuation or termination of an effective financing statement) must be used to continue or terminate an existing effective financing statement.

B. An EFS-3 is filed with the office of the secretary of state and must include the signatures of all secured party(ies) if filed to continue an existing financing statement. The effectiveness of the original effective financing statement will be continued for five (5) years from the last date to which the filing was effective.

C. The signatures of all secured parties are required if an EFS-3 is filed to terminate an existing financing statement.

D. Continuation or termination fees are:

(1) the fee for filing a continuation or a termination is eleven dollars and fifty cents (\$11.50) if filed on the EFS-3 form prescribed by the secretary of state;

(2) the use of a non-standard form is an additional three dollars (\$3.00) or fourteen dollars and fifty cents (\$14.50) if an EFS-3 is not used;

(3) an additional fifty cents (\$.50) per page for each additional page filed as an attachment.

[1/1/88, 8/1/98, 7/1/99; Recompiled 10/15/01]

12.7.2.11 QUARTERLY REPORTS:

A. Each quarter, the secretary of state prepares listings of farm products as requested by registered buyers. The listings are provided according to farm product; and

(1) in alphabetical order according to the last name of the individual debtors (for those debtors doing business other than as individuals, the first word in the name of such debtor); or

(2) in numerical order according to the social security number of the debtor (for those debtors doing business other than as individuals, the internal revenue service taxpayer identification number); or

(3) geographically by county; or

(4) by crop year.

B. The quarterly lists are distributed no later than the tenth day after the end of a quarter. Quarters end on March 31, June 30, September 30 and December 31 of each year. All filings (effective financing statements, continuations, amendments or terminations) received by the office of the secretary of state by the last business day of a quarter will be included in the listings for that quarter. Quarterly lists will be distributed by certified mail, return receipt requested.

C. The secretary of state will prepare special lists upon request. A special list is a list limited to fewer than all counties or less than all crop years. Special lists are prepared alphabetically or numerically.

D. The fees for quarterly lists are:

- (1) all filings for a farm product (paper) - \$300.00 per product;
- (2) all filings for a farm product (microfiche) - \$150.00 per product;
- (3) special lists - \$150.00 per product;
- (4) master list (all filings for all products) - \$300.00.

E. The fees indicated above are for one year. The above fees will be pro-rated for buyer registrations during a calendar year based on twenty-five percent (25%) of the annual fee per quarter. A registrant must register before the last ten days of a quarter to receive the listing for that quarter. The previous quarterly report will also be available for twenty-five percent (25%) of the annual fee. The registration fee is not pro-rated.

F. Payments for fees pursuant to this act may be made in cash or by check or money order made payable to the secretary of state.

[1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.12 REGISTRATION:

A. Buyers of farm products, commission merchants, selling agents and other persons must register with the secretary of state to receive the quarterly reports identified in Section 11 [now 12.7.2.11 NMAC]. Registration is thirty dollars (\$30.00) annually and must be made on the form prescribed by the secretary of state (Form EFS-4). The secretary of state will mail renewal notices to registrants of record at the beginning of each calendar year.

B. Upon registering, the registrant must indicate the types of reports requested and the desired medium (paper or microfiche). The type of sequence, whether alphabetical or numerical, and the type of listing (regular, special or master) must also be indicated. All fees (registration plus lists) must be paid at the time of registration by check or money order made payable to the secretary of state.

C. Registrations are effective on the date that a properly completed form and all required fees are accepted by the secretary of state. Fees for quarterly reports will be pro-rated based on twenty-five percent (25%) of the annual fee for each report requested. If a registrant registers before the last ten (10) days preceding the end of a quarter, the fee paid will also include a charge for the most current quarterly listing for the product(s) requested (at twenty-five percent (25%) of the annual fee per listing). The registration fee is not pro-rated.

[1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.13 INQUIRIES:

A. Any person may request from the office of the secretary of state information regarding particular debtors. The request may be made either in person, by telephone or in writing. At the time the inquiry is made, the operations division staff will search the computerized database of agricultural filing records and provide orally a preliminary confirmation of the debtor(s). A written confirmation of the search and the information provided will be mailed to the inquiring party before the end of the next business day.

B. Inquiries may be made Monday through Friday, with the exception of official state holidays, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 4:00 p.m. (mountain time). If systems are down for any other unforeseen reason, the secretary of state will suspend inquiries until the office is prepared to resume such functions.

C. The fee for each inquiry, which includes the oral response and the confirmation notice, is fifteen dollars (\$15.00) per debtor name or any variation of that name. A billing of the inquiry will be included with the written confirmation, and payment must be made within fifteen (15) calendar days. The inquiring party will be responsible for any communication expenses.

[1/1/88, 8/1/98; Recompiled 10/15/01]

CHAPTER 8: TRADE PRACTICES AND REGULATIONS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO

12.8.2.1 ISSUING AGENCY:

New Mexico Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87507, telephone: (505) 476-4565, website: www.sblpes.state.nm.us.

[12.8.2.1 NMAC - Rp, 12.8.2.1 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.2 SCOPE:

Provisions for Part 2 apply to licensed professional surveyors engaging in the practice of surveying and to licensed professional engineers who are authorized by the Engineering and Surveying Practice Act.

[12.8.2.2 NMAC - Rp, 12.8.2.2 NMAC, 5/01/2007]

12.8.2.3 STATUTORY AUTHORITY:

NMSA 1978, Section 61-23-10 (D) prescribes that "the professional surveying committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all individuals licensed pursuant to the Engineering and Surveying Practice Act."

[12.8.2.3 NMAC - Rp, 12.8.2.3 NMAC, 5/01/2007]

12.8.2.4 DURATION:

Permanent.

[12.8.2.4 NMAC - Rp, 12.8.2.4 NMAC, 5/01/2007]

12.8.2.5 EFFECTIVE DATE:

5/01/2007, unless a later date is cited at the end of a section.

[12.8.2.5 NMAC - Rp, 12.8.2.5 NMAC, 5/01/2007]

12.8.2.6 OBJECTIVE:

The objective of part 2 is to define the types of surveying, and to establish a minimum standard of professional competency and performance to govern the performance of surveying and other survey-related services by licensed professional surveyors in New Mexico. It is the responsibility of the licensee to meet or exceed the minimum standards contained herein and to apply the technical knowledge and skill that would be applied by other qualified licensees performing the same task in the same area at the same time.

[12.8.2.6 NMAC - Rp, 12.8.2.6 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.7 DEFINITIONS:

A. Professional competency and performance: A surveyor shall provide competent representation to the client, their employer and the public interest. Competent surveying practice requires the knowledge, skill, thoroughness, and

preparation reasonably necessary for the engagement including the assessment of which his/her skills, knowledge and experience befits the needs of the client and to advise or otherwise direct or decline the work based on that assessment of their personal and professional competency.

B. Types of Surveying:

(1) Boundary surveying is the determination, description, portraying, measuring or monumentation of the boundaries of a tract of land and reflecting the relationship of the boundaries of the surveyed property (i.e. contiguity, gaps, or overlaps) with its adjoiners, where ascertainable from record documents or from field evidence gathered during the process of conducting the survey of the property being surveyed. If the surveyed property is composed of multiple parcels, the extent of any gaps or overlaps between those parcels shall be identified.

(2) Improvement location reporting is the preparation of a report which complies with all of the requirements and limitations of an improvement location report as set forth in 12.8.2.10 NMAC, and which is issued to a title, abstract or escrow company or a lending institution for their exclusive use in determining such things as insurability or value of a tract of land.

(3) Topographic surveying is the measurement and portrayal of the configuration of the ground or the location and description of objects thereon. It can include the plotting and description of property boundary monuments and property lines on a topographic map. Unless a boundary survey is being conducted simultaneously, only existing monuments found at the time of the survey are shown, and no boundary monuments are set; and the following words are prominently shown on the topographic map: THIS IS NOT A BOUNDARY SURVEY OR A RIGHT-OF-WAY SURVEY. APPARENT PROPERTY CORNERS, RIGHT-OF-WAY LINES, OR PROPERTY LINES AS SHOWN ARE DERIVED FROM RECORD SURVEY PLATS, RIGHT-OF-WAY MAPS, OR DEEDS REFERENCED HEREON AND ARE NOT GUARANTEED OR TO BE RELIED ON FOR THE ESTABLISHMENT OF PROPERTY LINES.

(4) Easement surveying is the description, portrayal, or monumentation of easement(s) only.

(5) Right-of-way surveying is boundary surveying of existing right-of-way lines, which may include the boundary survey of adjoining property lines, for locating existing or proposed right-of-way.

(6) Condominium surveying - when performing or preparing a survey that falls under the Condominium Act (Article 7B), the survey requirements (Article 47-7B-9 or subsequent amendments) of said act shall be the standards to which the survey shall be held.

(7) Preparation of legal descriptions - the preparation of legal descriptions is a form of surveying and, other than the citing of a lot or parcel for reference or identification purposes of a duly recorded plat, must be performed by a licensed professional surveyor.

(8) An ALTA/ NSPS survey is a boundary survey. Therefore, a plat of survey must be recorded. The filed survey can be a separate plat and need not include all the detail of the ALTA/NSPS survey but only the improvements affecting the boundary are required to be shown (See Subsection J of 12.8.2.9 NMAC).

(9) Control surveying is the establishment of horizontal or vertical controls which will be the basis for future phases of a project including, but not limited to: extraction of geospatial data, engineering design projects, construction staking, surveys to layout horizontal and vertical alignments, topographic surveys using field methods, collection of topographic and planimetric data using photogrammetric methods and construction surveys of engineering or architectural public works projects.

(10) Unclassified surveying is surveying not defined above.

C. "Dimensions means" the direction, expressed either as a bearing or an azimuth, and the length of a survey line.

D. "Easement means" a right that the public, a person or an entity holds in the land of another.

E. "Monument means" an object intended to mark a property boundary or a point of reference.

F. "Surveyor means" a professional surveyor licensed under the Engineering and Surveying Practice Act.

G. "Tract or lot means" a parcel of land in separate ownership, where a unique parcel identification number(s) has been or will be assigned by the county in which the tract or lot is situated. It can also be a leasehold set off for separate ownership or a leasehold for other uses.

H. "Supplemental surveying work means" surveying work performed in order to densify, augment and enhance previously performed surveying work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system.

I. "GPS" is global positioning system, a.k.a. GNSS.

J. "Classes of surveys":

(1) **"Urban means"** a survey within or adjoining a municipality or a survey, regardless of location, of land zoned for or intended for use for multifamily, commercial or industrial purposes.

(2) **"Suburban means"** a survey, which is not an urban survey, of land zoned for or intended for use for residential purposes.

(3) **"Rural means"** a survey, which is neither an urban nor suburban survey.

K. "Positional error means" the error inherent in setting or measuring from a monument and is added to the error expressed as a ratio for a closed traverse.

L. "Positional accuracy" is an assessment of the closeness of the location of spatial objects in relation to their true positions geospatially.

M. "GNSS" is global navigational satellite system, a.k.a. GPS or global positioning by satellites.

N. "Geospatial" is the relative position of features on, above, or below the earth's surface defined by a localized or globalized system.

O. "OPUS" is the online positioning user service as provided by the national geodetic survey, national oceanic atmospheric administration, United States (U.S.) government.

P. "Digital geospatial data" is data in addition to, or as an alternative to, written or drawn media containing geospatially referenced electronic or computerized data, including land information systems (LIS) and geographic information systems (GIS). It includes data such as produced by optical and digital photographic comparison, scanners, lidar or radar, laser, infrared or ultrasonic measuring and UAV/UAS/airborne sensors.

Q. "Basis of Bearing" is the basis of bearings or azimuth used in the survey and required to be depicted for boundary surveys, easement surveys, right-of-way surveys, ALTA/NSPS surveys and control surveys and shall be shown and based upon:

(a) New Mexico (NM) state plane grid coordinates with specifics to horizontal datum, zone, and convergence angle if pertinent;

(b) a specific line between two points either found or re-established set points as shown on an existing filed plat or included as part of a deed description;

(c) measured and published geodetic control values based upon an online position user service (OPUS) solution or geodetic control stations;

(d) a longitudinal line is acceptable using GPS or GNSS observations or other means for determining the longitude of a basis of bearings as long as the longitudinal value is published on the survey with the method used in determining the longitude;

(e) "GPS North" or similar notations without explanation as described above is unacceptable; and the use of "assumed bearings" is prohibited.

A basis of bearings for legal descriptions and unclassified surveys is required only if the performing surveyor determines it is necessary for others to retrace the survey.

[12.8.2.7 NMAC - Rp, 12.8.2.7 NMAC, 5/01/2007; A, 7/24/2016; A, 3/12/2022]

12.8.2.8 REQUIREMENTS:

Whenever a professional surveyor or a professional engineer undertakes any surveying as authorized in the Engineering and Surveying Practice Act, the licensee shall determine which type of surveying activity is being conducted from the definitions in Subsection A of 12. 8.2.7 NMAC shall then conform to the requirements set forth in 12.8.2.9 NMAC through 12.8.2.14 NMAC for that type of surveying and must also comply with accuracy standards in 12.8.2.16 NMAC when applicable. If the surveying is not defined, then the surveyor shall conform to the requirements for unclassified surveying set forth in 12.8.2.15 NMAC.

[12.8.2.8 NMAC - Rp, 12.8.2.8 NMAC, 5/01/2007]

12.8.2.9 BOUNDARY SURVEYING:

When performing a boundary survey, the surveyor shall be responsible for accomplishing all of the following.

- A.** Obtain copies of relevant documents necessary to perform the survey.
- B.** Review recorded plats and plats known to and available to the surveyor that are germane to the tract being surveyed.
- C.** Make a site visit and inspect the subject property and look for evidence of existing monuments and for evidence of possession and usage.
- D.** Determine the relative location on the ground of all found existing monuments which pertain to the survey using procedures which achieve the minimum accuracy standards in 12.8.2.16 NMAC.
- E.** Tag found monuments which are accepted by the surveyor and pertain to the boundary being surveyed with a metal tag, bearing the surveyor's license number, attached to the monument with a metal wire or strap; monuments set by a government agency which are clearly identified by their markings need not be tagged.

F. Set new monuments in conformance with 12.8.2.17 NMAC at all corners of the tract being surveyed using procedures which achieve the minimum accuracy standards in 12.8.2.16 NMAC, unless a permanent monument already exists.

G. Follow the rules and procedures, except for the accuracy and monumentation standards, in the applicable *manual of surveying instructions* for the survey of the public lands of the U.S., prepared by the United States bureau of land management, if the tract being surveyed pertains to the United States survey of public lands in any way including the following:

(1) is a section or an aliquot part of a section;

(2) is a small holding claim, private claim, land grant, mining claim or any other tract described in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions*);

(3) has a boundary which is a boundary of a tract described in Paragraph (1) and (2) of Subsection G of 12.8.2.9 NMAC;

(4) prior surveys and physical evidence within and adjacent to the section being surveyed should be carefully considered as evidence of original corner locations.

H. Never move, remove nor obscure an existing monument unless it is first properly referenced and all dimensions necessary to preserve its location are reported on a recorded plat.

I. Updating a prior survey - If an existing survey is updated for any reason, the surveyor shall comply with the minimum standards in effect at the time of the update unless the update is only to correct a minor scrivener's error. If the update is solely to bring the survey into compliance with the minimum standards and the location of the boundary has not changed, remonumentation is not required unless the original monumentation was not in compliance with the minimum standards in effect at the time the original survey was performed.

J. Prepare a plat of the survey, unless the survey is only the re-monumentation of corners of a tract, shown on a recorded plat, where some of the existing corners of the tract are recovered, whose measured dimensions on the ground are reasonably close to the record dimensions. A plat of survey must be recorded only if it is a survey of a parcel for which no previously recorded plat exists or, in the case of remonumentation, the surveyor finds that field measurements are significantly different from record dimensions. The plat may contain as many sheets as required, which meet the size and material requirements of the state statute and shall contain at least the following:

(1) the name, address and registration number of the surveyor responsible for the survey;

(2) a certificate followed by the dated signature and seal of the surveyor responsible for the survey stating that the surveyor conducted an actual survey on the ground and is responsible for the survey and that the survey and plat meet the minimum standards for surveying in New Mexico; only one surveyor's signature and seal shall appear on a plat; and the following model certification is considered to be an example of the minimum that the surveyor should certify to:

I, _____ (surveyor's name) _____, New Mexico Professional Surveyor No. _____ (surveyors' license number), do hereby certify that this Boundary Survey Plat and the actual survey on the ground upon which it is based were performed by me or under my direct supervision; that I am responsible for this survey; that this survey meets the Minimum Standards for Surveying in New Mexico; and that it is true and correct to the best of my knowledge and belief. I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act and that this instrument is a Boundary Survey Plat of an existing tract or tracts.

(Surveyor's Name) _____ PS No. _____ Date _____;

(3) a title which shall include the county in which the survey is located and at least the following:

(a) the lot, block or tract number and subdivision or district name if the survey is within a subdivision or conservancy district;

(b) the city, grant, small holding, mining or private claim, or similar area in which the survey is located;

(c) if neither subparagraph (a) nor (b) applies, then the section(s), township(s) and range(s) in which the survey is located; if the survey is not within a section, then the projected section(s) shall be stated and designated as such if required by the county clerk;

(4) a north arrow, equivalent scale and graphic scale for each sheet of the main drawing;

(5) a description of all monuments found or set, which shall include identifying characteristics such as the material, shape and all pertinent information stamped or printed on any cap or tag and the diameter (or the equivalent if other than round) when possible; a found monument which the surveyor has rejected as a true property corner shall be designated as such;

(6) the basis of bearings used in the survey;

(7) a description of pertinent documents, including filing information as applicable, used to determine the boundaries and to prepare the plat of survey; if a

particular document is not of record, this fact shall be so stated and all information used from the document shall be shown on the plat; if significant discrepancies exist between the documents used to determine the boundaries, the surveyor shall disclose the same and shall disclose which document was ultimately relied upon to determine the boundaries;

(8) the boundary being surveyed including the dimensions as measured on the ground and the record dimensions unless the two are equivalent in which case it shall be so stated; all dimensions which pertain to the determination of the tract boundaries, and a tie to a suitable, permanent, existing monument;

(9) all dimensions which pertain to the restoration of a lost or obliterated corner or the subdividing of a section under Subsection G of 12.8.2.9 NMAC;

(10) the location and description of any evidence of a boundary or line of occupation including such things as a fence, building, wall or the remains thereof which is on a boundary or close enough to a boundary to be confused with the boundary;

(11) the location and description of all easements known or disclosed to the surveyor which cross, adjoin or serve a surveyed tract together with the recording data for the document that created the easement and the location and description of any visible structures which encroach upon said easement;

(12) the radius, central angle, length and chord dimensions for all curves;

(13) the lot number, tract number, other designation or the apparent owner of all adjoining tracts with the recording data of the last recorded plat;

(14) the relationship of the boundaries of the surveyed property (i.e. contiguity, gaps, or overlaps) with its adjoiners, where ascertainable from record documents and from field evidence gathered during the process of conducting the survey of the property being surveyed; if the surveyed property is composed of multiple parcels, the extent of any gaps or overlaps between those parcels shall be identified;

(15) the location and description of any evidence of use by a nonowner of the surveyed tract including such things as a road, trail, path, pipeline or utility which crosses a boundary of the tract;

(16) a letter or number providing a unique designation of each surveyed tract on a plat with more than one tract;

(17) access easement; if the surveyed tract is not contiguous to a public right-of-way, any access easement of record which is known to the surveyor shall be described on the plat and its location shall be determined; if no easement is known to the surveyor, a note prominently shown shall disclose that fact;

(18) the area of each surveyed tract.

K. Record the plat prepared under Subsection J of 12.8.2.9 NMAC with the county clerk of the county or counties in which the survey is located. A plat of survey must be recorded only if it is a survey of a parcel for which no previously recorded plat exists or, in the case of remonumentation, the surveyor finds that field measurements are significantly different from record dimensions. The plat shall be recorded within sixty days of completion. A plat which requires the approval of a government agency is complete upon final approval. Any other plat is complete when the surveyor signs or seals it.

[12.8.2.9 NMAC - Rp, 12.8.2.9 NMAC, 5/01/2007; A, 7/24/2016; A, 3/12/2022]

12.8.2.10 IMPROVEMENT LOCATION REPORT:

A. Improvement location reporting is the preparation of an improvement location report which is a narrative report, which may be accompanied by a sketch, and which is issued only to a title, abstract or escrow company or a lending institution for their exclusive use; it shall not be represented by the surveyor as being a property boundary survey.

B. If the report contains a sketch, the sketch shall contain the following words which are printed as large and as prominently as any other words upon the sketch: "This report is not for use by a property owner for any purpose. This is not a boundary survey and may not be sufficient for the survey exception from an owner's title policy. It may or may not reveal encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate boundary survey."

[12.8.2.10 NMAC - Rp, 12.8.2.10 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.11 TOPOGRAPHIC SURVEYING:

On topographic surveys with contour lines, the vertical accuracy of ninety percent of the points tested shall be within one half of the contour interval, unless otherwise stated on the survey. Every topographic map shall comply with 12.8.2.14 and 12.8.2.16 NMAC.

[12.8.2.11 NMAC - Rp, 12.8.2.11 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.12 EASEMENT SURVEYING:

A. When performing easement surveying, the surveyor shall use procedures in any field measurements which achieve the minimum accuracy standards in 12.8.2.16 NMAC.

B. If the easement does not run parallel to a boundary of the tract in which it is located, then the surveyor shall prepare a plat which shows the dimensions of the

easement and conforms with Paragraphs (1), (2), (3), (4), (5) and (6) of Subsection J of 12.8.2.9 NMAC, and complies with one of the following:

(1) shows ties to record monuments at the beginning and ending of the easement and at least at every mile along the easement; or

(2) shows the coordinates of the beginning, ending and all angle points in accordance with the New Mexico coordinate system and shows the grid bearing and ground distance between said points; or

(3) shows ties to existing corners of a subdivision in which the easement is located.

C. These field procedures and subsequent plat preparation or legal description must be conducted under the responsible charge of a professional surveyor.

D. Unless the easement runs parallel to the boundary of the tract, ties from points on the easement to lot corners shall be shown for every tract the easement is affecting so that when a subsequent survey is being prepared on the tract, the location can be defined based upon the ties.

[12.8.2.12 NMAC - Rp, 12.8.2.12 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.13 RIGHT OF WAY SURVEYING:

When performing right of way surveying, the surveyor shall do all of the following.

A. Obtain a copy of the last recorded deed for the tract(s) affected by the existing or contemplated right of way and obtain copies of all existing right of way maps and conveyance documents available.

B. Obtain a copy of all available, relevant recorded plats and all plats and maps known to be available to the surveyor for the tract(s) affected by the existing or contemplated right of way.

C. Make a diligent search on the ground, including the use of a metal detector, for all existing monuments, which pertain to the property boundaries intersecting the public highway right of way corridor being surveyed.

D. Determine the relative location on the ground of all found existing monuments, which pertain to the survey using procedures to achieve the minimum accuracy standards in 12.8.2.16 NMAC.

E. [RESERVED]

F. Set new monuments conforming to 12.8.2.17 NMAC on the right of way limit lines at all changes in direction and at all points where property lines intersect, using procedures which achieve the minimum accuracy standards in 12.8.2.16 NMAC, unless a permanent monument exists; when monumenting existing right of way limit lines, monuments at intersecting property lines need not be set.

G. Follow the rules and procedures, except for the accuracy and monumentation standards, in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions*) prepared by the United States bureau of land management, if the tract being surveyed pertains to the United States survey of public lands in any way including the following:

(1) is a section or an aliquot part of a section;

(2) is a small holding claim, private claim, land grant, mining claim or any other tract described in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions*);

(3) has a boundary which is a boundary of a tract described in Subsection G of 12.8.2.13 NMAC, paragraphs (1) or (2) above.

H. Whenever a tract of land is to be severed by right of way acquisition, the surveyor shall locate property lines that intersect the right of way limits. The surveyor shall use all available documents, field data, including parol evidence and land title information to determine the length, location and bearing of the severed property line relative to the right of way limits. This includes surveying as many additional parcel boundaries as necessary which connect to the property lines intersecting the right of way in order to accurately locate the property lines affected by the contemplated right of way.

I. [RESERVED]

J. Prepare a plat of survey, containing as many sheets as required, and which contains at least the following:

(1) the name, address, and registration number of the surveyor responsible for the survey;

(2) a certificate followed by the signature and seal of the surveyor responsible for the survey and stating that the survey and plat meet the minimum standards for surveying in New Mexico;

(3) a title which shall include at least the following:

(a) the project number;

- (b)** the project's control number (PCN) of the project (if applicable);
- (4)** the section(s), township(s), range(s), grant or reservation, municipality, and county(s) in which the project is located;
- (5)** a north arrow, equivalent scale, graphic scale, date of the fieldwork and a location/vicinity map showing where the project is located;
- (6)** a description of all monuments found or set; a found monument, which the surveyor rejected as a property corner, shall be designated as such;
- (7)** the basis of bearing used shall comply with the requirement Paragraph (6) of Subsection J of 12.8.2.9 NMAC;
- (8)** a description of all documents used to determine the boundary of any tract surveyed and to prepare the plat of survey; the recording information shall be stated; if the document is not of record, all information used from the document shall be shown on the plat;
- (9)** the pertinent boundaries of the tract abutting the right of way being surveyed including the dimensions as measured on the ground and the record dimensions unless the two are equivalent;
- (10)** the location and description of any evidence of a boundary line shall comply with Paragraph (10) of Subsection J of 12.8.2.9 NMAC;
- (11)** all dimensions which pertain to the restoration of a lost corner or the subdivision of a section under Subsection G of 12.8.2.13 NMAC;
- (12)** the location of permanent improvements lying in close proximity to the new right of way limit line and which may be affected by the contemplated acquisition of land for public use;
- (13)** the radius, central angle, length and the chord bearing and dimension for all curves;
- (14)** the lot number, tract number, other designation or the apparent owner of all adjoining tracts with the recording data of the last recorded plat;
- (15)** the name of the owner of the parcel from which right of way is being acquired;
- (16)** the location and description of all easements known or disclosed to the surveyor which cross, or adjoin the right of way;

(17) a letter/number or combined letter and number designation of each parcel acquired for right of way.

K. Record the plat prepared under Subsection J of 12.8.2.13 NMAC with the county clerk of the county or counties in which the project is located. The plat shall be recorded within sixty days of completion. The plat is considered complete when the surveyor signs and seals it. For the New Mexico department of transportation (NMDOT) right of way surveys, the plat(s) may carry multiple surveyor certifications, if necessary, in order to reflect specific areas of individual responsibility when the scope, duration, or complexity of a NMDOT right of way project so requires. Certifications of all other right of way surveys shall carry a single signature and seal of the surveyor responsible for the survey.

[12.8.2.13 NMAC - Rp, 12.8.2.13 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.14 CONTROL SURVEYING REPORTING:

Whenever a professional surveyor undertakes control surveying as defined in 12.8.2.7 NMAC, where the coordinates and elevations of the control points established by the survey will be relied upon by professionals other than the original surveyor for future phases of the work, the licensee shall prepare a control survey report and shall provide the report to the prime client and to any other person who makes a written submittal. Alternatively, if the entire report is contained on the face of the work product no other reporting is required. The report will contain the following information as appropriate to work being performed.

A. A listing of the final adjusted coordinates and elevations for all points within the control network along with a complete description of all monuments established or recovered.

B. A complete description of the horizontal and vertical datum used including the basis of bearings.

C. A complete description of the state plane or UTM zone used including all pertinent metadata, if appropriate.

D. Units used for coordinates and elevations.

E. Description of monument(s) used to constrain the control network including the reference coordinates and elevations used for said monument(s).

F. If the final adjusted coordinates are based on a modified (ground datum) state plane coordinate system or a low-distortion local coordinate system (ground referenced) derived from geospatial positions, a complete description of the method(s) used to generate the modified coordinates shall be included in the report.

G. A brief description detailing the field methods and equipment used to conduct the control survey.

H. The date when the control monuments were set, the date when the control monuments were positionally observed, and the date of the final network adjustment.

I. Nothing in this section dictates the spatial accuracy that will be required by any specific project. It will be the responsibility of the individual licensee to determine the appropriate level of accuracy for each project. However, the licensee shall report the spatial accuracy in both the horizontal and vertical components.

J. A certificate followed by the dated signature and seal of the surveyor responsible for the control survey stating that the surveyor conducted an actual survey on the ground and is responsible for the survey. The following model certification is considered to be an example of the minimum that the surveyor should certify to:

I, (surveyor's name) , New Mexico Professional Surveyor No. (surveyor's license number), do hereby certify that this Control Survey Report was prepared by me or under my direct supervision based on an actual survey on the ground as described herein; that I am responsible for this survey; and that the survey and report meets the minimum standards for surveying in New Mexico.

[12.8.2.14 NMAC - N, 5/01/2007; A, 7/24/2016]

12.8.2.15 UNCLASSIFIED SURVEYING:

When a surveyor does surveying of a type not described in these standards, the surveyor shall do all that is necessary to fully determine and report all information which is relevant to the project. The scope of the project may be stated and limited. The surveyor shall not prepare or sign a document, which could mislead or misinform. If a surveyor issues a plat with the surveyor's signature and seal, which was not required by these minimum standards, the plat shall comply with the applicable portions of Subsection J of 12. 8.2.9 NMAC.

[12.8.2.15 NMAC - Rp, 12.8.2.14 NMAC, 5/01/2007]

12.8.2.16 ACCURACY:

A. Topographic map accuracy standards.

(1) The required horizontal and vertical accuracy of a topographic map produced by field procedures or photogrammetric methods shall be determined on a project by project basis and shall meet the accuracy standards set forth in the current American society for photogrammetry and remote sensing (ASPRS) positional accuracy standards for digital geospatial data. accuracy testing and reporting shall be pursuant to the current 'ASPRS positional accuracy standards for digital geospatial data'. Accuracy

testing and reporting shall be pursuant to the current 'ASPRS positional accuracy standards for digital geospatial data' as well.

(2) [RESERVED]

(3) [RESERVED]

(4) Accuracy reporting - If testing by an independent source of higher accuracy has not or cannot be followed, the final topographic map shall contain the following statement: "This map has been produced according to procedures that have been demonstrated to produce data that meets or exceeds the *minimum standards* for a topographic map compiled at a scale of (insert map scale here) with a contour interval of (insert contour interval here)." If testing by an independent source of higher accuracy has been conducted pursuant to the guidelines contained herein, the final topographic map shall contain the following statement: "This map has been tested from an independent source of higher accuracy and meets the *Minimum Standards* for a topographic map compiled at a scale of (insert map scale here) with a contour interval of (insert contour interval here)."

(5) Alteration of original mapping (scale): When the presentation scale of a map is other than that of the compilation scale, that fact shall be stated in the legend. "This map is an enlargement of a 1:2,400 map" or "This map is a reduction of a 1"=200' map."

B. Boundary surveying, easement surveying and right-of-way surveying accuracy standards. The surveyor shall determine the class of a survey using the definitions in Paragraphs (1) through (3) of Subsection I of 12.8.2.7 NMAC, and achieve the accuracy specified for the class of survey. It is the responsibility of the surveyor to select the appropriate procedures and equipment to obtain the accuracy required by the minimum field accuracy standards below for boundary surveying, easement surveying and right-of-way surveying:

	Urban	Suburban	Rural
Unadjusted closure (Traverse)	1 part in 15,000		1 part in 10,000
	1 part in 7,500		
Positional accuracy	0.10 ft.	0.10 ft.	
	0.25 ft.		
Location of improvements	0.15 ft.	0.25 ft.	
	1.0 ft.		

C. [RESERVED]

[12.8.2.16 NMAC - Rp, 12.8.2.15 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.17 MONUMENTS:

A. Except as prescribed in Subsections B and C of 12.8.2.16 NMAC, monuments set by the surveyor shall be ferrous metal, at least one-half inch in diameter (or the equivalent if other than round) and at least 16 inches long. They shall bear a metal or plastic cap stamped with the surveyor's license number.

B. Corners which fall upon a hard surface shall be monumented with a chiseled cross or a nail in a disk or tag bearing the surveyor's registration number.

C. When a corner is located at a place where it is not practical to set a monument or a monument at the corner is likely to be destroyed, at least one reference monument shall be set and dimensioned on the plat such that the location of the corner can be reestablished.

D. Monuments for the exterior corners of a subdivision shall be set by the surveyor who certified the plat of the subdivision prior to recordation of the subdivision plat. It is the responsibility of the subdivider to ensure that interior corners of a subdivision are set within 30 days of completion of the construction of infrastructure improvements but within one year after recordation of the subdivision plat. The board of licensure may elect to extend the time period upon the showing of good cause. The surveyor certifying the subdivision plat shall be responsible for notifying the subdivider by either including a statement regarding this responsibility in the executed contract for services or by letter sent certified mail, return receipt requested. The requirements of this section are met if any surveyor stakes the interior corners of the subdivision. If the subdivision is developed in phases, the interior corners of each phase may be staked by separate surveyors, provided the above stated time limits are met or extended by decision of the board of licensure. Under this section, it is the responsibility of each surveyor who stakes the interior corners of a subdivision to record an affidavit with the county clerk. Said affidavit shall be signed and sealed by the surveyor and shall contain at least the following: subdivision name as shown on the recorded plat, all recording information, name of subdivider, type of monuments set and, if the surveyor is staking a phase of the subdivision, the limits of responsibility. If the surveyor is required to record a plat of survey under the requirements of Subsection J of 12.8.2.9 NMAC, the affidavit may be included on said plat.

E. A surveyor shall perpetuate monuments established by the public land survey system which the surveyor finds in need of rehabilitation or replacement. A description of the monument as found and as restored or referenced and all available dimensions to other monuments shall be reported on a recorded plat. Said plat may be a boundary survey plat. If circumstances do not require a boundary survey plat, a plat depicting only the rehabilitated or replaced monuments will satisfy the requirements of this section.

F. For monuments which pertain to the survey, a surveyor shall perpetuate those monuments which the surveyor finds in need of rehabilitation or replacement. A description of the monument as found and as restored or referenced and all available dimensions to other monuments shall be reported on a recorded plat.

[12.8.2.17 NMAC - Rp, 12.8.2.16 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.18 GENERAL:

A. Authority. These rules are authorized by the Engineering and Surveying Practice Act.

B. Penalties. The New Mexico board of licensure for professional engineers and professional surveyors may take those actions prescribed in the Engineering and Surveying Practice Act against any surveyor who has been found in violation of these standards, or against non-licensed practitioners.

C. Disclaimers. Any disclaimer by a surveyor purporting to disavow compliance with any of these standards is prohibited.

D. Certifications. Professional surveyors should be prepared to certify to those things required in the execution of their duties and those mandated by law or rule. They should be cautious, however, in certifying only to conditions and facts falling within their areas of competency. Certification language that goes beyond the obligations prescribed by law and the responsibilities assumed by the surveyor in the normal course of boundary surveying should be carefully considered by the surveyor before signing and sealing any document.

E. Interpretation. The words "offers surveying services to the public" as used in Paragraph B of Section 61-23-27 (10), NMSA 1978, includes the certification by a surveyor of a plat or map which may be used by the public.

F. Advisory Opinions. The surveying committee of the board of licensure may issue its opinion explaining the application of these standards to a specific situation.

[12.8.2.18 NMAC - Rp, 12.8.2.17 NMAC, 5/01/2007]

CHAPTER 9: NOTARIES PUBLIC

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: PERFORMING ELECTRONIC NOTARIAL ACTS [REPEALED]

[This part was repealed effective January 1, 2022.]

PART 3: NOTARIAL PROCEDURES

12.9.3.1 ISSUING AGENCY:

Office of the Secretary of State.

[12.3.3.1 NMAC - N, 1/1/2022]

12.9.3.2 SCOPE:

The rule applies to notarial acts, notaries public and other notarial officers pursuant to the Revised Uniform Laws on Notarial Acts (RULONA).

[12.9.3.2 NMAC - N, 1/1/2022]

12.9.3.3 STATUTORY AUTHORITY:

This rule is authorized by Section 14-14A-26 NMSA 1978.

[12.9.3.3 NMAC - N, 1/1/2022]

12.9.3.4 DURATION:

Permanent.

[12.9.3.4 NMAC - N, 1/1/2022]

12.9.3.5 EFFECTIVE DATE:

January 1, 2022, unless a later date is cited at the end of a section.

[12.9.3.5 NMAC - N, 1/1/2022]

12.9.3.6 OBJECTIVE:

The objective of the rule is to establish standards, guidelines, procedures, fees, and responsibilities under the Revised Uniform Laws on Notarial Acts.

[12.9.3.6 NMAC - N, 1/1/2022]

12.9.3.7 DEFINITIONS:

A. "County clerk duties" means the official duties performed by the county clerk or deputy county clerk as determined by the county clerk [pursuant to Paragraph (4) of Subsection A of Section 14-14A-9 NMSA 1978].

B. "Deputy county clerk" means a person authorized by the county clerk to be a deputy county clerk and who has taken an oath of office.

C. "Electronic record" means a record as defined pursuant to Subsection 7 of Section 14-16-2 NMSA 1978 and includes but is not limited to a PDF or Microsoft Word file.

D. "In-person electronic notarization" means that an electronic record is presented for notarization on a computer or mobile device with the individual signing the record and the notarial officer meeting physically face-to-face.

E. "Remote online notarization (RON)" means that an electronic record is presented for notarization and the individual signing the record and the notary public meet face-to-face online and communicate using communication technology.

F. "Tamper evident" means any change to the record provides evidence of the change.

G. "Tangible copy" means a physical paper copy of an electronic record or tangible record.

H. "Tangible record" means a physical paper record with an original written signature.

[12.9.3.7 NMAC - N, 1/1/2022; A & Rn, 6/16/2023]

12.9.3.8 APPLYING FOR OR RENEWING A NOTARY PUBLIC COMMISSION:

A. A person applying for or renewing a notary public commission shall apply electronically or by paper application using the prescribed application form issued by the secretary of state. An applicant shall use the applicant's name as it appears on the applicant's state issued identification. In addition to meeting the requirements pursuant to Subsection B of Section 14-14A-20 NMSA 1978, the applicant shall provide:

(1) proof of having successfully completed an approved training course and passing the required examination. If the secretary of state has a record that a notary public applying for renewal has previously passed the required examination, a notary public applying for renewal is not required to re-take the training and examination unless:

(a) the applicant's commission has expired for more than one year; or

(b) there have been substantial changes to the statutes or rules pertaining to notarial procedures, as determined by the secretary of state, since the applicant's last application date; and

(2) a true and complete copy of a surety bond pursuant to Subsection D of Section 14-14A-20 NMSA 1978. The surety bond shall contain the applicant's notarized signature listed as the principal or sole applicant;

(3) executed oath of office using the prescribed form issued by the secretary of state pursuant to Subsection C of Section 14-14A-20 NMSA 1978 notarized by a notarial officer; and

(4) a non-refundable application fee of \$30.

B. The secretary of state shall issue a notary public certificate of commission containing the notary public's commission number and term expiration date to the applicant once the secretary of state determines:

(1) that the applicant has met the qualifications to be commissioned as a notary public;

(2) that the name on the bond, on the application, and the signatures on those documents are the same; and

(3) the applicant has not previously had a notary public commission denied or revoked.

C. Within 45 days of receiving the notary public commission and prior to the notary public performing his or her first notarial act, the notary public shall provide a copy of the applicant's official stamp to the secretary of state. A notary public will be deemed non-compliant with the act upon failure to provide this information. Failure to comply with this rule shall result in a referral to the state ethics commission.

D. A notarial officer may apply and must receive approval before conducting remote online notarizations pursuant to 12.9.4.8 NMAC.

E. The notary public is required to maintain the notary public's current name, contact information, and signature and official stamp on file with the secretary of state by submitting the form prescribed by the secretary of state within 30 days of the change of information. An amended certificate of commission will be issued upon notification of a name change and the notary public shall be required to obtain a new official stamp showing the updated information.

[12.9.3.8 NMAC - N, 1/1/2022; A, 6/16/2023]

12.9.3.9 SUSPENSION OR REVOCATION OF A NOTARY PUBLIC COMMISSION:

A. Upon the state ethics commission making a determination to deny, refuse to renew, revoke, suspend or impose a condition on a notary public pursuant to Subsection A of Section 14-14A-22 NMSA 1978, the state ethics commission shall notify the secretary of state in writing of the recommended action and reason for the determination.

B. Upon receipt of notification from the state ethics commission that a notary public's commission has been suspended or revoked, the secretary of state shall update the electronic database of notaries public maintained pursuant to Section 14-14A-23 NMSA 1978.

[12.9.3.9 NMAC - N, 1/1/2022]

12.9.3.10 EDUCATION AND EXAMINATION PROCEDURES:

A. The secretary of state shall provide regular training and administration of an examination pursuant to Subsection B of Section 14-14A-21 NMSA 1978. Training may be provided by the secretary of state or through any third-party training vendor approved by the secretary of state.

B. The fee for providing the training and examination is not included in the application fee collected pursuant to 12.9.3.8 NMAC.

C. A notary public applicant and an automatic notarial officer shall provide proof of passing the required examination with a score of eighty percent or higher.

D. Examination records maintained by third-party vendors, including the applicant's score, shall be retained for five years.

[12.9.3.10 NMAC - N, 1/1/2022; A, 6/16/2023]

12.9.3.11 TECHNOLOGY FEES:

A. A notary public or notarial officer may charge the maximum fees pursuant to Section 14-14A-28 NMSA 1978 with a fee not to exceed \$25.00 for each remote notarial act.

B. For an in-person notarization of an electronic record, the notary public shall follow the fee structure established pursuant to Subsection C of Section 14-14A-28 NMSA 1978.

[12.9.3.11 NMAC - N, 1/1/2022]

12.9.3.12 NOTARIAL PROCEDURES:

A. Notarial procedures for tangible records. The individual and the notarial officer shall meet physically face-to-face, and the notarial officer shall determine whether the requirements of Section 14-14A-4 NMSA 1978 have been met and shall verify the identity of the individual appearing before the officer in accordance with Section 14-14A-6 NMSA 1978. The notarial officer shall:

(1) ensure the individual uses permanent ink in a photo-reproducible color to sign the record;

(2) ensure the notarial certificate meets the requirements of Subsection C of Section 14-14A-14 NMSA 1978, sign the certificate using permanent ink and affix the official stamp to the record; and,

(3) if the notarial officer is a notary public or otherwise required to keep a journal pursuant to Subsection E of Section 14-14A-18 NMSA 1978, chronicle or note the notarization in a paper or electronic journal in accordance with Section 14-14A-18 NMSA 1978.

B. Notarial procedures for in-person electronic records. The individual and the notarial officer shall meet physically face-to-face, and the notarial officer shall determine whether the requirements of Section 14-14A-4 NMSA 1978 have been met and shall verify the identity of the individual appearing before the officer in accordance with Section 14-14A-6 NMSA 1978. Upon making the required determination and identity verification:

(1) the individual shall sign the electronic record using an electronic signature;

(2) the notarial officer shall ensure the notarial certificate meets the requirements of Subsection C of Section 14-14A-14 NMSA 1978;

(3) the notarial officer shall sign the notarial certificate with an electronic signature and affix the electronic seal, provided the electronic signature and seal have been previously provided to the secretary of state; and

(4) if the notarial officer is a notary public, or otherwise required to keep a journal pursuant to Subsection E of Section 14-14A-18 NMSA 1978, the notarial officer shall chronical or note the notarization in a paper or electronic journal in accordance with Section 14-14A-18 NMSA 1978.

C. For an acknowledgment as defined in Subsection A of Section 14-14A-2 NMSA 1978, the individual or representative shall declare before a notarial officer that the individual is signing the record for the purpose stated in the record.

D. For a verification on oath or affirmation as defined in Subsection O of Section 14-14A-2 NMSA 1978, the individual shall declare before a notarial officer that the statement in the record is true.

E. When certifying or attesting a copy of a record, the notarial officer:

(1) may make or supervise the copy of a record as a means of assuring the accuracy of the copy; or

(2) review the original record along with the copy so that the notarial officer can make a comparison as required by Subsection D of Section 14-14A-4 NMSA 1978.

F. For witnessing or attesting a signature, the notarial officer shall certify that the individual has the identity claimed and that the signature is that of the individual signing. Witnessing or attesting a signature differs from an acknowledgment in that the record must be signed in the physical presence of the notarial officer and there is no

declaration that the record is signed for the purposes stated in the record and differs from a verification of oath and affirmation in that the individual is not declaring that a statement in the record is true.

[12.9.3.12 NMAC - N, 1/1/2022]

12.9.3.13 PREVENTING FRAUD OR MISTAKES:

A. A notarial officer shall only notarize a record when the signer is either physically face to face or face to face online with the notarial officer.

B. A notarial officer shall determine the signer's identity from personal knowledge or satisfactory evidence pursuant to Section 14-14A-6 NMSA 1978 before performing a notarial act. When obtaining satisfactory evidence of the identity of the signer pursuant to Paragraph (1) of Subsection B of Section 14-14A-6 NMSA 1978, the notarial officer shall review the name, birth date, photo, or other available data elements on an identification document of the signer to make a determination regarding to the identity of the signer.

C. A notarial officer shall only enter the actual date of a notarial act (not an earlier or later date) on a record.

D. A notarial officer shall not share or publish his or her official stamp.

[12.9.3.13 NMAC - N, 1/1/2022]

12.9.3.14 OFFICIAL STAMP:

A. The official stamp of a commissioned notary public shall conform to the requirements pursuant to Section 14-14A-16 NMSA 1978 and shall also include the words "Notary Public" and "State of New Mexico."

B. The official stamp of a notarial officer that is not a commissioned notary public shall conform to the requirements pursuant to Section 14-14A-16 NMSA 1978 and shall also include the words "Notarial Officer" and "State of New Mexico."

C. The official stamp shall conform to the following requirements:

- (1) be 10-point type;
- (2) if the stamp is affixed to a tangible record, it shall be applied in permanent ink and shall be capable of being photocopied; and
- (3) include the notarial officer's official notary seal, as defined in Subsection L of 14-14A-2 NMSA 1978.

D. If the notarial officer is authorized to perform remote online notarizations, the official stamp shall also conform to the requirements set forth in Section 12.9.4.13 NMAC.

[12.9.3.14 NMAC - N, 1/1/2022; A, 6/16/2023]

12.9.3.15 JOURNAL:

A. A notary public shall maintain a journal to sequentially chronicle all notarial acts pursuant to Section 14-14A-18 NMSA 1978.

B. A current or former notary public shall store the journal in a secure location under the notary public's sole control unless a current or former notary public transmits the journal to the secretary of state or state records officer.

C. If a current or former notary public transmits the journal to the state records officer, the notary public shall notify the secretary of state by submitting the prescribed form within 30 days.

D. A former employer may retain a copy of a notary public's journal, but it shall be clearly marked as a copy.

E. Electronic journal.

(1) If the journal is maintained in an electronic format, it shall meet all the requirements of a tangible journal and shall be:

(a) securely stored;

(b) recoverable in the event of a software malfunction or computer crash; and

(c) tamper evident.

(2) Entries from the electronic journal must be available to the public or the state ethics commission in a PDF format.

(3) If an electronic journal is turned over to the secretary of state or the state records officer, it shall be transferred in PDF format.

F. If a notary public's journal is lost or stolen, the notary public shall promptly notify the secretary of state utilizing a form prescribed by the secretary of state.

[12.9.3.15 NMAC - N, 1/1/2022; A & Rn, 6/16/2023]

12.9.3.16 RULONA:

A. A notarial officer who is not a notary public is not required to follow the application process prescribed by this rule except that the automatic notarial officer shall provide proof of having successfully completed an approved training course and passing the required examination prior to the notarial officer's initial notarial act. If a notarial officer desires to be authorized to conduct remote online notarizations, the notarial officer shall follow the application procedures pursuant to 12.9.4.8 NMAC.

B. A new automatic notarial officer who is not a notary public shall upload a copy of the notarial officer's official stamp to the secretary of state prior to the notarial officer's initial notarial act.

C. Within one year of the effective date of this section of this rule, an existing automatic notarial officer shall upload a copy of the notarial officer's official stamp to the secretary of state and shall provide proof of having successfully completed an approved training course and passing the required examination.

[12.9.3.16 NMAC - N, 1/1/2022; A, 6/16/2023]

PART 4: REMOTE ONLINE NOTARIZATION STANDARDS

12.9.4.1 ISSUING AGENCY:

Office of the Secretary of State.

[12.9.4.1 NMAC - N, 1/1/2022]

12.9.4.2 SCOPE:

Notaries public and other notarial officers authorized by the secretary of state to perform remote online notarizations in the state of New Mexico as well as remote notarization system providers.

[12.9.4.2 NMAC - N, 1/1/2022]

12.9.4.3 STATUTORY AUTHORITY:

In accordance with Subsection H of Section 14-14A-5 and Section 14-14A-26 NMSA 1978, the secretary of state has the authority to promulgate rules for notarial officers to perform notarial acts for remotely located individuals using communication technology.

[12.9.4.3 NMAC - N, 1/1/2022]

12.9.4.4 DURATION:

Permanent.

[12.9.4.4 NMAC - N, 1/1/2022]

12.9.4.5 EFFECTIVE DATE:

January 1, 2022, unless a later date is cited at the end of a section.

[12.9.4.5 NMAC - N, 1/1/2022]

12.9.4.6 OBJECTIVE:

The objective of the rule is to establish uniform standards of performance and governance of notarial acts for remotely located individuals by use of communication technology.

[12.9.4.6 NMAC - N, 1/1/2022]

12.9.4.7 DEFINITIONS:

A. "Certified tangible copy of an electronic record" means an original tangible copy, as defined pursuant to Subsection F of 2.9.3.7 NMAC, of an electronic record that has been certified by a notarial officer as an accurate copy of the electronic record.

B. "Credential analysis" means an identity assessment used by a notarial officer to determine if an individual's government-issued identification card is genuine. The assessment requires the use of technology to confirm the security features on an identification card and confirm the identification card is not fraudulent.

C. "Electronic record" means see Subsection C of 12.9.3.7 NMAC.

D. "Identity credential" means a government issued identification card pursuant to the requirements of Paragraph (1) of Subsection B of Section 14-14A-6 NMSA 1978.

E. "Knowledge-based authentication" means an identity assessment used by a notarial officer to verify the identity of an individual that is based on questions formulated from public or private data sources for which the individual has not provided prior answers.

F. "Remote online notarization (RON)" means see Subsection F of 12.9.3.7 NMAC.

G. "Remote online notarization system" means a set of applications, programs, hardware, or software designed to enable a notarial officer to perform notarial acts on electronic records involving the use of communication technology that satisfies the requirements outlined in this rule.

H. "Remote online notarization system provider" means a business entity that provides a remote online notarization system that has been approved by the secretary of state.

[12.9.4.7 NMAC - N, 1/1/2022]

12.9.4.8 REMOTE ONLINE NOTARIZATION APPLICATION REQUIREMENTS:

A. A notarial officer must submit an application to perform remote online notarizations (RON) on a form prescribed by the secretary of state and receive approval from the secretary of state before the notarial officer may remotely notarize a record.

The notarial officer shall provide:

(1) the name of all remote online notarization systems approved for use by the secretary of state the notarial officer intends to use;

(2) a copy of any necessary instructions or techniques supplied by a remote online notarization system provider that allow the notarial officer's signature and official stamp to be read and authenticated;

(3) an explanation of the methods and technology by which the notarial officer will maintain and store the required journal, if applicable, and audio video recording;

(4) proof of having successfully completed an approved training course and passing the required examination. If the secretary of state has a record that a commissioned notary public applying for renewal has previously passed the required examination, a commissioned notary public applying for renewal is not required to re-take the training and examination unless:

(a) the applicant's commission has expired for more than one year; or

(b) there have been substantial changes to the statutes or rules pertaining to RONS, as determined by the secretary of state, since the effective date of applicant's last application date; and

(5) a non-refundable application fee of \$75.

B. An individual applying for authorization to perform RONS shall already be a current notarial officer pursuant to Section 14-14A-9 or Section 14-14A-20 NMSA 1978 or an individual may simultaneously apply to be commissioned as a notary public with authorization to perform RONS.

C. The secretary of state shall issue an approval authorizing the notarial officer to perform RONS when the secretary of state determines that the applicant has met the qualifications. Within 45 days of receiving authorization to perform RONS from the secretary of state, the notarial officer shall provide a copy of the applicant's official

electronic stamp to the secretary of state along with the form prescribed by the secretary of state. The applicant's official electronic stamp must be received by the secretary of state prior to the notarial officer performing a RON. Failure to provide this information shall result in a referral to the State Ethics Commission.

D. The expiration date for a notary public authorized to perform RONs shall be the commission expiration date established when an individual is commissioned as a notary public pursuant to Section 14-14A-20 NMSA 1978.

E. If at any time a notarial officer authorized to perform RONs adopts a new remote online notarization system provider, the notarial officer must notify the secretary of state of the new system and provider on a form prescribed by the secretary of state.

F. The renewal of the commission of a notary public who has previously been authorized to perform RONs under this section constitutes renewal of the notary public's qualification without the necessity to submit another application under this section, and the renewal fees shall be the same as that to renew a notary public commission unless the applicant's commission has been expired for more than one year. If an applicant's commission has been expired for more than one year, the applicant must complete the application for authorization to perform RONs and pay the required application fee as prescribed by this section.

[12.9.4.8 NMAC - N, 1/1/2022]

12.9.4.9 EDUCATION AND EXAMINATION PROCEDURES:

A. The secretary of state shall provide a remote notarization course and examination. Training may be administered in house or through any third-party training vendor approved by the secretary of state.

B. The fee for administering the training and examination is not included in the application fee collected pursuant to 12.9.4.8 NMAC.

C. An applicant must provide proof of passing the required examination with a score of eighty percent or higher.

D. Examination records maintained by any third-party vendor, including the applicant's score, shall be retained for five years.

[12.9.4.9 NMAC - N, 1/1/2022]

12.9.4.10 PERFORMANCE OF REMOTE ONLINE NOTARIAL ACTS:

A. A notarial officer authorized to perform RONs must be physically located in New Mexico at the time the notarial act takes place.

B. A notarial officer authorized to perform RONS may perform authorized notarial acts relating to electronic records only if the individual personally appears before the notarial officer at the time of the notarization by means of communication technology.

C. A notarial officer authorized to perform RONS may make a reasonable determination regarding whether an individual is under duress or being coerced to complete a transaction. The notarial officer may:

(1) observe the individual's behavior for signs of being nervous, fearful, hesitant, distracted, distraught or uncomfortable;

(2) observe the surroundings and watch the behavior of others in the room who seem to make the individual uncomfortable;

(3) request to speak privately with the individual; and

(4) ask direct questions such as "are you signing this record of your own free will?"

D. A notarial officer may refuse to perform a notarial act if the notarial officer has reasonable grounds to believe that the individual is acting under coercion or undue influence.

E. A notarial officer authorized to perform RONS shall verify the identity of the individual at the start of an online notarial session by means of communication technology. Identity shall be verified by the notarial officer pursuant to Section 14-14A-6 NMSA 1978 or 12.9.4.11 NMAC.

F. A notarial officer shall not base identification merely on familiarity with an individual's signature or an electronic verification process that authenticates the individual's electronic signature without the individual personally before the notarial officer by two-way audio and video communication technology.

G. A notarial officer authorized to perform RONS shall refuse to complete the notarial act if the notarial officer:

(1) is unable to verify the identity of the individual in compliance with these rules:

(2) becomes aware that communication technology is not secure;

(3) determines the signature of the individual cannot be attached to the electronic record; or

(4) cannot attach the notarial officer's electronic stamp to the electronic record using technology that renders any subsequent change or modification to the record evident.

H. The notarial officer shall complete and affix or attach the officer's signature and official stamp to the electronic notarial certificate. The electronic notarial certificate shall meet the requirements of Subsection A of Section 14-14A-14 NMSA 1978.

[12.9.4.10 NMAC - N, 1/1/2022]

12.9.4.11 IDENTITY PROOFING:

If a notarial officer does not personally know the identity of a remotely located individual pursuant to Subsection A of Section 14-14A-6 NMSA 1978, the notarial officer must reasonably verify the individual's identity through two different types of identity proofing procedures as provided in this section. The procedure shall analyze the individual's identity credential against trusted third-person data sources, bind the individual's identity to the individual following successful knowledge-based authentication, and permit the notarial officer to visually compare the identity credential and the individual. The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

A. Credential Analysis. The analysis of an identity credential must use public or private data sources to confirm the genuineness of the identity credential presented by a remotely located individual and, at a minimum:

(1) use automated software processes to aid the notarial officer in verifying the identity of each remotely located individual;

(2) require the identity credential to pass an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

(3) use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

(4) enable the notarial officer to visually compare for consistency, the information and photograph on the identity credential and the remotely located individual appearing before the notarial officer in real time through communication technology.

B. Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:

- (1) the remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;
- (2) each question must have a minimum of five possible answer choices;
- (3) at least eighty percent of the questions must be answered correctly;
- (4) all questions must be answered within two minutes;
- (5) if the remotely located individual fails after two attempts, the individual may not retake the quiz within 24 hours;
- (6) during a retake of the quiz, a minimum of forty percent of the prior questions must be replaced; and
- (7) the notarial officer must not be able to see or record the questions or answers.

C. Credible Witness. A notarial officer has satisfactory evidence of the identity of a remotely located individual if the notarial officer has personal knowledge and satisfactory evidence of the identity of the individual by oath or affirmation of a credible witness appearing before the notarial officer as provided in Paragraph (2) of Subsection B of Section 14-14A-6 NMSA 1978. A credible witness may be remotely located if the notarial officer, credible witness, and remotely located individual can communicate simultaneously by using communication technology.

[12.9.4.11 NMAC - N, 1/1/2022]

12.9.4.12 COMMUNICATION TECHNOLOGY REQUIREMENTS:

A. Communication technology shall provide:

- (1) for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notarial officer and the remotely located individual to see and speak with each other;
- (2) a means for the notarial officer to reasonably confirm that a record before the notarial officer is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature; and
- (3) accessibility accommodations to facilitate communication with a remotely located individual who has a vision, hearing, or speech impairment.

B. Communication technology shall provide reasonable security measures to prevent unauthorized access to the live transmission of the audiovisual feeds, the

methods used to perform the identity proofing process, and the electronic record that is the subject of the notarial act.

C. A notarial officer authorized to perform RONS shall stop and restart the remote online notarization process from the beginning if the:

(1) remotely located individual or the remote notarial officer must exit the remote online notarization system before completion of the notarial act;

(2) audio or visual feed is interrupted or terminated; or

(3) resolution or quality of the transmission becomes such that the remote notarial officer believes the process has been compromised and cannot be completed.

D. A notarial officer performing a RON shall verify that each remote online notarization system provider has an active status with the secretary of state before using that provider's remote online notarization system to perform a remote notarization. This duty extends to each remote online notarization.

[12.9.4.12 NMAC - N, 1/1/2022]

12.9.4.13 ELECTRONIC SIGNATURE AND STAMP:

A. A notarial officer authorized to perform RONS shall use the same electronic signature and electronic official stamp for all electronic notarial acts. A copy of the official stamp shall be provided to the secretary of state within 45 days of being authorized by the secretary of state to perform RONS and prior to the first RON being performed.

B. A notarial officer shall select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notarial officer to use a technology that the notarial officer has not selected. The tamper-evident technology must be capable of:

(1) affixing or attaching the notarial officer's electronic signature to the electronic record in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident; and

(2) utilizing a valid digital certificate issued by a third-party provider that uses public key infrastructure (PKI) technology that is X.509 compliant or higher. A notarial officer shall not perform a notarial act with respect to an electronic record if the digital certificate:

(a) has expired;

(b) has been revoked or terminated by the issuing or registering authority;

(c) is invalid; or

(d) is incapable of authentication.

C. The remote notarial officer's electronic signature and official stamp must be retained under the notarial officer's sole control and access. A notarial officer's employer must not permit the use of a notarial officer's electronic signature or official stamp by anyone except the notarial officer.

[12.9.4.13 NMAC - N, 1/1/2022]

12.9.4.14 AUDIOVISUAL RECORD RETENTION AND REPOSITORIES:

A. A notarial officer authorized to perform RONS shall retain an audiovisual recording required under Paragraph (4) of Subsection C of Section 14-14A-5 NMSA 1978, on a computer, storage device, or online storage that protects the audiovisual recording against unauthorized access by password or cryptographic process. The recording must be created in an open file format and not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.

B. On the death or adjudication of incompetency of a current or former notarial officer, the notarial officer's personal representative or guardian or any other person knowingly in possession of an audiovisual recording shall:

(1) comply with the retention requirements of this section;

(2) transmit the recording to one or more repositories pursuant to Subsection C below; or

(3) transmit the recording on a data storage device to the secretary of state on an open file format that can be accessed and read by the secretary of state.

C. A notarial officer, a guardian, conservator, or agent of a notarial officer, or a personal representative of a deceased notarial officer may, by written contract, engage a third person to act as a secure repository to provide the storage required by this Subsection. The contract shall:

(1) enable the notarial officer, the guardian, conservator, or agent of the notarial officer, or the personal representative of the deceased notarial officer to comply with the retention requirements of this section even if the contract is terminated;

(2) enable the notarial officer to keep all audiovisual recordings under the sole control of the notarial officer and provide copies to any requesting person; or

(3) provide that the information will be securely transferred to the notarial officer, the guardian, conservator, or agent of the notarial officer, or the personal representative of the deceased notarial officer if the contract is terminated.

[12.9.4.14 NMAC - N, 1/1/2022]

12.9.4.15 NOTARIAL JOURNAL TO RECORD REMOTE ONLINE NOTARIZATIONS:

A. A notarial officer authorized to perform RONS shall adhere to the rule on journals pursuant to 12.9.3.16 NMAC.

B. In addition to the journal information required by Subsection C of Section 14-14A-18 NMSA 1978, the notarial officer must record the name of the remote online notarization system provider used for each remote online notarization.

[12.9.4.15 NMAC - N, 1/1/2022]

12.9.4.16 CERTIFICATE OF REMOTE NOTARIAL ACT:

A. An electronic certificate of a notarial act for a remote online notarization must clearly state that the remotely located individual signing the record appeared using communication technology. This requirement is met if the statement is substantially as follows: "This notarial act involved the use of communication technology."

B. A certified tangible copy of an electronic record shall be considered an original record. A certified tangible copy of an electronic record must include a notarial certificate substantially in the short form provided in Subsection E of Section 14-14A-15 NMSA 1978.

[12.9.4.16 NMAC - N, 1/1/2022]

12.9.4.17 STANDARDS FOR REMOTE ONLINE NOTARIZATION SYSTEM PROVIDERS:

A. Application. A provider must submit an application on a form prescribed by the secretary of state before the provider can provide its remote online notarization system to a notarial officer in New Mexico. Upon being approved as a provider, the secretary of state shall list the provider as active on the website of the secretary of state.

B. Criteria for approval. To be approved and maintain an active status, a remote online notarization system provider shall:

(1) provide the ability for an individual receiving notarization services to print tangible copies of all records notarized for that individual executed on the system;

(2) ensure that access to a notarial officer's electronic signature and official stamp is limited solely to the notarial officer and protected by the use of a password or other secure means of authentication;

(3) communication technology provided by the remote notarization system provider shall comply with the requirements of Section 12.9.4.12 NMAC;

(4) provide for the credential analysis and knowledge-based authentication assessment requirements provided for in Section 12.9.4.11 NMAC;

(5) provide, or allow a notarial officer to provide, a public key certificate to satisfy the requirement of Paragraph 2 of Subsection B of Section 12.9.4.13 NMAC; and

(6) provide a storage system that complies with 12.9.4.14 NMAC.

C. The secretary of state may request that remote online notarization system providers submit an application on an annual basis for a remote online notarization system provider to maintain active status.

D. Notifications.

(1) If a remote online notarization system provider becomes aware of a security breach involving its data, the provider must comply with the requirements of the Data Breach Notification Act, Sections 57-12C-1 to 57-12C-12 NMSA 1978, and submit notice to the secretary of state.

(2) No later than 30 days before making any substantial changes or feature enhancements to the remote online notarization system that was previously approved by the secretary of state, a provider must request approval from the secretary of state and notify the New Mexico notarial officers using its system.

(3) No later than 30 days after any changes to the provider's information on file with the secretary of state, the provider must notify and update the information on a form prescribed by the secretary of state.

E. Complaints. A person may file a complaint with the secretary of state against a remote online notarization system provider. The complaint must allege a specific violation of New Mexico's Revised Uniform Law on Notarial Acts or these rules.

F. Grounds for termination of active status. The secretary of state may terminate approval of a provider for any of the following reasons:

(1) a violation of the Revised Uniform Law on Notarial Act or these rules that impacts the ability of the remote online notarization provider from providing a compliant remote online notarization system;

(2) making representations that the secretary of state endorses, recommends, or mandates use of any of the provider's products, goods, or services;

(3) if the provider sustains a security breach pursuant to Subsection D of Section 57-12C-2 NMSA 1978; and

(4) failure to respond within ten business days to the secretary of state's request for information or otherwise cooperate with an investigation, including providing requested information.

[12.9.4.17 NMAC - N, 1/1/2022]

12.9.4.18 NON-COMMISSIONED NOTARIAL OFFICERS:

A. If a notarial officer who is not commissioned as a notary public desires to be authorized to conduct RONS, the notarial officer shall follow the authorization application procedures pursuant to 12.9.4.8 NMAC.

B. Upon approval by the secretary of state to perform RONS, the notarial officer shall comply with this rule and all statutes applicable to a notary public performing RONS.

[12.9.4.18 NMAC - N, 1/1/2022]

12.9.4.19 NOTARY PUBLIC COMMISSION IN EFFECT:

A notary public with an appointment or renewal date prior to the effective date of the Revised Uniform Law on Notarial Acts who desires to be authorized to perform RONS shall follow the application process prescribed by Subsection B of 12.9.4.8 NMAC to apply to become authorized to perform RONS.

[12.9.4.19 NMAC - N, 1/1/2022]

CHAPTER 10: LOBBYISTS [RESERVED]

CHAPTER 11: SECURITIES

PART 1: GENERAL PROVISIONS

12.11.1.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.1.1 NMAC - Rp, 12.11.1.1 NMAC, 1-1-2010]

12.11.1.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their representatives and agents.

[12.11.1.2 NMAC - Rp, 12.11.1.2 NMAC, 1-1-2010]

12.11.1.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.1.3 NMAC - Rp, 12.11.1.3 NMAC, 1-1-2010]

12.11.1.4 DURATION:

Permanent.

[12.11.1.4 NMAC - Rp, 12.11.1.4 NMAC, 1-1-2010]

12.11.1.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.1.5 NMAC - Rp, 12.11.1.5 NMAC, 1-1-2010]

12.11.1.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.1.6 NMAC - Rp, 12.11.1.6 NMAC, 1-1-2010]

12.11.1.7 DEFINITIONS:

The definitions in this section apply throughout the New Mexico Uniform Securities Act and the rules in Title 12 Chapter 11 NMAC unless the context otherwise requires.

A. "Affiliate" means a person who directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

B. "Bank" as defined in Section 58-13C-102B(3) is limited to institutions whose deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund or a successor authorized by federal law.

C. "Branch office" means any location where one or more agents or investment adviser representatives regularly conducts the business of effecting or attempting to effect transactions in any security, or transacting investment advisory business, or is held out as such, excluding:

(1) any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(2) any location that is the agent's or investment adviser's primary residence, provided that:

(a) only one agent or investment adviser representative, or multiple such agents or representatives who reside at that location and are members of the same immediate family, conduct business at the location;

(b) the location is not held out to the public as an office and the associated person does not meet with customers at the location;

(c) neither customer funds nor securities are handled at that location;

(d) the agent or investment adviser representative is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such agent or investment adviser representative;

(e) the agent's or investment adviser's correspondence and communications with the public are subject to the firm's supervision;

(f) electronic communications (e.g., e-mail) are made through the firm's electronic system;

(g) all orders are entered through the designated branch office or an electronic system established by the firm that is reviewable at the branch office;

(h) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the firm; and

(i) a list of the residence locations is maintained by the firm;

(3) any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that such location complies with the provisions of Subparagraphs (a) through (h) of Paragraph (2) of this subsection;

(4) any office of convenience, where agents or investment adviser representatives occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; and

(5) a temporary location established in response to the implementation of a business continuity plan;

(6) notwithstanding the exclusions provided in Paragraphs (1) through (5) of this subsection, any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

D. "Broker-dealer" as defined in Section 58-13C-102C does not include:

(1) a pension or profit sharing trust, when effecting transactions for its own account; or

(2) an investment adviser registered under the New Mexico Uniform Securities Act or registered under the Investment Advisers Act of 1940 when placing orders for the accounts of its clients in accordance with rules prescribed by the director, provided that no commission or other remuneration is received by the investment adviser for placing orders.

E. "Control person" means an officer, director, managing partner or trustee, manager of a limited liability company or person of similar status or function or any security holder who owns beneficially or of record ten percent or more of any class of securities of an issuer.

F. "CRD" means the internet-based central registration depository that is the central licensing and registration system for broker-dealers, agents and regulators in the United States.

G. "FDIC" means the federal deposit insurance corporation of the United States.

H. "FINRA" means the financial industry self-regulatory organization created in July 2007 through the consolidation of NASD and the member regulation, enforcement and arbitration functions of the New York stock exchange. As the successor to NASD, FINRA is the entity designated as the filing depository by the SEC for purposes of the Investment Advisers Act of 1940, 15 U.S.C section 80b-1 et seq.

I. "Institutional investor" as defined Section 58-13C-102L includes but is not limited to:

(1) an entity, other than a natural person, which is directly engaged in the business of, and derives at least eighty percent of its annual gross income from, investing, purchasing, selling or trading in securities of more than one issuer and not of its own issue, and that has gross assets in excess of \$10,000,000 at the end of its latest fiscal year;

(2) a state, a political subdivision of a state or an agency or corporate or other instrumentality of a state or a political subdivision of a state; or

(3) a federally recognized Indian tribe or pueblo that has total assets in excess of \$10,000,000 and that has obtained certification from the division that it is an institutional investor.

J. "IARD" means the internet-electronic filing system for registration and disclosures by investment advisers and their associated persons developed and operated by FINRA according to the requirements of the system's sponsors, the SEC and NASAA.

K. "Investment contract" as used in Section 58-13C-102DD includes any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

L. "NASAA" means the North American securities administrators association, www.nasaa.org. whose membership is comprised of securities administrators in the 50 states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Canada, and Mexico, and whose activities include among others development of model rules and uniform forms for use by state regulatory agencies.

M. "NASD" was a self-regulatory organization commonly known as the national association of securities dealers responsible for the operation and regulation of the Nasdaq stock market and over-the-counter markets and consolidated into FINRA in July 2007.

N. An "offer" is made within the meaning of Subsection O of Section 58-13C-202, so far as the securities holders of an issuer are concerned, if there is submitted to the vote of the securities holders a proposal, plan or agreement for:

(1) a reclassification of securities of such issuer which involves the substitution or exchange of a security for another security;

(2) a statutory merger or consolidation in which securities of the issuer will become or be exchanged for securities of another issuer;

(3) a transfer of assets of the issuer to another person in consideration of the issuance of securities of the other person or any of its affiliates; or

(4) a sale of securities of the issuer to another person in consideration of the issuance or transfer to such issuer of securities of the other person or any of its affiliates.

O. "Pledgee" within the meaning of Section 58-13C-202G of the New Mexico Uniform Securities Act includes a "secured party" as that term is defined in Section 55-9-102(a)(71) NMSA 1978.

P. "SEC" means the securities and exchange commission of the United States.

[12.11.1.7 NMAC - Rp, 12.11.1.7 NMAC, 1-1-2010]

12.11.1.8 [RESERVED]

12.11.1.9 FINDINGS OF THE DIRECTOR:

The director finds that adoption of these rules is in the public interest, appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the New Mexico Uniform Securities Act.

[12.11.1.9 NMAC - Rp, 12.11.1.9 NMAC, 1-1-2010]

12.11.1.10 SEVERABILITY:

If any provision of these rules shall be determined to be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of these rules are declared severable.

[12.11.1.10 NMAC - Rp, 12.11.1.10 NMAC, 1-1-2010]

12.11.1.11 FEES:

The fees set forth in this section do not include fees set by statute or as determined elsewhere in these rules; are expressly prescribed for the expenses of various matters arising pursuant to authority under the New Mexico Uniform Securities Act; are chargeable to the applicant or registrant; and unless otherwise provided, are payable at the time an application or notice is filed. None of the fees paid are refundable.

A. Administrative fees.

(1) The fee for processing a name change in registration statements on file is \$50.00.

(2) The fee for processing a name change for a registered broker-dealer or a registered investment adviser is \$50.00.

(3) The fee for an interpretative opinion, pursuant to Section 58-13C-605D, or for a no action letter is \$300.00.

B. Inspection fees. Broker-dealers and investment advisers registered or required to be registered shall be charged a fee of \$100.00 per examiner per day plus actual costs of transportation and lodging where applicable for examinations conducted pursuant to Section 58-13C-411D.

C. Successor firm fees.

(1) An application for registration of a successor firm pursuant to Section 58-13C-407A shall be accompanied by a fee of \$300.00.

(2) An application for registration of successor firms pursuant to Section 58-13C-407A shall be accompanied by an administrative fee of \$50.00 for each representative's registration which must be transferred to the successor firm.

[12.11.1.11 NMAC - Rp, 12.11.1.11 NMAC, 1-1-2010; A, 7-1-2010]

12.11.1.12 ADMINISTRATIVE PROCEDURE:

A. Application of rule. These rules govern proceedings conducted pursuant to Section 58-13C-604B of the New Mexico Uniform Securities Act.

B. Service. Service of subpoenas, notices of intent, summary orders, notices of opportunity for hearing and final orders shall be made either:

(1) personally;

(2) by certified mail, return receipt requested, sent to the last known address of the person; or

(3) by such other means as are reasonably calculated to give actual notice.

C. Administrative conferences.

(1) Any person entitled to a hearing pursuant to Section 58-13C-604B may submit a written request to the director for an informal conference to discuss an order

issued or proposed to be issued by the director. A request for an informal conference will not affect a person's right to a formal hearing pursuant to Section 58-13C-604B provided that a proper request for a hearing is made pursuant to Section 58-13C-604B(2). However, any person requesting an informal conference with the director must specifically waive in writing the time deadlines for setting a formal hearing pursuant to Section 58-13C-604B(2). Upon the granting of an informal conference, the formal hearing will be indefinitely postponed pending the outcome of the informal conference. A person who has formerly waived the right to have a hearing set within 60 days pursuant to Section 58-13C-604B(2) may reinstate a request for a formal hearing by written notice to the director.

(2) The director may, at the director's discretion, grant a request for an informal conference for the purpose of settlement or simplification of the issues. Conduct and statements made during informal conferences are not admissible as evidence to prove either liability or a violation of the New Mexico Uniform Securities Act or the rules thereunder. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution.

(3) If consistent with Section 58-13C-604B, the director may dispose of proceedings pending pursuant to that section by stipulation, agreed settlement, consent order or default.

D. Motions. Any motion made prior to the commencement of any hearing must be made in writing to the director. Motions other than those for an extension of time or for additional discovery must be accompanied by a memorandum of law and served on the opposing party. Motions shall be a maximum of ten pages in length. The director may, at the director's sole discretion, rule without a hearing upon any procedural or discovery motion not disposing of the merits of the proceeding. All motions not specifically acted upon by the director shall be deemed denied upon the filing of the final order of the director in the proceeding.

E. Discovery. Parties may, by motion to the director, request reasonable discovery in addition to those procedures granted in Section 58-13C-604B(8). The director may, at the director's sole discretion, grant or deny further discovery, or impose such limitations or conditions on discovery as may be necessary in the interests of economy and expeditious decision making. Parties are encouraged to seek agreement on the scope of discovery before presenting a motion for additional discovery to the director.

F. Venue. All hearings conducted pursuant to Section 58-13C-604B shall be conducted in the offices of the securities division or other convenient place within Santa Fe county. The director may, at the director's discretion, hold the hearing in another county of this state upon a finding that good cause exists to do so.

G. Evidence. In a proceeding held pursuant to Section 58-13C-604B, the formal rules of evidence do not apply and the director or hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs.

H. Findings of fact and conclusions of law. The director or hearing officer may require all parties of record to file proposed findings of fact, conclusions of law or final orders at the close of the hearing.

I. Costs on appeal. The party seeking review pursuant to Section 58-13C-609 shall pay all costs of appeal, including the expenses of preparation of the record and transcript.

J. Default orders.

(1) A respondent that has received actual or constructive notice of the entry of either a summary order or notice of intent, together with a notice of opportunity for hearing, and fails to respond or appear within the time set forth in Section 58-13C-604B(2) shall be deemed to have admitted the allegations set forth in the summary order or notice of intent and shall be deemed to have consented to entry of a final order as proposed in the summary order or notice of intent.

(2) A respondent that has received actual or constructive notice of a hearing having been set and fails to appear, either in person or through counsel, at the time and place set for such hearing shall be deemed to have admitted the allegations set forth in the summary order or notice of intent that was entered in the matter before the hearing officer and shall be deemed to have consented to entry of a final order.

[12.11.1.12 NMAC - Rp, 12.11.1.12 NMAC, 1-1-2010]

12.11.1.13 ADOPTION OF UNIFORM FORMS:

A. The following uniform forms promulgated by the SEC, including subsequent amendments, are hereby adopted by reference for use in New Mexico:

- (1) **"Form ADV"**, *uniform application for investment adviser registration;*
- (2) **"Form ADV-E"**, *uniform certificate of accounting of client securities and funds in the possession or custody of an investment adviser;*
- (3) **"Form ADV-H"**, *uniform application for a temporary or continuing hardship exemption;*
- (4) **"Form ADV-W"**, *uniform notice of withdrawal from registration as investment adviser;*

- (5) "Form BD", *uniform application for broker-dealer registration*;
- (6) "Form BDW", *uniform request for broker-dealer withdrawal*; and
- (7) "Form D", *notice of sale of securities pursuant to regulation D*.

B. The following uniform forms promulgated by FINRA and approved by the SEC, including subsequent amendments, are hereby adopted by reference for use in New Mexico:

- (1) "Form BR", *uniform branch office registration form*;
- (2) "Form U-4", *uniform application for securities industry registration or transfer*; and
- (3) "Form U-5", *uniform termination notice for investment adviser registration*.

C. The following uniform forms adopted by NASAA, including subsequent amendments, are hereby adopted by reference for use in New Mexico:

- (1) "Form NF", *uniform investment company notice filing*;
- (2) "Form U-1", *uniform application to register securities*;
- (3) "Form U-2", *uniform consent to service of process*;
- (4) "Form U-2A", *uniform corporate resolution*; and
- (5) "Form U-7", *small company offerings registration*;

[12.11.1.12 NMAC - N, 1-1-2010]

PART 2: BROKER-DEALERS AND AGENTS

12.11.2.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.2.1 NMAC - Rp, 12.11.2.1 NMAC, 1-1-2010]

12.11.2.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as an investment adviser or an issuer of securities, and their agents.

[12.11.2.2 NMAC - Rp, 12.11.2.2 NMAC, 1-1-2010]

12.11.2.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to make, amend and rescind rules as are necessary to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.2.3 NMAC - Rp, 12.11.2.3 NMAC, 1-1-2010]

12.11.2.4 DURATION:

Permanent.

[12.11.2.4 NMAC - Rp, 12.11.2.4 NMAC, 1-1-2010]

12.11.2.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.2.5 NMAC - Rp, 12.11.2.5 NMAC, 1-1-2010]

12.11.2.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.2.6 NMAC - Rp, 12.11.2.6 NMAC, 1-1-2010]

12.11.2.7 DEFINITIONS:

[RESERVED]

12.11.2.8 APPLICATIONS FOR REGISTRATION:

A. Applications for registration by broker-dealers and agents who are members of FINRA shall be filed with CRD on forms established for the CRD and, in addition thereto, the broker-dealer shall file with the director a financial statement that is current within 90 days of the date the application is received by the division, and a completed affidavit of no sales or an explanation why such affidavit cannot be completed.

B. Applications for registration and annual reports of broker-dealers and agents not members of the FINRA shall be filed with the director on forms BD, U-4, and affidavit of no sales, as designated in 12.11.16 NMAC. If the applicant cannot complete the affidavit of no sales, then the applicant shall file an explanation why such affidavit cannot be completed.

C. An "application" for purposes of Section 58-13C-406A shall include any information required by the director pursuant to Section 58-13C-406A(2).

D. Annual reports required by the New Mexico Uniform Securities Act or rules promulgated thereunder shall be filed with the director on or before December 31 of each year.

[12.11.2.8 NMAC - Rp, 12.11.2.8 NMAC, 1-1-2010]

12.11.2.9 REGISTRATION FEES:

A. Registration fees required of broker-dealers and agents who are members of FINRA shall be paid to CRD, in accordance with FINRA instructions. Annual renewal fees shall be paid no later than December 31 of each year.

B. Registration fees required of broker-dealers and agents who are not members of the FINRA shall be paid to the division. Annual renewal fees shall be paid to the division on or before December 31 of each year.

[12.11.2.9 NMAC - Rp, 12.11.2.9 NMAC, 1-1-2010]

12.11.2.10 EXAMINATION REQUIREMENTS - AGENTS:

Each applicant for initial registration as a broker-dealer or agent is required to pass with a grade of at least 70 percent, within two years prior to the date the application for registration is filed in this state, the uniform securities agent state law examination (series 63) or uniform combined state law examination (series 66), and one of the general securities examinations in Subsection A below, unless the applicant's proposed securities activities will be restricted, in which case the applicant is required to pass, in addition to the series 63 or series 66 examination, each examination in Subsections B to I of this section that relates to the applicant's proposed securities activities:

A. FINRA non-member general securities examination (series 2) or, in the case of applicants registered with FINRA, the general securities registered representative examination (series 7);

B. investment company products/variable contracts representative examination (series 6);

C. limited registered representative examination (series 17);

D. direct participation program representative examination (series 22);

E. municipal securities representative examination (series 52);

F. corporate securities representative examination (series 62);

G. government securities limited representative qualification examination (series 72);

H. Canada modules of the series 7 examination (series 37 and 38);

I. Japan module of the series 7 examination (series 47).

[12.11.2.10 NMAC - Rp, 12.11.2.10 NMAC, 1-1-2010]

12.11.2.11 EXAMINATION REQUIREMENTS WAIVER:

The examination requirement in 12.11.2.10 NMAC is waived for any applicant who meets the criteria set forth in either Subsections A or B of this section.

A. The applicant has been registered, within two years prior to the date the application for registration is filed in this state, as agents or as a broker-dealer under the securities law of any other state that requires passing the uniform securities agent state law examination or the uniform combined state law examination and has been registered with FINRA, within two years prior to the date the application for registration is filed, to engage in the type of business for which the applicant is applying for registration.

B. The applicant has been registered under the New Mexico Uniform Securities Act within two years prior to the date the application is filed as an agent or broker-dealer to engage in the type of business for which the applicant is seeking registration.

[12.11.2.11 NMAC - Rp, 12.11.2.11 NMAC, 1-1-2010]

12.11.2.12 EXAMINATION REQUIREMENTS - PRINCIPAL:

Prior to issuance of an initial registration as a broker-dealer, and at all times thereafter, at least one registered sales representative located at the principal office of the broker-dealer, and, except as provided in 12.11.2.24 NMAC, at least one sales representative located at each branch office in this state, who are so identified in the registration application, shall be designated to act in a supervisory capacity in each such office. Each supervisor designated in accordance with this section shall meet the examination requirements specified in 12.11.2.10 NMAC for applicants whose securities activities will not be restricted and shall pass with a grade of at least 70 percent the examination in Subsection A of this section. If the broker-dealer's proposed securities activities will be restricted, the designated supervisor is required to pass each examination in Subsections B to D of this section that relates to the broker-dealer's proposed securities activities:

A. general securities principal examination (series 24);

B. investment company products/variable contracts principal examination (series 26);

C. direct participation programs principal examination (series 39);

D. municipal securities principal examination (series 53).

[12.11.2.12 NMAC - Rp, 12.11.2.12 NMAC, 1-1-2010]

12.11.2.13 NOT COMPLETED AND WITHDRAWN APPLICATIONS:

Any application for registration which is not completed or withdrawn within six months from the date it is initially received may be deemed materially incomplete, and the director may issue an order denying the registration.

[12.11.2.13 NMAC - Rp, 12.11.2.13 NMAC, 1-1-2010]

12.11.2.14 AUTOMATIC EFFECTIVENESS:

Pursuant to Section 58-13C-406C, a registration becomes automatically effective 45 days after all requirements have been met and all requested information has been filed, provided that no proceeding under Section 58-13C-412 has been instituted. A registration may become effective sooner than 45 days after the filing of an application if:

A. the director issues a registration before the expiration of 45 days; or

B. the director transmits approval of the registration status of an agent or broker-dealer through the CRD of the FINRA.

[12.11.2.14 NMAC - Rp, 12.11.2.14 NMAC, 1-1-2010]

12.11.2.15 SECTION 202K EXEMPTION:

Persons effecting only transactions exempt pursuant to Section 58-13C-202K who are duly licensed New Mexico real estate agents or duly registered under the New Mexico Mortgage Loan Company and Loan Broker Act are exempt from the requirements of Sections 58-13C-401A and 58-13C-402A.

[12.11.2.15 NMAC - Rp, 12.11.2.15 NMAC, 1-1-2010]

12.11.2.16 ISSUER AGENTS - SCOR OFFERINGS:

Persons acting for an issuer effecting offers and sales of securities registered pursuant to 12.11.10 NMAC, Small Company Offering Registration (SCOR), to whom no commissions or other similar compensation is paid or given directly or indirectly for

effecting such transactions are exempt from the requirements of Sections 58-13C-401A and 58-13C-402A.

[12.11.2.16 NMAC - Rp, 12.11.2.16 NMAC, 1-1-2010]

12.11.2.17 CANADIAN BROKER-DEALERS AND SALES REPRESENTATIVES EXEMPTION:

A broker-dealer and its authorized agents are exempt from the registration requirements of Sections 58-13C-401A and 58-13C-402A if:

- A.** the broker-dealer and its authorized agents are located in Canada;
- B.** the broker-dealer and its authorized agents are licensed or registered pursuant to the laws of one or more Canadian provinces or territories;
- C.** the broker-dealer has no place of business in this state; and
- D.** the transactions in this state are limited to the following:
 - (1)** transactions with a person who is temporarily in this state and with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or
 - (2)** transactions with a person who is present in this state in relation to a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

[12.11.2.17 NMAC - Rp, 12.11.2.17 NMAC, 1-1-2010]

12.11.2.18 NET CAPITAL REQUIREMENTS AND AGGREGATE INDEBTEDNESS LIMITATIONS:

- A.** Every broker-dealer, whether or not subject to Rule 15c3-1 of the Securities Exchange Act of 1934, shall maintain net capital in such minimum amounts as are designated in that rule for the activities to be engaged in by a broker-dealer in this state.
- B.** The aggregate indebtedness of each broker-dealer whether or not subject to rule 15c3-1 of the Securities Exchange Act of 1934 shall not exceed the levels prescribed in that rule.
- C.** If a broker-dealer is an individual, the person shall segregate from personal capital in a separate account an amount sufficient to satisfy the net capital requirement, and the amount so segregated shall be utilized solely for the business for which the broker-dealer is registered.

D. The director may by order exempt any broker-dealer from the provisions of this rule, either unconditionally or upon specified conditions, if by reason of the broker-dealer's membership on a national securities exchange or the special nature of its business and its financial position, and the safeguards that have been established for the protection of customers' funds and securities, the provisions are not necessary in the public interest or for the protection of investors.

[12.11.2.18 NMAC - Rp, 12.11.2.18 NMAC, 1-1-2010]

12.11.2.19 FIDELITY BONDS:

A. Every broker-dealer shall file with the director a surety bond in the amount set by the director, with a minimum of \$100,000 and a maximum of \$1,000,000, except as provided in Subsections B and C of 12.11.2.19 NMAC. The bond shall comply with the requirements of Subsection E of Section 411 of the New Mexico Uniform Securities Act.

B. Broker-dealers who are members of the securities investor protection corporation will not be required to file the surety bond.

C. Broker-dealers who do not have custody of customer funds or securities will not be required to file the surety bond.

D. Issuer agents shall file with the director a surety bond in the amount set by the director, with a minimum of \$10,000 and a maximum of \$100,000.

[12.11.2.19 NMAC - Rp, 12.11.2.19 NMAC, 1-1-2010]

12.11.2.20 USE OF INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ON PRODUCTS AND SERVICES:

A. Broker-dealers and agents who use the internet to distribute information on available products and services through communications made on the internet directed generally to anyone having access to the internet and transmitted through internet communications shall not be considered to be "transacting business" in this state for purposes of Sections 58-13C-401A and 58-13C-402A of the New Mexico Uniform Securities Act based solely on that fact, provided that:

(1) the internet communication contains a legend in which it is clearly stated that:

(a) the broker-dealer or agent in question may only transact business in this state if first registered, excluded, or exempted from state broker-dealer or agent registration requirements; and

(b) follow-up, individualized responses to persons in this state by the broker-dealer or agent that involve either effecting or attempting to effect transactions in

securities, or rendering of personalized investment advice for compensation, will not be made without compliance with broker-dealer or agent registration requirements, or an applicable exemption or exclusion;

(2) the internet communication contains a mechanism which includes, but is not limited to, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that before any subsequent, direct communication with prospective customers or clients in this state, the broker-dealer and agent are first registered in this state or qualify for an exemption or exclusion from the registration requirement;

(3) the internet communication is limited to the dissemination of general information on products and services and does not involve either effecting or attempting to effect transactions in securities, or rendering personalized investment advice for compensation in this state over the internet; and

(4) with respect to broker-dealer or agent internet communications:

(a) the broker-dealer affiliation of the agent is prominently disclosed within the internet communication;

(b) the broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any internet communication by agent;

(c) the broker-dealer with whom the agent is associated first authorizes the distribution of information on the particular products and services through the internet communication; and

(d) when disseminating information through the internet communication, the agent acts within the scope of the authority granted by the broker-dealer.

B. This rule extends to state broker-dealer and agent registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

C. Nothing in this rule shall be construed to affect the activities of any broker-dealer or agent engaged in business in this state that is not subject to the jurisdiction of the director as provided in the National Securities Markets Improvements Act of 1996, as amended.

[12.11.2.20 NMAC - Rp, 12.11.2.20 NMAC, 1-1-2010]

12.11.2.21 REPORTING REQUIREMENTS:

A. Each broker-dealer shall file with the director a copy of any complaint related to its business, transactions or operations naming the broker-dealer or any of its partners,

officers, members, sales representatives or agents as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint is served on the broker-dealer; a copy of any answer or reply thereto filed by the broker-dealer within ten days of the date such is filed; and a copy of any decision, order or sanction made with respect to any such proceeding within twenty days of the date the decision, order or sanction is rendered.

B. Each broker-dealer shall file with the director a notice of transfer of control or change of name not less than thirty days prior to the date on which the transfer of control or change of name is to become effective or such shorter period as the director may permit.

C. Except as otherwise provided in this section, all material changes in the information included in a broker-dealer's most recent application for registration shall be set forth in an amendment to form BD filed with the director within thirty days after the change occurs.

D. Every broker-dealer shall file with the director the following reports concerning its net capital and aggregate indebtedness:

(1) immediate facsimile, telegraphic or written notice whenever the net capital of the broker-dealer is less than is required under 12.11.2.18 NMAC specifying the respective amounts of its net capital and aggregated indebtedness on the date of the notice; and

(2) a copy of every report or notice required to be filed by the broker-dealer pursuant to Rule 17a-11 of the Securities Exchange Act of 1934.

E. Each broker-dealer shall give immediate written notice to the director of the theft or disappearance of any New Mexico customers' securities or funds that are in the custody or control of its offices, whether within or outside this state, stating all material facts known to it concerning the theft or disappearance. However, if a broker-dealer complies with the provisions of 17 C.F.R. 240.17(f)(1), such broker-dealer need not give the notice required by this subsection.

F. Each broker-dealer shall file with the director a copy of any subordination agreement relating to the broker-dealer, within ten days after the agreement has been entered into, unless prior thereto the broker-dealer has filed a copy of the agreement with a national securities exchange or association of which it is a member.

G. Each broker-dealer shall notify the director in writing at least ten days prior to opening and not more than ten days after closing in this state any "branch office" as defined in these rules. The notification shall include such information as the director may request.

[12.11.2.21 NMAC - Rp, 12.11.2.21 NMAC, 1-1-2010]

12.11.2.22 FILING DOCUMENTS WITH THE DIRECTOR:

Broker-dealers and agents may satisfy filing requirements contained in these rules by filing required documents with CRD where appropriate.

[12.11.2.22 NMAC - Rp, 12.11.2.22 NMAC, 1-1-2010]

12.11.2.23 DENIAL, SUSPENSION AND REVOCATION:

Any order denying, suspending, revoking, canceling or limiting the registration of, and any order barring, a broker-dealer or agent may include such other sanctions as the director finds appropriate.

[12.11.2.23 NMAC - Rp, 12.11.2.23 NMAC, 1-1-2010]

12.11.2.24 BRANCH OFFICE SUPERVISORY REQUIREMENTS:

Every registered broker-dealer must employ at its principal office and at each branch office in this state at least one person designated to act in a supervisory capacity who is registered as an agent in this state and has satisfied the supervisory examination requirement in 12.11.2.12 NMAC. Designated supervisors must meet the requirements of this section at the time that the principal or branch office located in this state opens for business. Except as provided in Subsection A of 12.11.2.24 NMAC, the designated supervisor must be physically located in the office that he or she supervises. After a principal or branch office located in this state opens for business, if the designated supervisor no longer meets the requirements of this section, the broker-dealer shall have 90 days from the first date of noncompliance to meet the requirements of this section, provided that the broker-dealer notifies the director in writing of the event of noncompliance within five days of such event and further sets forth the method of supervision pending the replacement of the designated supervisor.

A. For single agent branch offices, the supervisory requirement of this section shall be satisfied if at least one person registered in this state who meets the examination requirements of sections 12.11.2.10 NMAC and 12.11.2.12 NMAC is employed on a full-time basis by the broker-dealer, and the broker-dealer shall:

- (1)** meet the supervisory requirements of FINRA;
- (2)** conduct annual on-site field audits, by its compliance department, of each single agent branch office, including, but not limited to, an examination for compliance with books and records requirements, for evidence of outside business activity, and for evidence that such activity was properly disclosed to and approved by the firm;

(3) maintain in its principal office the results of all field audits conducted pursuant to Paragraph (2) of this subsection;

(4) contact annually either telephonically or in writing a random sampling of at least 10 percent of the clients of each agent operating from single agent branch offices to determine if such agents are complying with 12.11.4.16 NMAC, including, but not limited to, whether agents are conducting any business with clients other than business that has been disclosed to the broker-dealer; if clients are contacted telephonically the broker-dealer shall maintain a written memorandum summarizing the questions asked and the clients' responses; and

(5) comply with any additional conditions that the director may by order impose, if the director finds the issuance of such order is necessary or appropriate in the public interest or for the protection of investors.

B. Branch office sales supervisors who have no supervisory or compliance responsibility for net capital or investment banking functions may substitute the general securities sales supervisor examination (series 8 or series 9/10) for the general securities principal exam (series 24).

[12.11.2.24 NMAC - Rp, 12.11.2.24 NMAC, 1-1-2010]

PART 3: BROKER-DEALER AND AGENTS RECORDS

12.11.3.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.3.1 NMAC - Rp, 12 NMAC 11.2.1.1, 1-1-2010]

12.11.3.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer or an issuer of securities, and their agents.

[12.11.3.2 NMAC - Rp, 12 NMAC 11.2.1.2, 1-1-2010]

12.11.3.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to make, amend and rescind rules as are necessary to carry out the provisions of the New Mexico Uniform Securities Act Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.3.3 NMAC - Rp, 12 NMAC 11.2.1.3, 1-1-2010]

12.11.3.4 DURATION:

Permanent.

[12.11.3.4 NMAC - Rp, 12 NMAC 11.2.1.4 NMAC, 1-1-2010]

12.11.3.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.3.5 NMAC - Rp, 12 NMAC 11.2.1.5, 1-1-2010]

12.11.3.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.3.6 NMAC - Rp, 12 NMAC 11.2.1.6, 1-1-2010]

12.11.3.7 DEFINITIONS:

[RESERVED]

12.11.3.8 BROKER-DEALERS REQUIRED BY FEDERAL LAW TO KEEP RECORDS:

Every registered broker-dealer subject to the Securities Exchange Act of 1934 ("the 1934 Act") and which is a member of a self-regulatory organization shall prepare and keep current the records required by the 1934 Act and the appropriate self-regulatory organization.

[12.11.3.8 NMAC - Rp, 12 NMAC 11.2.6.1, 1-1-2010]

12.11.3.9 BROKER-DEALERS RECORDS:

Every registered broker-dealer not subject to 12.11.3.8 NMAC shall prepare and keep current the following books and records relating to its business:

A. blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits; such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;

B. ledgers or other records reflecting all assets and liabilities, income, expense and capital accounts;

C. ledgers or other records reflecting securities in transfer, dividends and interest received, securities borrowed and securities loaned, moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in the collateral), and securities failed to receive and failed to deliver;

D. a securities record or ledger reflecting separately for each security as of the clearance dates, all "long" or "short" positions (including securities in safekeeping) carried by the broker-dealer for its account or for the account of its customers or partners, and showing the location of all securities long and the offsetting position to all securities short, and in all cases the name or designation of the account in which each position is carried;

E. a memorandum of each order (order ticket), and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted; the memorandum shall show the terms and conditions of the order or instruction; any modification or cancellation thereof; the account for which entered; whether the transaction was unsolicited; the time of entry; the price at which executed; and, to the extent feasible, the time of execution or cancellation; orders entered pursuant to the exercise of discretionary power by the broker-dealer, or any employee thereof, shall be so designated; the term "time of entry" shall mean the time when the broker-dealer transmits the order or instructions for execution or, if it is not so transmitted, the time when it is received;

F. a memorandum (order ticket) of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution;

G. copies of confirmations of all purchases and sales of securities, whether the confirmations are issued by the broker-dealer or the issuer of the security involved, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of the broker-dealer;

H. copies of all communications, correspondence and other records relating to securities transactions with customers;

I. a separate file containing all complaints made or submitted by customers to the broker-dealer or its agents relating to securities transactions; in this subsection, "complaint" means any written or oral statement of a customer alleging a grievance involving the activities of persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of any securities or funds of that customer that would constitute a violation of the New Mexico Uniform Securities Act or any rule or order thereunder;

J. a customer information form (new account information worksheet) for each customer; if recommendations are to be made to the customer, the form shall include information regarding the customer's name, address, telephone number, age, occupation, annual income, net worth and investment objectives or, if the customer refuses to provide the required information upon request, a notation to that effect;

K. for each cash and margin account established and maintained with the broker-dealer, information setting forth the name and address of the beneficial owner of each account, and copies of all guarantees of accounts and all margin, lending and option agreements; in the case of joint, partnership, corporate and limited liability accounts, the records required by this subsection must be executed by persons authorized to transact business for the account;

L. copies of all powers of attorney and other evidence of the granting of any discretionary authority with respect to a customer's account;

M. a record of the proof of money balances of all ledger accounts in the form of trial balances;

N. all partnership agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books and stock certificate books or, in the case of a limited liability company, all articles of organization and operating agreements of the broker-dealer;

O. a separate file containing copies of all advertising by the broker-dealer in the conduct of its securities business; and

P. a computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its net capital on form X-17A-5 of the SEC's FOCUS report as it may be amended from time to time.

[12.11.3.9 NMAC - Rp, 12 NMAC 11.2.6.2, 1-1-2010]

12.11.3.10 BROKER-DEALERS PRESERVATION OF RECORDS:

Every registered broker-dealer not subject to 12.11.3.8 NMAC shall preserve for at least five years, the most recent two years in an easily accessible place, all records required under 12.11.3.9 NMAC except that records required under Subsections J and L of 12.11.3.9 NMAC shall be preserved by the broker-dealer for at least five years after the closing of the account; and records required under Subsection N of 12.11.3.9 NMAC shall be preserved by the broker-dealer for at least five years after withdrawal or expiration of its registration in this state. After a record or other document has been preserved for one year as required under this section, a microfilm copy thereof may be substituted for the remainder of the required period.

[12.11.3.10 NMAC - Rp, 12 NMAC 11.2.6.3, 1-1-2010]

12.11.3.11 BROKER-DEALER BRANCH OFFICE RECORDS:

Except as provided in Subsection E below, every branch office of a registered broker-dealer not subject to 12.11.3.8 NMAC shall prepare and keep current the following records:

A. copies of the records described in Subsections E, G, H, I, J and O of 12.11.3.9 NMAC;

B. blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities; this requirement may be satisfied by maintaining a unit filing system where the order ticket information (described in Subsection E of 12.11.3.9 NMAC) required in Subsection A of 12.11.3.11 NMAC is accumulated and segregated on a daily basis;

C. blotters (or other records of original entry) setting forth an itemized daily record of all receipts and deliveries of securities (including certificate numbers) and all receipts and disbursements of cash;

D. copies of customer monthly or other periodic statements that are issued by the broker-dealer or that are furnished to the broker-dealer by the issuer of a security purchased by a customer of the broker-dealer; and

E. branch offices of broker-dealers engaged solely in the offer and sale of either securities issued by open-end investment companies, face-amount certificate companies or unit investment trusts registered under the Investment Company Act of 1940, or the securities of direct participation program issuers, or both, shall prepare and keep current copies of those records described in Subsections C, E, H, I and J of 12.11.3.9 NMAC.

[12.11.3.11 NMAC - Rp, 12 NMAC 11.2.6.4, 1-1-2010]

12.11.3.12 BROKER-DEALER PRESERVATION OF BRANCH OFFICE RECORDS:

The records required in 12.11.3.11 NMAC shall be preserved at the branch office for a period of not less than five years, the most recent two years in an easily accessible place, except that customer new account forms shall be preserved for a period of not less than three years after the closing of the account. After a record or document has been preserved for one year as required under this subsection, a microfilm copy thereof may be substituted for the remainder of the required period.

[12.11.3.12 NMAC - Rp, 12 NMAC 11.2.6.5, 1-1-2010]

12.11.3.13 RECORDS OF CLEARING BROKER-DEALER:

This part does not require a registered broker-dealer to make and keep such records of transactions cleared for the registrant by another registered broker-dealer as are customarily made and kept by the clearing broker-dealer.

[12.11.3.13 NMAC - Rp, 12 NMAC 11.2.6.6, 1-1-2010]

12.11.3.14 DIRECTOR MAY ORDER EXEMPTION:

The director may by order exempt any broker-dealer from all or part of the requirements of this part, either unconditionally or upon specified conditions, if by reason of the special nature of its business, the director finds the issuance of the order is necessary or appropriate in the public interest or for the protection of investors.

[12.11.3.14 NMAC - Rp, 12 NMAC 11.2.6.7, 1-1-2010]

12.11.3.15 AGENT RECORDS:

Every registered agent shall have and keep current the following records relating to customer securities transactions, unless the director by order exempts an agent from all or part of the requirements of this part:

A. the customer information form as set forth in Subsection J of 12.11.3.9 NMAC;

B. a securities holding record for each customer including the customer's name, address, telephone number, age, occupation, investment objectives and a chronological listing of the names and amount of all securities purchased or sold for the account of the customer, including the date of each transaction, and the unit purchase or sale price; and

C. the record requirements may not be satisfied by maintaining a file of confirmations unless permitted by order of the director.

[12.11.3.15 NMAC - Rp, 12 NMAC 11.2.7, 1-1-2010]

PART 4: BROKER-DEALER AND AGENTS RULES OF CONDUCT AND PROHIBITED BUSINESS PRACTICES

12.11.4.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.4.1 NMAC - Rp, 12.11.4.1 NMAC, 1-1-2010]

12.11.4.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer or an issuer of securities, and their agents.

[12.11.4.2 NMAC - Rp, 12.11.4.2 NMAC, 1-1-2010]

12.11.4.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to make, amend and rescind rules as are necessary to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.4.3 NMAC - Rp, 12.11.4.3 NMAC, 1-1-2010]

12.11.4.4 DURATION:

Permanent.

[12.11.4.4 NMAC - Rp, 12.11.4.4 NMAC, 1-1-2010]

12.11.4.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.4.5 NMAC - Rp, 12.11.4.5 NMAC, 1-1-2010]

12.11.4.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.4.6 NMAC - Rp, 12.11.4.6 NMAC, 1-1-2010]

12.11.4.7 DEFINITIONS:

[RESERVED]

12.11.4.8 WRITTEN CONFIRMATIONS:

Except as provided in 12.11.4.9 NMAC, each broker-dealer shall give or send to the customer a written confirmation, promptly after execution, and before settlement, of each transaction. The confirmation shall set forth:

A. a description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold and any commission charged;

B. whether the broker-dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent for both the customer and some other person;

C. when the broker-dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold, or the fact that the information will be furnished upon the request of the customer, if the information is known to, or with reasonable diligence may be ascertained by, the broker-dealer; and

D. whether the transaction was unsolicited.

[12.11.4.8 NMAC - Rp, 12.11.4.8 NMAC, 1-1-2010]

12.11.4.9 COMPLIANCE WITH RULE 10b-10:

If applicable, compliance with Rule 10b-10 of the Securities Exchange Act of 1934 shall be deemed compliance with 12.11.4.8 NMAC.

[12.11.4.9 NMAC - Rp, 12.11.4.9 NMAC, 1-1-2010]

12.11.4.10 WRITTEN SUPERVISORY PROCEDURES:

Each broker-dealer shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of the New Mexico Uniform Securities Act and rules and orders thereunder. The procedures shall include the designation by name or title of a number of supervisory employees reasonable in relation to the number of its registered agents, offices and transactions in this state. A complete set of the procedures and system for applying them shall be kept and maintained at every branch office.

[12.11.4.10 NMAC - Rp, 12.11.4.10 NMAC, 1-1-2010]

12.11.4.11 CONTRACT WAIVING RIGHTS PROHIBITED:

A broker-dealer shall not enter into any contract with a customer if the contract contains any condition, stipulation or provision binding the customer to waive any rights under the New Mexico Uniform Securities Act or any rule or order thereunder. Any such condition, stipulation or provision is void.

[12.11.4.11 NMAC - Rp, 12.11.4.11 NMAC, 1-1-2010]

12.11.4.12 NET WORTH WITHDRAWALS PROHIBITED:

No broker-dealer shall permit or effect a withdrawal of any part of its net worth, including subordinated indebtedness, whether by redemption, retirement, repurchase, repayment,

or otherwise, that would cause its net capital or its aggregate indebtedness to violate Subsections A or B of 12.11.2.18 NMAC, without prior written approval of the director.

[12.11.4.12 NMAC - Rp, 12.11.4.12 NMAC, 1-1-2010]

12.11.4.13 CUSTOMER COPIES OF CONTRACTS:

Each broker-dealer shall provide each customer with a conformed copy of all contracts or agreements between the broker-dealer and the customer, and a copy of the customer information forms prescribed under Subsections J and K of 12.11.3.9 NMAC, not later than 15 days after the initial securities transaction effected in the customer's account.

[12.11.4.13 NMAC - Rp, 12.11.4.13 NMAC, 1-1-2010]

12.11.4.14 BROKER-DEALER ASSOCIATION WITH A DEPOSITORY INSTITUTION:

No broker-dealer may associate with a depository institution by contract, agreement or other means unless promotional and account-establishing functions are performed or supervised by persons registered as agents representing the broker-dealer.

[12.11.4.14 NMAC - Rp, 12.11.4.14 NMAC, 1-1-2010]

12.11.4.15 PROHIBITED BUSINESS PRACTICES BY BROKER-DEALERS:

The following are deemed to be unethical and dishonest conduct or practices by a broker-dealer under Section 58-13C-412C(13) NMSA 1978 without limiting those terms to the practices specified herein:

A. causing any unreasonable delay in the delivery of securities purchased by any of its customers, or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

B. inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

C. recommending to a customer the purchase, sale or exchange of any securities without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer;

D. executing a transaction on behalf of a customer without authority to do so;

E. executing a transaction for the account of a customer upon instruction from a third party without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;

F. exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;

G. extending, arranging for, or participating in arranging for credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the Federal Reserve Board;

H. executing any transaction in a margin account without obtaining from its customer a written margin agreement not later than 15 calendar days after the initial transaction in the account;

I. failing to segregate customers' free securities or securities in safekeeping;

J. hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;

K. charging its customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

L. entering into a transaction for its own account with a customer with an unreasonable markup or markdown;

M. entering into a transaction for its own account with a customer in which a commission is charged;

N. entering into a transaction with or for a customer at a price not reasonably related to the current market price;

O. executing orders for the purchase by a customer of securities not registered or exempted unless the transaction is exempted under the New Mexico Uniform Securities Act;

P. representing itself as a financial or investment planner, consultant, or adviser, when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services and the method of compensation for the services;

Q. violating any material rule of any securities exchange or national securities association of which it is a member with respect to any customer, transaction or business in this state;

R. failing to furnish to a customer purchasing securities in an offering, not later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

S. introducing customer transactions on a "fully disclosed" basis to another broker-dealer that is not registered under the New Mexico Uniform Securities Act;

T. recommending to a customer that the customer engage the services of an investment adviser that is not registered under the New Mexico Uniform Securities Act or the Investment Advisers Act of 1940; and

U. using in a misleading manner any term or abbreviation that states or implies that a person has special expertise, certification, or training in financial planning, including but not limited to, the misleading use of a senior-specific certification or designation as set forth in 12.11.17 NMAC.

[12.11.4.15 NMAC - Rp, 12.11.4.15 NMAC, 1-1-2010]

12.11.4.16 PROHIBITED BUSINESS PRACTICES BY AGENTS:

The following are deemed to be unethical or dishonest conduct or practices by an agent under Section 58-13C-412C(13) NMSA 1978 without limiting those terms to the practices specified herein:

A. borrowing money or securities from, or lending money or securities to, a customer;

B. acting as a custodian for money, securities or an executed stock power of a customer;

C. effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;

D. effecting transactions in securities for an account operating under a fictitious name, unless disclosed to, and permitted in writing by, the broker-dealer or issuer which the agent represents;

E. sharing directly or indirectly in profits or losses in the account of any customer without first obtaining written authorization of the customer and the broker-dealer which the agent represents;

F. dividing or otherwise splitting commissions, profits or other compensation receivable in connection with the purchase or sale of securities in this state with any person not so registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

G. using advertising describing or relating to the agent's securities business unless the advertising clearly identifies the name of the agent's employing broker-dealer or issuer;

H. misrepresenting the services of a registered investment adviser on whose behalf the agent is soliciting business or accounts; and

I. engaging in any of the practices specified in Subsections B, C, D, E, F, G, H, O, P, Q, R, T and U of 12.11.4.15 NMAC.

[12.11.4.16 NMAC - Rp, 12.11.4.16 NMAC, 1-1-2010]

PART 5: INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES AND FEDERAL COVERED ADVISERS

12.11.5.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.5.1 NMAC - Rp, 12.11.5.1 NMAC, 1-1-2010]

12.11.5.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as an investment adviser and their representatives.

[12.11.5.2 NMAC - Rp, 12.11.5.2 NMAC, 1-1-2010]

12.11.5.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.5.3 NMAC - Rp, 12.11.5.3 NMAC, 1-1-2010]

12.11.5.4 DURATION:

Permanent.

[12.11.5.4 NMAC - Rp, 12.11.5.4 NMAC, 1-1-2010]

12.11.5.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.5.5 NMAC - Rp, 12.11.5.5 NMAC, 1-1-2010]

12.11.5.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.5.6 NMAC - Rp, 12.11.5.6 NMAC, 1-1-2010]

12.11.5.7 DEFINITIONS:

The following definitions apply throughout this part.

A. "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or having the ability to appropriate them.

(1) Custody includes:

(a) possession of client funds or securities, unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(b) any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the adviser's instruction to the custodian; and

(c) any capacity (such as a general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser, an owner of the investment adviser, or a supervised person of the investment adviser legal ownership of or access to client funds or securities.

(2) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains the records required.

B. For purposes of 12.11.5 NMAC, an investment adviser shall not be deemed to be exercising "discretion" or "discretionary authority" when it places trade orders with a broker-dealer pursuant to a third party trading agreement if:

(1) the investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

(2) the investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

(3) a third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

[12.11.5.7 NMAC - N, 1-1-2010]

12.11.5.8 ELECTRONIC FILING WITH DESIGNATED ENTITY:

A. Designation. Pursuant to Section 58-13C-406A, the director designates the IARD and the CRD to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the director.

B. Use of the IARD and the CRD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the director shall be filed electronically with and transmitted to the IARD or the CRD.

C. Electronic signature. When a signature or signatures are required by the particular instructions of any filing made through the IARD or the CRD, the applicant or a duly authorized officer of the applicant, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the IARD or the CRD. Submission of a filing in this manner shall constitute evidence of legal signature by any individuals whose names are typed on the filing.

D. Non-IARD and non-CRD filings. Notwithstanding Subsection B of this section, any documents or fees required to be filed with the director that are not permitted to be filed with or cannot be accepted by the IARD or the CRD shall be filed directly with the director.

E. Hardship exemptions. This subsection provides two "hardship exemptions" from the requirements to make electronic filings.

(1) Temporary hardship exemption.

(a) Investment advisers registered or required to be registered under the New Mexico Uniform Securities Act that experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(b) To request a temporary hardship exemption, the investment adviser must:

(i) file the form ADV-H in paper format with the director no later than one business day after the filing that is the subject of the form ADV-H was due; and

(ii) submit the filing that is the subject of the form ADV-H in electronic format to the IARD no later than seven business days after the filing was due.

(c) The temporary hardship exemption will be deemed effective upon receipt by the director of the complete form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the director.

(2) Continuing hardship exemption. The director may exclude, by order, an investment adviser from the requirement to make electronic filings with the IARD. Such order will be granted only if the director determines that such an exemption is consistent with the public interest and the protection of investors.

[12.11.5.8 NMAC - N, 1-1-2010]

12.11.5.9 APPLICATION FOR INVESTMENT ADVISER REGISTRATION:

A. Initial application. The application for initial registration as an investment adviser pursuant to Section 58-13C-406A shall be made by completing the form ADV in accordance with the form instructions and by filing the form with the IARD. The application for initial registration shall also include the following:

(1) a financial statement demonstrating compliance with the requirements of 12.11.5.23 NMAC, if necessary;

(2) the fee required by Section 58-13C-410C;

(3) for sole proprietors, proof of compliance by the applicant with the examination requirements of 12.11.5.14 NMAC unless such proof is available to the director through the CRD; and

(4) any other information required by the director.

B. Annual renewal. Pursuant to Section 58-13C-406D, a registration is effective until midnight on December 31st of the year for which the application for registration was filed. An investment adviser may renew a registration through the IARD and shall pay the fee required by Section 58-13C-410C.

C. Amendments.

(1) Pursuant to Section 58-13C-406B, if the information or record contained in an application filed under this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment in accordance with the instructions in the form ADV.

(2) An amendment will be considered to be filed promptly if it is filed within 30 days of the event that requires the filing.

D. Completion of filing. An application for initial registration or renewal is not considered filed for purposes of Section 58-13C-406 until the required fee and all additional information requested by the director has been received by the director.

[12.11.5.9 NMAC - Rp, 12.11.5.8 NMAC, 1-1-2010]

12.11.5.10 APPLICATION FOR INVESTMENT ADVISER REPRESENTATIVE REGISTRATION:

A. Initial application. The application for initial registration pursuant to Section 59-13C-406A shall be made by completing form U-4 in accordance with the form instructions and by filing the form U-4 with the CRD. The application for initial registration shall also include the following:

(1) proof of compliance by the investment adviser representative applicant with the examination requirements set out in 12.11.5.14 NMAC unless such proof is available to the director through the CRD; and

(2) the fee required by Section 58-13C-410D.

B. Annual renewal. Pursuant to Section 58-13C-406D, a registration is effective until midnight on December 31st of the year for which the application for registration was filed. An investment adviser representative registration may be renewed through the CRD with payment of the fee required by Section 58-13C-410D.

C. Amendments.

(1) Pursuant to Section 58-13C-406B, if the information or record contained in an application filed under this section is or becomes inaccurate or incomplete in a material respect, the investment adviser or investment adviser representative shall promptly file a correcting amendment in accordance with the instructions in the form U-

4. The investment adviser and the investment adviser representative are under a continuing obligation to update information required by the form U-4 as changes occur.

(2) An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing.

D. Completion of filing. An application for initial registration or a renewal is not considered filed for purposes of Section 58-13C-406 until the required fee and all additional information and records requested by the director pursuant to Section 58-13C-410D have been received.

[12.11.5.10 NMAC - Rp, 12.11.5.8 NMAC, 1-1-2010]

12.11.5.11 NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED INVESTMENT ADVISERS:

A. Notice Filing. The notice filing for a federal covered investment adviser under Section 58-13C-405C of the New Mexico Uniform Securities Act shall be filed with the IARD on an executed form ADV. A notice filing shall be deemed filed when the fee required by Section 58-13C-410E and the complete form ADV are filed with and accepted by the IARD on behalf of the state.

B. Annual renewal. The annual renewal of the notice filing for a federal covered investment adviser pursuant to Section 58-13C-405C shall be filed with the IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by Section 58-13C-410E is filed with and accepted by the IARD on behalf of the state.

C. Updates and amendments.

(1) A federal covered investment adviser shall file with the IARD, in accordance with the instructions in the form ADV, any amendments to the federal covered investment adviser's form ADV by filing an annual updating amendment within 90 days after the end of its fiscal year.

(2) In addition to filing its annual updating amendment, the federal covered investment adviser shall amend its form ADV by filing additional amendments promptly with the IARD if:

(a) information provided in response to items 1, 3, 9, or 11 of part 1A or items 1, 2.A through 2.F, or 2.I or part 1.B of form ADV become inaccurate in any way;

(b) information provided in response to items 4, 8, 10 of part 1.A or item 2.G of part 1.B of form ADV become materially inaccurate; or

(c) information provided in its brochure becomes materially inaccurate.

(3) An amendment shall be considered to be filed promptly if filed within 30 days of the event that requires the filing of the amendment.

[12.11.5.11 NMAC - Rp, 12.11.5.16 NMAC, 1-1-2010]

12.11.5.12 INVESTMENT ADVISER BROCHURE RULE:

A. DEFINITIONS. For the purpose of this section:

(1) "contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

(a) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(b) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(c) any combination of the foregoing services;

(2) "entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal; and

(3) "investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of Section 15(c) of that act.

B. General Requirements. Unless otherwise provided in this section, an investment adviser, registered or required to be registered pursuant to Section 403 of the New Mexico Uniform Securities Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of part II of its form ADV or written documents containing at least the information then so required by part II of form ADV, or such other information as the director may require.

C. Delivery.

(1) An investment adviser, except as provided in Paragraph (2) of this subsection, shall deliver the statement required by this section to an advisory client or prospective advisory client:

(a) not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client; or

(b) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(2) The delivery of the statement required by Paragraph (1) of this subsection need not be made in connection with entering into:

(a) an investment company contract; or

(b) a contract for impersonal advisory services requiring a payment of less than \$200.00.

D. Offer to deliver.

(1) An investment adviser, except as provided in Paragraph (2) of this subsection, annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section.

(2) The delivery or offer required by Paragraph (1) of this subsection need not be made to advisory clients receiving advisory services solely pursuant to:

(a) an investment company contract; or

(b) a contract for impersonal advisory services requiring a payment of less than \$200.00.

(3) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$200.00 or more, an offer of the type specified in Paragraph (1) of this subsection shall also be made at the time of entering into an advisory contract.

(4) Any statement requested in writing by an advisory client pursuant to an offer required by this section must be mailed or delivered within seven days of the receipt of the request.

E. Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by part II of form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

F. Other disclosures. Nothing in this section shall relieve any investment adviser from any obligation pursuant to any provision of the New Mexico Uniform Securities Act or the rules and regulations thereunder or other federal or state law to disclose any

information to its advisory clients or prospective advisory clients not specifically required by this section.

[12.11.5.12 NMAC - N, 1-1-2010]

12.11.5.13 TERMINATION, TRANSFER AND WITHDRAWAL:

A. Termination of investment adviser representative's employment or association. Pursuant to Section 58-13C-408A, if an investment adviser representative registered under the New Mexico Uniform Securities Act terminates employment by or association with an investment adviser or a federal covered investment adviser or terminates activities that require registration as an investment adviser representative, the investment adviser or federal covered investment adviser shall complete the form U-5 in accordance with the form instructions and promptly file the form with CRD. If the investment adviser representative learns that the investment adviser or federal covered investment adviser has not filed the form, then the investment adviser representative shall promptly file it. The form will be considered to be filed promptly if it is filed within 30 days of the termination.

B. Transfer of investment adviser representative's employment or association. Pursuant to Section 58-13C-408B, if an investment adviser representative registered under the New Mexico Uniform Securities Act terminates employment by or association with an investment adviser or federal covered investment adviser and begins employment by or association with another investment adviser or federal covered investment adviser, an initial application for registration must be filed in compliance with Section 58-13C-406 and 12.11.5.10 NMAC.

C. Withdrawal.

(1) The application for withdrawal of a registration by an investment adviser pursuant to Section 58-13C-409 shall be made by following the instructions on form ADV-W and filing the form ADV-W with the IARD.

(2) The application for withdrawal of registration as an investment adviser representative pursuant to Section 58-13C-409 shall be made by following the instructions on form U-5 and filing the form U-5 with the CRD.

[12.11.5.13 NMAC - N, 1-1-2010]

12.11.5.14 EXAMINATION REQUIREMENTS:

An individual applying to be registered as an investment adviser or investment adviser representative under the New Mexico Uniform Securities Act shall provide the director with proof of obtaining a passing score on either:

A. the uniform investment adviser law examination (series 65 - post 1999 version);
or,

B. the general securities representative examination (series 7) and the uniform combined state law examination (series 66 - post 1999 version).

[12.11.5.14 NMAC - Rp, 12.11.5.9 NMAC, 1-1-2010]

12.11.5.15 LIMITED REGISTRATION:

Any individual whose proposed advisory activities will be restricted shall provide the director with proof of obtaining a passing score on the uniform combined state law examination (series 66 - post 1999 version) and each examination in the following paragraphs that relates to the applicant's proposed activities:

A. the investment company products/variable contracts representative examination (series 6);

B. the limited registered representative examination (series 17);

C. the direct participation programs representative examination (series 22);

D. the municipal securities representative examination (series 52);

E. the corporate securities representative examination (series 62);

F. the government securities limited representative examination (series 72);

G. the Canada modules of the series 7 examination (series 37 and 38);

H. the Japan module of the series 7 examination (series 47).

[12.11.5.15 NMAC - Rp, 12.11.5.10 NMAC, 1-1-2010]

12.11.5.16 EXAMINATION REQUIREMENTS WAIVER:

The examination requirement in 12.11.5.14 NMAC is waived for any applicant who meets the criteria set forth in any one of the paragraphs in this section:

A. the applicant has been licensed or registered within two years prior to the date the application is filed as an investment adviser or investment adviser representative under the securities law of another state requiring examinations equivalent to the examinations designated in 12.11.5.14 NMAC;

B. the applicant has been licensed or registered within two years prior to the date the application is filed as an investment adviser or investment adviser representative under the securities law of another state requiring examinations equivalent to:

(1) either the uniform investment adviser law examination (series 65 - pre 2000 version) or the uniform combined state law examination (series 66 - pre 2000 version); and

(2) either the national association of securities dealers non-member general securities examination (series 2) or the general securities registered representative examination (series 7);

C. the applicant has been registered or licensed as an investment adviser or an investment adviser representative under the New Mexico Uniform Securities Act or its predecessor act within two years prior to the date the application is filed.

[12.11.5.16 NMAC - Rp, 12.11.5.11 NMAC, 1-1-2010]

12.11.5.17 PROFESSIONAL DESIGNATION WAIVERS:

The examination requirements of sections 12.11.5.14 NMAC and 12.11.5.18 NMAC shall not apply to an individual who currently holds at least one of the following professional designations:

A. chartered financial analyst certification (CFA);

B. chartered investment counselor certification (CIC);

C. certified financial planner designation (CFP);

D. chartered financial consultant certification (ChFC); or

E. certified public accountant with a personal financial specialist designation (PFS).

[12.11.5.17 NMAC - Rp, 12.11.5.12 NMAC, 1-1-2010]

12.11.5.18 EXAMINATION REQUIREMENTS - PRINCIPAL:

Prior to initial registration as an investment adviser, and at all times thereafter, the applicant is required to have at least one designated supervisor who, in addition to passing the examinations required in 12.11.5.14 NMAC, has passed, within two years prior to the date the application for registration is filed in this state, the general securities principal examination (series 24) or the general securities sales supervisor qualification examination (series 9/10), unless waived under 12.11.5.17 NMAC. An investment adviser which does not have more than one person associated with the firm who is registered pursuant to the New Mexico Uniform Securities Act is not required to have a

designated supervisor and is not required pass examinations in addition to those required in 12.11.5.14 NMAC.

[12.11.5.18 NMAC - Rp, 12.11.5.13 NMAC, 1-1-2010]

12.11.5.19 LIMITED REGISTRATION:

An applicant may apply for a limited registration to engage in activities limited to one or more of the categories set forth in 12.11.5.15 NMAC, provided the applicant has passed the examination in the category for which the applicant is applying and the applicant has submitted a written statement to the director setting forth how the applicant's activities will be limited in this state and, in the case of an investment adviser representative seeking a limited registration, how the representative will be adequately supervised.

[12.11.5.19 NMAC - Rp, 12.11.5.14 NMAC, 1-1-2010]

12.11.5.20 SOLICITORS:

A. Definitions for purposes of this section:

(1) "solicitor" means any individual, person or entity who, directly or indirectly, receives a cash fee or any other economic benefit for soliciting, referring, offering or otherwise negotiating for the sale or selling of investment advisory services to clients on behalf of an investment adviser;

(2) "client" includes any prospective client.

B. It shall be unlawful for any investment adviser, registered or required to be registered, to pay a cash fee or any other economic benefit, directly or indirectly, in connection with solicitation activities unless:

(1) the solicitor is registered as an investment adviser representative or is exempt from registration as provided for in Subsection E of this section;

(2) the solicitor to whom a cash fee or any other economic benefit is paid for such referral is not a person described in Paragraphs (2) through (6), (8) or (11) through (13) of Section 58-13C-412C of NMSA 1978;

(3) the cash fee or any other economic benefit is paid by the investment adviser with respect to solicitation activities that are impersonal in nature in that they are provided solely by means of:

(a) written material or oral statements which do not purport to meet the objectives or needs of the specific client;

(b) statistical information containing no expressions of opinions as to the merits of particular securities; or

(c) any combination of the foregoing services,

(4) the cash fee or any other economic benefit is paid pursuant to a written agreement to which the investment adviser is a party and all of the following conditions are met:

(a) the written agreement:

(i) describes the solicitation or referral activities to be engaged in by the solicitor on behalf of the investment adviser and the cash fee or any other economic benefit to be received for such activities;

(ii) contains an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the New Mexico Uniform Securities Act and rules thereunder; and

(iii) requires that the solicitor, at the time of any solicitation or referral activities for which a cash fee or any other economic benefit is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's disclosure document required under rule 203(b)-1 and a separate disclosure statement as described in Subsection C of this section;

(b) the investment adviser receives from the client, prior to or at the time of entering into any written investment advisory contract, a signed and dated acknowledgement of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document;

(c) the investment adviser makes a bona fide effort and has a reasonable basis for believing that the solicitor has complied with the agreement; and

(d) the foregoing requirements in Subparagraphs (a), (b) and (c) of Paragraph (4) of this subsection shall not apply where the solicitor is:

(i) a partner, officer, director or employee of such investment adviser;
or

(ii) a partner, officer, director or employee of a person that controls, is controlled by, or is under common control with such investment adviser, provided the status of the solicitor is disclosed to the client at the time of the solicitation or referral.

C. The separate written disclosure document required to be furnished by the solicitor to the client pursuant to Item (iii) of Subparagraph (a) of Paragraph (4) of Subsection B of this section shall contain the following information:

- (1) the name of the solicitor;
- (2) the name of the investment adviser;
- (3) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;
- (4) a statement that the solicitor will be compensated for solicitation or referral services by the investment adviser;
- (5) the terms of the compensation arrangement including a description of the cash fee or any other economic benefit paid or to be paid to the solicitor; and
- (6) the amount of compensation the client will pay, if any, in addition to the advisory fees, and whether the cash fee or any other economic benefit paid to the solicitor will be added to the advisory fee, creating a differential with respect to the amount charged to other advisory clients who are not subject to the solicitor compensation arrangement.

D. Nothing in this rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

E. A solicitor is not required to be registered as an investment adviser or as an investment adviser representative if the solicitor is in compliance with all requirements of Subsections B and C in this section, and the solicitor either:

- (1) receives compensation that consists of a one-time payment only; or
- (2) receives an order of the director waiving the registration requirement.

[12.11.5.20 NMAC - N, 1-1-2010]

12.11.5.21 NOT COMPLETED AND WITHDRAWN APPLICATIONS:

Any application for registration that is not completed or withdrawn within six months from the date it is initially received may be deemed materially incomplete and the director may issue an order denying the application.

[12.11.5.21 NMAC - Rp, 12.11.5.15 NMAC, 1-1-2010]

12.11.5.22 CUSTODY OF CLIENT FUNDS OR SECURITIES BY INVESTMENT ADVISERS:

A. Section definitions. For purposes of this section:

- (1) "independent representative" means a person who:

(a) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle, and by law or contract is obligated to act in the best interest of the advisory client or the limited partners, members or other beneficial owners;

(b) does not control, is not controlled by, and is not under common control with the adviser; and

(c) does not have, and has not had within the past two years, a material business relationship with the adviser;

(2) "qualified custodian" means:

(a) a bank or savings association that has deposits insured by the FDIC under the Federal Deposit Insurance Act;

(b) a registered broker-dealer holding the client assets in customer accounts;

(c) a registered futures commission merchant under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(d) a foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets; and

(3) "supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

B. General provision. It shall be unlawful and a fraudulent or deceptive act, practice, or course of business for any investment adviser registered or required to be registered in New Mexico to take or have custody of any securities or funds of any client unless the investment adviser complies with the provisions of this section.

C. Notice to director. The investment adviser shall promptly notify the director in writing that the investment adviser has or may have custody. Such notification is required to be given on form ADV.

D. Qualified custodian. The funds and securities shall be maintained by a qualified custodian:

- (1) in a separate account for each client under that client's name; or
- (2) in accounts that contain only the funds and securities of the adviser's clients, under the adviser's name as agent or trustee for the clients.

E. Notice to clients. When the investment adviser opens an account with a qualified custodian for maintaining a client's funds or securities, the adviser shall notify the client promptly in writing of the qualified custodian's name and address and of the manner in which the funds and securities are maintained. The adviser shall notify the client promptly in writing of any changes to this information.

F. Account statements.

- (1) Account statements must be sent to clients, either by:
 - (a) a qualified custodian; the investment adviser must have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions during that period; or
 - (b) the investment adviser.
- (2) If the investment adviser sends account statements to its clients, the adviser must comply with the following requirements:
 - (a) the investment adviser shall send an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period;
 - (b) the investment adviser shall engage an independent certified public accountant who shall verify all of those funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and shall file a certificate on form ADV-E, 17 C.F.R. Section 279.8, with the director within 30 days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and the extent of the examination; and
 - (c) the terms of engagement of the independent certified public accountant shall require that, upon finding any material discrepancies during the course of the examination, such accountant shall notify the director within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the director.

(3) Limited partnerships and limited liability companies. If the investment adviser is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under this subsection must be sent to each limited partner (or member or other beneficial owner or their independent representative).

(4) Revocable trusts. If an investment adviser, owner of an investment adviser, or supervised person of an investment adviser is serving as trustee of a revocable trust and the investment adviser acts as the investment adviser to that trust, the account statements required under this subsection must be sent to the grantor of the trust. If the trust assets are being maintained by a qualified custodian, the adviser shall instruct the custodian to send the statements directly to the grantor and must have a reasonable basis for believing the statements are being sent.

(5) Irrevocable trusts.

(a) If an investment adviser, owner of an investment adviser, or supervised person of an investment adviser is serving as trustee of an irrevocable trust and the investment adviser acts as the investment adviser to that trust, the investment adviser shall send a notice annually to every beneficiary entitled to receive the annual report of the trustee pursuant to Section 46A-8-813C, NMSA 1978. The investment adviser is not required to send this notice to beneficiaries for whom the trustee is also the legal guardian.

(b) The notice must state that:

(i) the investment adviser or one of its owners or supervised persons is serving as the trustee for the trust;

(ii) the investment adviser is providing advisory services to the trust;
and

(iii) the beneficiary may receive, upon request, a copy of the account statements required by this subsection.

(c) The notice required by Subparagraph (a) of this paragraph may be sent with the annual report of the trustee required by Section 46A-8-813C, NMSA 1978.

(d) The investment adviser shall arrange for the account statements to be sent to each beneficiary requesting statements. If the trust assets are being maintained by a qualified custodian, the adviser shall instruct the custodian to send the statements directly to the requesting beneficiaries and must have a reasonable basis for believing the statements are being sent. If more than three beneficiaries request statements, the custodian may charge a fee, reflecting its actual costs of copying and mailing the statements, to each beneficiary receiving them.

(6) Co-trustees. Compliance with Paragraphs (4) and (5) of this subsection is not required if the trust has at least one co-trustee who is neither a relative of, nor within the past three years has had a material business relationship with, the investment adviser or any of its owners or supervised persons, and the trust's assets are maintained by a qualified custodian who is sending a copy of the account statements required by Paragraph (1) of this subsection directly to the co-trustee.

G. Independent representatives. A client may designate an independent representative to receive, on his behalf, notices and account statements as required under Subsections E and F of this section.

H. Direct fee deduction.

(1) An adviser who has custody by virtue of having fees directly deducted from client advisory accounts must also provide the following safeguards:

(a) the investment adviser must have written authorization from the client to deduct advisory fees from the account with the qualified custodian; and

(b) each time a fee is directly deducted from a client account, the investment adviser must concurrently:

(i) send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

(ii) send the client an invoice itemizing the fee; itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee; invoices need not be sent more frequently than every quarter, provided that the invoice must show the calculation of each fee deducted during the quarter.

(2) An investment adviser is not required to comply with Item (ii) of Subparagraph (b) of Paragraph (1) of this subsection) for any client who waives in writing the right to receive an itemized invoice. The waiver must describe the right being waived and must be on a document that does not address any other matter.

(3) Whenever account statements are required to be sent to a grantor or beneficiary of a trust pursuant to Paragraphs 4 or 5 of Subsection F of this section, the adviser shall send to that person the itemized invoice required by Item (ii) of Subparagraph (b) of Paragraph (1) of this subsection unless the person has executed a waiver in accordance with this subsection.

(4) The investment adviser must notify the director in writing that the investment adviser intends to use the safeguards provided in Paragraph (1) of this subsection. Such notification is required to be given on the form ADV.

(5) An investment adviser having custody solely by virtue of having fees directly deducted from client advisory accounts and who complies with this subsection and with Subsections D through G of this section is not required to:

(a) meet the financial requirements for custodial advisers set forth in Subsection B of 12.11.5.24 NMAC; and

(b) file an audited balance sheet on form ADV, part II, Schedule G, unless required for some reason other than having custody of client assets.

I. Mutual fund shares. With respect to shares of an open-end investment company as defined in Section 5(a)(1) of the Investment Company Act of 1940, 15 U.S.C. Section 80a-5(a)(1), an investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with this section.

J. Certain privately offered securities.

(1) An investment adviser is not required to comply with this section with respect to securities that are:

(a) acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(b) uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(c) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(2) This subsection applies to securities held for the account of a limited partnership (or limited liability company or other type of pooled investment vehicle) only if the limited partnership is audited and the audited financial statements are distributed as required by Subsection K of this section.

K. Limited partnerships subject to annual audit. An investment adviser is not required to comply with Paragraph (3) of Subsection F of this section with respect to the account of a limited partnership (or limited liability company or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of the fiscal year, or in the case of a fund of funds within 180 days of the end of the fiscal year.

L. Registered investment companies. An investment adviser is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to -64).

M. Client funds or securities not maintained with qualified custodian. An investment adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian, as defined in this section, must:

- (1) first obtain the written approval of the director, and
- (2) comply with Subsections C through G of this section, to the extent applicable, including performing those functions that would otherwise be performed by the qualified custodian.

N. Beneficial trusts. An investment adviser who has custody of client assets solely because the investment adviser, an owner of the investment adviser, or a supervised person of the investment adviser is a trustee for a beneficial trust and the beneficial owner of the trust is a parent, grandparent, spouse, sibling, child or grandchild of the trustee is not required to file an audited balance sheet on form ADV, part II, schedule G if the investment adviser complies with this section. These relationships include "step" relationships.

[12.11.5.22 NMAC - N, 1-1-2010]

12.11.5.23 MINIMUM FINANCIAL REQUIREMENTS FOR INVESTMENT ADVISERS:

A. All investment advisers. An investment adviser registered or required to be registered under the New Mexico Uniform Securities Act that shall maintain at all times a minimum net worth of \$5,000 or such amount as may be required by any other applicable subsection of this rule, whichever requirement is higher.

B. Investment advisers with custody. An investment adviser registered or required to be registered under the Act that has custody of client funds or securities shall maintain at all times a minimum net worth of \$2,000,000, or post a surety bond in the amount set by order of the director up to a maximum of \$2,000,000.

C. Investment advisers with discretionary authority. An investment adviser registered or required to be registered under the New Mexico Uniform Securities Act that has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of \$10,000, unless the director by order approves a lesser minimum net worth.

D. Net worth less than minimum requirement. Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under the New Mexico Uniform Securities Act shall by the close of business on the next business day notify the director if that investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the director of its financial condition, including the following:

- (1) a trial balance of all ledger accounts;
 - (2) a statement of all client funds or securities which are not segregated;
 - (3) a computation of the aggregate amount of client ledger debit balances;
- and
- (4) a statement as to the number of client accounts.

E. Section definition of net worth. For purposes of 12.11.5.23 NMAC, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles.

- (1) Net worth shall not include the following assets:
 - (a) prepaid expenses, except as to items properly classified as assets under generally accepted accounting principles;
 - (b) deferred charges;
 - (c) goodwill;
 - (d) franchise rights;
 - (e) organizational expenses;
 - (f) patents;
 - (g) copyrights;
 - (h) marketing rights;
 - (i) debt discount and expense; and
 - (j) all other assets of intangible nature.
- (2) In addition, for individuals, net worth shall not include home, home furnishings, automobile(s) and any other personal items not readily marketable.
- (3) In addition, for corporations and limited liability companies, net worth shall not include advances or loans to stockholders, officers or members.
- (4) In addition, for partnerships, net worth shall not include advances or loans to partners.

F. Appraisal. The director may require that a current appraisal be submitted in order to establish the worth of any asset.

G. Minimum capital requirement for investment advisers with principal place of business out of state. Every registered investment adviser that has its principal place of business in a state other than New Mexico shall maintain only such minimum capital as required by such state, provided the investment adviser is licensed or registered in such state and is in compliance with such state's minimum capital requirement.

[12.11.5.23 NMAC - Rp, 12.11.5.17 NMAC and 12.11.5.18 NMAC, 1-1-2010]

12.11.5.24 USE OF THE INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ON PRODUCTS AND SERVICES:

A. Investment advisers and investment adviser representatives who use the internet to distribute information on available products and services through communications made on the internet directed generally to anyone having access to the internet and transmitted through internet communications shall not be considered to be "transacting business" in this state for purposes of Section 58-13C-403A based solely on that fact, provided that:

(1) the internet communication contains a legend in which it is clearly stated that:

(a) the investment adviser or investment adviser representative in question may only transact business in this state if first registered, excluded, or exempted from state investment adviser or investment adviser representative registration requirements; and

(b) follow-up, individualized responses to persons in this state by the investment adviser or investment adviser representative that involve either effecting or attempting to effect transactions in securities, or rendering of personalized investment advice for compensation, will not be made without compliance with state investment adviser or investment adviser representative registration requirements or an applicable exemption or exclusion;

(2) the internet communication contains a mechanism, which includes but is not limited to, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that before any subsequent, direct communication with prospective customers or clients in this state, the investment adviser and investment adviser representative are first registered in this state or qualify for an exemption or exclusion from the registration requirement; nothing in this paragraph shall be construed to relieve a state registered investment adviser or investment adviser representative from any applicable securities registration requirement in this state;

(3) the internet communication is limited to the dissemination of general information on products and services and does not involve either effecting or attempting to effect transactions in securities or rendering personalized investment advice for compensation in this state over the internet; and

(4) in the case of an investment adviser representative:

(a) the affiliation of the investment adviser representative with the investment adviser is prominently disclosed within the internet communication;

(b) the investment adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any internet communication by an investment adviser representative;

(c) the investment adviser with whom the investment adviser representative is associated first authorizes the distribution of information on the particular products and services through the internet communication; and

(d) in disseminating information through the internet communication, the investment adviser representative acts within the scope of the authority granted by the investment adviser.

B. This rule extends to state investment adviser and investment adviser representative registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

C. Nothing in this rule shall be construed to affect the activities of any investment adviser or investment adviser representative engaged in business in this state that is not subject to the jurisdiction of the director as a result of the National Securities Markets Improvements Act of 1996, as amended.

[12.11.5.24 NMAC - Rp, 12.11.5.20 NMAC, 1-1-2010]

12.11.5.25 REPORTING REQUIREMENTS:

A. Each investment adviser shall file annually with the director at the time when the renewal report and fee are due, a completed form ADV-E and a financial statement, prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant, showing the financial condition of such investment adviser as of the most recent practicable date. Investment advisers who do not retain custody of clients' funds or securities may file unaudited financial statements and need not file form ADV-E.

B. Each investment adviser shall file with the director a copy of any complaint related to its business, transactions, or operations naming the investment adviser or any of its partners, officers or investment adviser representatives as defendants in any civil

or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint is served on the investment adviser; a copy of any answer or reply to the complaint filed by the investment adviser within ten days of the date the answer or reply is filed; and a copy of any decision, order or sanction made with respect to any such proceeding within 20 days of the date the decision, order or sanction is rendered.

C. Each investment adviser, using the appropriate schedule to form ADV, shall file with the director a notice of transfer of control or change of name not less than 30 days prior to the date on which the transfer of control or change of name is to become effective, or such shorter period as the director may permit.

[12.11.5.25 NMAC - Rp, 12.11.5.21 NMAC, 1-1-2010]

12.11.5.26 DENIAL, SUSPENSION AND REVOCATION:

Any order denying, suspending, revoking, canceling or limiting the registration of, and any order barring, an investment adviser or investment adviser representative may include such other sanctions as the director finds appropriate.

[12.11.5.26 NMAC - Rp, 12.11.5.22 NMAC, 1-1-2010]

12.11.5.27 WITHDRAWAL OF REGISTRATION:

A. An application for withdrawal of the registration of an investment adviser, registered under the New Mexico Uniform Securities Act, shall be filed by the registrant on form ADV-W and shall include a report on the status of all customer accounts of the registrant in this state and any additional information the director may require.

B. An application for withdrawal of the registration of an investment adviser representative, registered under the New Mexico Uniform Securities Act, shall be filed with the director on form U-5 by the investment adviser within 15 days of the termination of the representative's employment.

[12.11.5.27 NMAC - Rp, 12.11.5.23 NMAC, 1-1-2010]

12.11.5.28 BRANCH OFFICE SUPERVISORY REQUIREMENTS:

Every registered investment adviser must employ at its principal office and at each branch office in this state at least one person designated to act in a supervisory capacity who is qualified as an investment adviser representative in this state and has satisfied the principal's examination requirement in 12.11.5.18 NMAC. The designated supervisor must meet the requirements of this section at the time that the principal or branch office located in this state opens for business. The designated supervisor must be physically located in the office that he or she supervises. After a principal or branch office located in this state opens for business, if the designated supervisor no longer

meets the requirements of this section, the investment adviser shall have 90 days from the first date of noncompliance to meet the requirements of this section, provided that the investment adviser provides the director with written notice of the event of noncompliance within five days of such event and further sets forth the method of supervision pending the replacement of the designated supervisor.

A. For single-representative offices, this section shall be satisfied if at least one person who meets the requirements of 12.11.5.18 NMAC is employed on a full-time basis by the investment adviser, and the investment adviser shall:

(1) conduct annual on-site field audits, by a person who meets the requirements of 12.11.5.18 NMAC, of each single-representative office, including but not limited to an examination for compliance with books and records requirements, and for compliance with the rules of conduct of 12.11.7 NMAC.

(2) maintain in its principal office the results of all field audits conducted pursuant to Paragraph (1) of Subsection A of this section; and

(3) comply with any additional conditions that the director may by order impose, if the director finds the issuance of such order is necessary or appropriate in the public interest or for the protection of investors.

B. Branch office supervisors who have no supervisory or compliance responsibility for net worth or investment banking functions may substitute the general securities sales supervisor examination (Series 8) for the examination, programs or certifications required in 12.11.5.18 NMAC.

[12.11.5.28 NMAC - Rp, 12.11.5.24 NMAC, 1-1-2010]

PART 6: INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES RECORDS

12.11.6.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.6.1 NMAC - N, 1-1-2010]

12.11.6.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as an investment adviser and their representatives.

[12.11.6.2 NMAC - N, 1-1-2010]

12.11.6.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.6.3 NMAC - N, 1-1-2010]

12.11.6.4 DURATION:

Permanent.

[12.11.6.4 NMAC - N, 1-1-2010]

12.11.6.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.6.5 NMAC - N, 1-1-2010]

12.11.6.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.6.6 NMAC - N, 1-1-2010]

12.11.6.7 DEFINITIONS:

For purposes of 12.11.6 NMAC:

A. "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security; and

B. "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

[12.11.6.7 NMAC - N, 1-1-2010]

12.11.6.8 RECORDKEEPING REQUIREMENTS FOR INVESTMENT ADVISERS:

A. Recordkeeping requirements for all investment advisers. Every investment adviser registered or required to be registered under the New Mexico Uniform Securities

Act shall make and keep true, accurate and current the following books, ledgers and records:

- (1)** a journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;
- (2)** general and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income and expense accounts;
- (3)** a record of the investment adviser's securities transactions in accordance with the requirements of Subsection A of 12.11.6.9 NMAC;
- (4)** all checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser;
- (5)** all bills or statements, or copies of bills or statements, paid or unpaid, relating to the investment adviser's business as an investment adviser;
- (6)** all trial balances, financial statements prepared in accordance with generally accepted accounting principles and internal audit working papers relating to the investment adviser's business as an investment adviser; for purposes of this paragraph, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation, if applicable, as required by 12.11.5.23 NMAC;
- (7)** records of the investment adviser's written communications in accordance with the requirements of Subsection B of 12.11.6.9 NMAC;
- (8)** a list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
- (9)** a copy of all powers of attorney and other evidence of the granting of any discretionary authority by any client to the investment adviser;
- (10)** a copy in writing of each agreement entered into by the investment adviser with any client and all other written agreements otherwise relating to the investment adviser's business as an investment adviser;
- (11)** a file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser; if the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media recommends the purchase or sale of a

specific security and does not state the reasons for the recommendation, the investment adviser shall retain a memorandum documenting its reasons for the recommendation;

(12) records of transactions in securities in which the investment adviser or an affiliated person has a beneficial ownership interest in accordance with the requirements of Subsection C of 12.11.6.9 NMAC;

(13) a copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of 12.11.5.12 NMAC, and a record of the dates that each written statement and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client;

(14) all accounts, books, internal working papers and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including but not limited to distribution by print and electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons employed by or contracted with the investment adviser; however, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits and other transactions in a client's account for the period of the statement and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts, shall be deemed to satisfy the requirements of this paragraph;

(15) a file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee and regarding any written customer or client complaint;

(16) written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client;

(17) written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations;

(18) a file containing a copy of each document, other than any notices of general dissemination, that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives; the file shall at a minimum contain applications, amendments, renewal filings, correspondence and any other applicable state, federal agency or self-regulatory organization documents issued or received by the registrant or its investment adviser representatives; and

(19) a record of the investment adviser's privacy policies, all privacy notices sent to consumers or customers and the date such notices were sent.

B. Additional recordkeeping requirements for investment advisers that have custody of client securities or funds. If an investment adviser subject to Subsection A of 12.11.6.8 NMAC has custody or possession of securities or funds of any client, the records required to be made and retained pursuant to Subsection A of this section shall include:

(1) a journal or other record showing all purchases, sales, receipts and deliveries of securities, including certificate numbers, for all accounts and all other debits and credits to the accounts;

(2) a separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

(3) copies of confirmations of all transactions effected by or for the account of any client; and

(4) a record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client and the location of each security.

C. Additional recordkeeping requirements for investment advisers that render investment management services. Every investment adviser subject to Subsection A of this section that renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale; and

(2) information from which the investment adviser can promptly furnish the name of each client and the current amount or interest of the client for each security in which any client has a current position.

D. Client codes or designations. Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

E. Manner of record preservation. Every investment adviser subject to Subsection A of this section shall preserve the following records in the manner prescribed:

(1) all books and records required to be made under the provisions of Subsections A and B and Paragraph (1) of Subsection C of this section, except for books and records required to be made under the provisions of Paragraphs (11) and (14) of Subsection A of this section, shall be maintained and preserved in an easily accessible place for a period of not less than six years from the end of the fiscal year during which the last entry was made on record, the first two years of which shall be in the principal office of the investment adviser;

(2) partnership articles and any amendments, articles of incorporation, charters, minute books and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least six years after termination of the enterprise;

(3) books and records required to be made under the provisions of Paragraphs (11) and (14) of Subsection A of this section shall be maintained and preserved in an easily accessible place for a period of not less than six years, the first two years of which shall be in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by print and electronic media;

F. Notwithstanding other recordkeeping requirements of this section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(1) records required to be preserved under Paragraphs (3), (7) through (10), (13), and (15) through (17) of Subsection A and Subsections B and C of this section inclusive; and

(2) records or copies required under the provision of Paragraphs (11) and (14) of Subsection A of this section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, its business locations' physical address, mailing address, electronic mailing address and telephone number.

G. The records shall be maintained for the period described in Paragraphs (1), (2) and (3) of Subsection E of this section.

H. Preservation of records upon cessation. An investment adviser subject to Subsection A of this section, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section and shall notify the administrator in

writing of the exact address where the books and records will be maintained during the period.

I. Preservation of records by alternative media.

(1) The records required to be maintained and preserved pursuant to this subsection may be immediately produced by any form of data storage, as provided below, and maintained and preserved for the required time by an investment adviser on:

(a) micrographic media, including microfilm, microfiche or any similar medium;
or

(b) electronic storage media, including any digital storage medium or system that meets the terms of this subsection.

(2) The investment adviser must:

(a) arrange and index the records in a way that permits easy location, access and retrieval of any particular record;

(b) provide promptly any of the following that the administrator may request:

(i) a legible, true and complete copy of the record in the medium and format in which it is stored;

(ii) a legible, true and complete printout of the record; and

(iii) means to access, view and print the records.

(c) store separately, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this subsection.

(3) In the case of records on electronic storage media, the investment adviser may maintain and preserve records which, in the ordinary course of the investment adviser's business, are created by the investment adviser on electronic media or are received by the investment adviser solely on electronic media or by electronic data transmission. The investment adviser must establish and maintain procedures to:

(a) maintain and preserve the records so as to reasonably safeguard them from loss, alteration or destruction;

(b) limit access to the records to properly authorized personnel and the administrator, including examiners and other representatives; and

(c) reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true and legible when retrieved.

[12.11.6.8 NMAC - Rp, 12 NMAC 11.3.6.1-10, 1-1-2010]

12.11.6.9 RECORDKEEPING REQUIREMENTS CONTINUED:

A. Record of the investment adviser's securities transactions required pursuant to Paragraph (3) of Subsection A of 12.11.6.8 NMAC.

(1) The investment adviser shall prepare a memorandum setting forth:

(a) each order given by the investment adviser for the purchase or sale of any security;

(b) any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security; and

(c) any modification or cancellation of any such order or instruction.

(2) The memorandum shall:

(a) show the terms and conditions of the order, instruction, modification or cancellation;

(b) identify the person connected with the investment adviser who recommended the transaction to the client and who placed the order;

(c) show the account for which entered, the date of entry and the bank or broker-dealer by or through which executed where appropriate; and

(d) identify orders entered pursuant to the exercise of discretionary power.

B. Records of the investment adviser's written communications required pursuant to Paragraph (7) of Subsection A of 12.11.6.8 NMAC.

(1) The investment adviser shall keep originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

(a) any recommendation made or proposed to be made and any advice given or proposed to be given;

(b) any receipt, disbursement or delivery of funds or securities; and

(c) the placing or execution of any order to purchase or sell any security.

(2) The investment adviser shall not be required to keep any unsolicited market letters and other similar communications or general public distribution not prepared by or for the investment adviser.

(3) If the investment adviser sends any notice, circular, or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent. However, if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain, with a copy of the notice, circular or advertisement, a memorandum describing the list and its source.

C. Records of transactions in securities in which the investment adviser or an affiliated person has a beneficial ownership interest required pursuant to Paragraph (12) of Subsection A of 12.11.6.8 NMAC.

(1) For the purposes of this subsection, the following definitions apply:

(a) "**affiliated person**" with respect to another person means any person directly or indirectly controlling, controlled by, or under common control with the other person; any officer, director or partner of the other person; or any spouse or relative, by blood or marriage, of the other person;

(b) "**control**" means the power to direct or influence the management or policies of a company through the ownership of voting securities by contract or otherwise; any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company; and

(c) "**primarily engaged in a business or businesses other than advising investment advisory clients**" means an investment adviser that, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, derived, on an unconsolidated basis, more than fifty percent of its total sales and revenues and its income or loss before income taxes and extraordinary items from such other business or businesses.

(2) The investment adviser shall keep a record of every transaction in a security in which the investment adviser, and any person described in Paragraphs (3) or (4) of this subsection, whichever is applicable, has, or by reason of any transaction acquires, any direct or indirect beneficial ownership of such security.

(3) For all investment advisers except those that are primarily engaged in a business or businesses other than advising investment advisory clients, records of transactions shall include records of the transactions of:

(a) any partner, officer or director of the investment adviser;

(b) any employee who participates in any way in the determination of which recommendations are made;

(c) any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and

(d) any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of any affiliated person, who obtains information concerning securities recommendation being made by the investment advisor prior to the effective dissemination of the recommendations.

(4) For all investment advisers that are primarily engaged in a business or businesses other than advising investment advisory clients, records of transactions shall include records of the transactions of:

(a) any partner, officer, and director or employee of the investment advisor who participates in any way in the determination of which recommendations are made, or who, in connection with his functions or duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and

(b) any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of any affiliated person who obtains information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of information concerning the recommendations.

(5) The investment adviser shall record each transaction no later than ten days after the end of the calendar quarter in which the transaction was effected.

(6) The investment adviser is not required to keep records of transactions:

(a) effected in any account over which neither the investment adviser nor any person described in Paragraphs (3) or (4) of this subsection has any direct or indirect influence or control; and

(b) in securities which are direct obligations of the United States.

(7) The record shall state:

(a) the title and amount of the security involved;

(b) the date and nature of the transaction, such as purchase, sale or other disposition; and

(c) the name of the broker-dealer or bank with or through which the transaction was effected.

(8) An investment adviser shall not be deemed to have violated the provisions of this subsection because of the failure to record securities transactions of any person described in Paragraphs (3) and (4) of this subsection if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

[12.11.6.9 NMAC - N, 1-1-2010]

12.11.6.10 DIRECTOR MAY ORDER EXEMPTION:

The director may by order exempt any investment adviser from all or part of the requirements of this section, either unconditionally or upon specified conditions, if by reason of the special nature of its business, the director finds that issuance of the order is necessary or appropriate in the public interest or for the protection of investors.

[12.11.6.10 NMAC - Rp, 12 NMAC 11.3.6.11, 1-1-2010]

12.11.6.11 EXEMPTION FOR PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE:

Every investment adviser that has its principal place of business in a state other than New Mexico shall be exempt from the requirements of this section, provided the investment adviser is licensed or registered in such state and is in compliance with such state's recordkeeping requirements.

[12.11.6.11 NMAC - Rp, 12 NMAC 11.3.6.12, 1-1-2010]

PART 7: INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES RULES OF CONDUCT AND PROHIBITED BUSINESS PRACTICES

12.11.7.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.7.1 NMAC - Rp, 12.11.7.1 NMAC, 1-1-2010]

12.11.7.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as an investment adviser and their representatives. To the extent that the conduct alleged constitutes fraud or deceit, the provisions of this section also apply to all other persons, in addition to investment advisers and investment adviser representatives, who advise

others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or who, for compensation and as part of a regular business, issue or promulgate analyses or reports relating to securities.

[12.11.7.2 NMAC - Rp, 12.11.7.2 NMAC, 1-1-2010]

12.11.7.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.7.3 NMAC - Rp, 12.11.7.3 NMAC, 1-1-2010]

12.11.7.4 DURATION:

Permanent.

[12.11.7.4 NMAC - Rp, 12.11.7.4 NMAC, 1-1-2010]

12.11.7.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.7.5 NMAC - Rp, 12.11.7.5 NMAC, 1-1-2010]

12.11.7.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.7.6 NMAC - Rp, 12.11.7.6 NMAC, 1-1-2010]

12.11.7.7 DEFINITIONS:

[RESERVED]

12.11.7.8 [RESERVED]

12.11.7.9 CONTRACT WAIVING RIGHTS PROHIBITED:

An investment adviser shall not enter into any contract with a customer if the contract contains any condition, stipulation or provision binding the customer to waive any rights

under the New Mexico Uniform Securities Act, or any rule or order thereunder, or of the Investment Advisers Act of 1940. Any such condition, stipulation or provision is void.

[12.11.7.9 NMAC - Rp, 12 NMAC 11.3.9.2, 1-1-2010]

12.11.7.10 WRITTEN CONTRACT REQUIRED:

A. No registered investment adviser may enter into, extend or renew any investment advisory contract with a customer in this state unless the contract is in writing and a copy of the contract is given to the customer within 15 days after the execution of the contract. Such contract shall disclose, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

B. It is unlawful to enter into, extend or renew any investment advisory contract if the investment advisory contract:

(1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client unless such contract complies with rule 205-3 under the Investment Advisers Act of 1940;

(2) fails to provide in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

(3) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

C. Paragraph (1) of Subsection B of this section shall not:

(1) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date; and

(2) apply to an investment advisory contract with a person who is not a resident of the United States.

D. The director, by rule, upon the director's own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from Paragraph (1) of Subsection B of this section, if and to the extent that the exemption relates to an investment advisory contract with any person that the director determines does not need the protections of

Paragraph (1) of Subsection B, on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser or investment adviser representative, and such other factors as the director determines are consistent with this section.

[12.11.7.10 NMAC - Rp, 12.11.7.10 NMAC, 1-1-2010]

12.11.7.11 [RESERVED]

12.11.7.12 PROHIBITED BUSINESS PRACTICES BY FEDERAL COVERED ADVISERS:

The provisions of 12.11.7.13 and 12.11.7.14 NMAC apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). An investment adviser or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser or a federal covered adviser shall not engage in any unlawful, unethical or dishonest conduct or practices.

[12.11.7.12 NMAC - Rp, 12.11.7.12 NMAC, 1-1-2010]

12.11.7.13 PROHIBITED BUSINESS PRACTICES BY INVESTMENT ADVISERS:

The following are deemed to be unlawful, unethical, or dishonest conduct or practice by an investment adviser or investment adviser representative without limiting those terms to the practices specified herein:

A. recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

B. exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specific security shall be executed, or both;

C. inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;

D. placing an order to purchase or sell a security for the account of a client without authority to do so;

E. placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

F. borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a depository institution engaged in the business of loaning funds;

G. loaning money to a client unless the investment adviser is a depository institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

H. misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

I. providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing that fact; this prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service;

J. charging a client an unreasonable advisory fee;

K. failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(1) compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or its employees;

L. guaranteeing a client that a specific result will be achieved (e.g. gain or no loss), with advice which will be rendered;

M. publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940;

N. disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

O. taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds and the adviser's action does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940;

P. failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940 or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940;

Q. engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative, contrary to the provisions of or in violation of the New Mexico Uniform Securities Act or any other rule of the director;

R. engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the New Mexico Uniform Securities Act or any rule or regulation thereunder;

S. using in a misleading manner any term or abbreviation that states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in 12.11.17 NMAC;

T. having custody of client funds or securities unless the investment adviser or investment adviser representative complies with the provisions of 12.11.5.22 NMAC;

U. failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the investment adviser, or any investment adviser representative or employee, taking into consideration the nature of the investment adviser's business;

V. entering into, extending, or renewing any investment advisory contract that violates the provisions of this subsection;

(1) it is unlawful to enter into, extend or renew any investment advisory contract if the investment advisory contract:

(a) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the

funds of the client unless such contract complies with rule 205-3 under the Investment Advisors Act of 1940;

(b) fails to provide in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

(c) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change;

(2) Subparagraph (a) of Paragraph (1) of this subsection shall not:

(a) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date; and

(b) apply to an investment advisory contract with a person who is not a resident of the United States;

(3) the director, by rule, upon the director's own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from Subparagraph (a) of Paragraph (1) of this subsection, if and to the extent that the exemption relates to an investment advisory contract with any person that the director determines does not need the protections of Subparagraph (a) of Paragraph (1) of this subsection, on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser or investment adviser representative, and such other factors as the director determines are consistent with this section;

W. failing or refusing to furnish a client, upon reasonable request, information to which the client is entitled, or to respond to a formal written demand or complaint;

X. in connection with the offer, purchase or sale of a security, leading a client to believe that the investment adviser or investment adviser representative is in possession of material, non-public information that would affect the value of the security;

Y. failing to comply with any securities-related arbitration award, unless a proceeding to vacate or modify such award is pending or unless the time limit to commence such a proceeding has not yet expired; and

Z. engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for an investment adviser or investment adviser representative to do directly under the provisions of the New Mexico Uniform Securities Act, this chapter or any other rule of the director.

[12.11.7.13 NMAC - Rp, 12.11.7.13 NMAC, 1-1-2010]

12.11.7.14 PROHIBITED BUSINESS PRACTICES LISTED ARE NOT EXCLUSIVE:

The conduct set forth in 12.11.7.13 NMAC is not exclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

[12.11.7.14 NMAC - Rp, 12.11.7.14 NMAC, 1-1-2010]

PART 8: REGISTRATION OF SECURITIES - GENERAL PROVISIONS

12.11.8.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.8.1 NMAC - Rp, 12 NMAC 11.4.1.1, 1-1-2010]

12.11.8.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their representatives and agents.

[12.11.8.2 NMAC - Rp, 12 NMAC 11.4.1.2, 1-1-2010]

12.11.8.3 STATUTORY AUTHORITY:

Section 58-13C-605A authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, NMSA 1978, Sections 58-13C-101 to 701, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.8.3 NMAC - Rp, 12 NMAC 11.4.1.3, 1-1-2010]

12.11.8.4 DURATION:

Permanent.

[12.11.8.4 NMAC - Rp, 12 NMAC 11.4.1.4, 1-1-2010]

12.11.8.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.8.5 NMAC - Rp, 12 NMAC 11.4.1.5, 1-1-2010]

12.11.8.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.8.6 NMAC - Rp, 12 NMAC 11.4.1.6, 1-1-2010]

12.11.8.7 DEFINITIONS:

[RESERVED]

12.11.8.8 GENERAL REGISTRATION PROVISIONS:

The following provisions shall apply generally to the registration of securities in New Mexico in addition to any requirements found elsewhere in the New Mexico Uniform Securities Act or these rules.

A. Registration statements.

(1) A registration application will not be considered as filed unless form U-1, uniform application to register securities, has been properly completed and endorsed, is accompanied by a filing fee calculated in accordance with Section 58-13C-305B, and applicable documents specified in form U-1. Checks are to be made payable to the New Mexico securities division. Fees paid upon the filing of the registration statement are not refundable.

(2) Issuers may satisfy filing requirements contained in these rules by filing required documents and fees using an electronic filing system in such a manner as approved by order of the director.

B. Consent to service of process. Applications to register securities shall be accompanied by a properly prepared and endorsed form U-2, uniform consent to service of process, and, in the case of corporations, a form U-2A, uniform corporate resolution. Form U-2 shall specify the director of the New Mexico securities division as the agent to receive service of process.

C. Registration effectiveness.

(1) If a registration application seeks to register only a portion of a larger offering, the application shall be deemed effective only as to the securities specified to be offered in this state.

(2) If it appears that a registration application is incomplete, inaccurate, compromises investor protection, tends to work a fraud on investors or is in any other way in violation of the New Mexico Uniform Securities Act, the division may issue a comment letter. Matters raised in the comment letter may be cause for issuance of a stop order if not resolved.

D. Fees for amendments to increase amount of securities offered.

(1) Pre-effective amendments increasing the amount of securities to be offered and sold are subject to additional fees of 1/10 of 1 percent of the amount of the increase, provided that no additional fee is required if, as a result of the increase, the total amount registered is less than \$525,000.

(2) Pursuant to Section 58-13C-305J, post-effective amendments registering additional securities become effective upon filing of the amendment and payment of fees of 3/10 of 1 percent of the incremental amount of increase. Each increase will be subject to a minimum fee of \$525.00 and maximum of \$2,500 unless the maximum fee of \$2,500 was previously paid in connection with such application for registration. If the maximum fee of \$2,500 was previously paid, then no further fee shall be required.

E. Confidentiality. Unless a valid claim of privilege or confidentiality is asserted pursuant to Section 58-13C-607B(2) of the New Mexico Uniform Securities Act, information contained in registration applications filed with the division is available for public inspection.

F. Amendments.

(1) Amendments to the application for registration may be made by filing an amended form U-1 plainly marked "Amendment" at the top of the form and accompanied by a letter explaining the change.

(2) The following will require an amended form U-1:

(a) amendments to the name under which the issuer is doing or intends to do business; amended form U-1 must include the former and current names and must be accompanied by a fee of \$50.00, an amended form U-2 and, if a corporation, form U-2A;

(b) changes to the location of the issuer's principal business office and, if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice or service of process;

(c) changes to the names and addresses of the underwriters;

(d) changes to the names and addresses of the issuer's correspondents; and

(e) changes to the amount of securities to be registered.

G. Multiple types of securities.

(1) A separate application and fee must be filed for each type of security offered, unless such securities are sold as units.

(2) In the case of warrants and rights, the securities purchasable upon exercise shall be registered together with the warrants and rights. In the case of convertible securities, only the convertible security itself need be registered if no further consideration is required for conversion other than the surrender of the convertible security.

H. Sequential partnerships.

(1) Limited partnerships offered sequentially or simultaneously must be registered individually in the name of each specific partnership and accompanied by the proper fee even if multiple partnerships are registered in a single registration statement with the security and exchange commission. If the issuer wishes to avoid the filing of duplicate exhibits for each partnership within a series, all partnerships to be included within a series must be identified to the division at the time of the initial filing.

(2) As subsequent partnerships are sought to be declared effective, the following must be filed with the division:

(a) form U-1;

(b) a copy of any supplement or any post-effective amendment filed with the security and exchange commission; such supplement or post-effective amendment must detail any material changes in any exhibit previously filed with the division and must include any additional exhibits pertaining to a particular partnership within a series that have not been previously filed;

(c) the appropriate filing fee; and

(d) in the absence of any material changes, subsequent partnerships within a series will be declared effective upon receipt of notice of the offering commencement date.

I. Renewal of permits. Permits authorizing the sale of securities registered by filing, coordination or qualification are effective for one year from date of issuance. In order to extend the permit, a new application must be filed on form U-1 together with the latest amendment to the offering document. All previously filed exhibits may be incorporated by reference. The application must be accompanied by a new filing fee and must be received by the division no later than two weeks prior to the expiration of the current permit.

J. Abandonment and withdrawal of registration statement. Any registration statement filed by filing, coordination or qualification shall be considered abandoned and withdrawn if there is no communication or activity regarding such filing for a period of six consecutive months. Any registration statement that has been abandoned and withdrawn may be re-filed by filing anew the appropriate documents and filing fee.

[12.11.8.8 NMAC - Rp, 12 NMAC 11.4.1.8, 1-1-2010]

12.11.8.9 [RESERVED]

12.11.8.10 REGISTRATION BY COORDINATION:

A registration statement under Section 58-13C-303(B) shall be submitted on form U-1, shall contain the following information and be accompanied by the following documents, in addition to the information specified in Section 58-13C-303B and Section 58-13C-305C and the consent to service of process on form U-2 required by Section 58-13C-303B(3):

A. copies of the articles of incorporation and by-laws or equivalents currently in effect, any agreements with or among underwriters of the offering, any instrument governing the issuance of the security to be registered, a specimen of the security and, if the security to be registered is a note, bond, debenture or other evidence of indebtedness, a trust indenture, unless the security is a face-amount certificate registered under the Investment Company Act of 1940 or unless the requirement to furnish a trust indenture relating to the securities is waived by the director for good cause shown; and

B. one copy of any other information or any documents required to be filed under form U-1.

[12.11.8.10 NMAC - Rp, 12 NMAC 11.4.3, 1-1-2010]

12.11.8.11 REGISTRATION BY QUALIFICATION:

A registration statement under Section 58-13C-304 shall be submitted on form U-1, shall contain the following information and be accompanied by the following documents, in addition to the information specified in Section 58-13C-304 and the consent to service of process on form U-2 required by Section 58-13C-304B:

A. copies of the articles of incorporation and by-laws or equivalents currently in effect, any agreements with or among underwriters of the offering, any instrument governing the issuance of the security to be registered, a specimen of the security and, if the security to be registered is a note, bond, debenture or other evidence of indebtedness, a trust indenture unless the security is a face amount certificate registered under the Investment Company Act of 1940 or unless the requirement to

furnish a trust indenture relating to the securities is waived by the director for good cause shown; and

B. one copy of any other information or any documents required to be filed under form U-1.

[12.11.8.11 NMAC - Rp, 12 NMAC 11.4.4, 1-1-2010]

12.11.8.12 PROSPECTUS REQUIREMENTS:

A. As a condition of registration, a prospectus, offering circular, or similar document meeting the requirements of Subsections B, C and D of 12.11.8.12 NMAC shall be sent or given to each person to whom an offer is made by or for the account of the issuer or any other person on whose behalf the offering is made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription as a participant in the distribution. The document shall be sent or given either before or concurrently with the earlier of any of the following:

- (1) any written offer made to the person, otherwise than by means of public advertisement;
- (2) confirmation of any sale to the person;
- (3) payment pursuant to any sale to the person; or
- (4) delivery of the security pursuant to any sale to the person.

B. The outside front cover of the prospectus, unless otherwise permitted by the director, shall meet the requirements of any appropriate form under the Securities Act of 1933 or shall contain substantially the following information:

- (1) name and location of issuer and its type of organization;
- (2) designation of securities offered;
- (3) per share or unit and aggregate public offering price, underwriting or selling commissions and discounts and net proceeds to offeror;
- (4) name of managing underwriter or broker-dealer or statement that the securities are being offered by the issuer;
- (5) a statement describing the anticipated secondary market for the securities being offered, including the identity of anticipated market makers;
- (6) date of prospectus;

(7) legends:

(a) the following legend, or its substantial equivalent, shall appear on the cover of the prospectus in boldface type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES DIVISION OF THE NEW MEXICO DEPARTMENT OF REGULATION AND LICENSING, NOR HAS THE SECURITIES DIVISION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;

(b) the following information, to the extent appropriate, shall appear on the cover page of any offering document utilized in connection with the offer and sale of securities which are exempt from registration under the Securities Act of 1933 as amended, but subject to a filing requirement under a state securities law:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISK INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;

(8) if the offering is exempt under Section (3)(a)(11) of the Securities Act of 1933, the following statement shall appear in boldface type: THESE SECURITIES ARE OFFERED ONLY TO BONA FIDE RESIDENTS OF THE STATE OF NEW MEXICO; and

(9) such other information as the director may permit or require.

C. The prospectus shall contain a full disclosure of all material facts relating to the issuer and the offering and sale of the registered securities. A prospectus meeting the requirements of form S-1 under the Securities Act of 1933 is deemed to satisfy the requirements of this subsection.

D. Unless otherwise permitted by the director, the body of the prospectus and all notes to financial statements and other tabular data included therein shall be in times new roman type or its substantial equivalent, at least as large and as legible as 10-point modern type, except that financial statements and other tabular data, including tabular data in notes, may be in times new roman type or its substantial equivalent, at least as large and as legible as 8-point modern type. All such type shall be leaded at least two points.

E. At the end of each period of not more than one year from the effectiveness of the registration statement, or in the event of any material change relating to the issuer or the securities subsequent to the filing of a prospectus, an amended prospectus shall be filed reflecting any such changes, and a current disclosure of all material facts relating to the issuer and the securities, including financial statements. No further solicitations or sales of the securities may be made thereafter until such amended prospectus has been filed with the director.

[12.11.8.12 NMAC - Rp, 12 NMAC 11.4.5, 1-1-2010]

PART 9: STANDARDS APPLICABLE TO REGISTERED OFFERINGS

12.11.9.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.9.1 NMAC - N, 1-1-2010]

12.11.9.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their representatives and agents.

[12.11.9.2 NMAC - N, 1-1-2010]

12.11.9.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.9.3 NMAC - N, 1-1-2010]

12.11.9.4 DURATION:

Permanent.

[12.11.9.4 NMAC - N, 1-1-2010]

12.11.9.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.9.5 NMAC - N, 1-1-2010]

12.11.9.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.9.6 NMAC - N, 1-1-2010]

12.11.9.7 DEFINITIONS:

A. General: The definitions in this section apply to issuers and promoters of such issuers, organized as limited liability companies, limited partnerships, limited liability partnerships or other legal entities, as appropriate, even though 12.11.9 NMAC refers only to corporate entities and their promoters.

B. Definitions: The definitions contained in this section apply to the terms used in 12.11.9 NMAC, except as otherwise provided.

(1) "Adjusted net earnings" are the issuer's net earnings after charges for interest and dividends, adjusted on a pro forma basis to reflect:

(a) the elimination of any required charges for debt, debt securities or preferred stock that are to be redeemed or retired from the proceeds derived from the public offering of preferred stock;

(b) the effect of any acquisitions or capital expenditures that were made by the issuer after its last fiscal year, or which are proposed or required to be made during the current fiscal year, which materially affect the issuer's net earnings;

(c) the effect of any charges or dividends on debt, debt securities or preferred stock issued after the issuer's last fiscal year;

(d) the effect of any charges or dividends on debt, debt securities or preferred stock that were issued during the issuer's last fiscal year, but which were outstanding for only a portion of such fiscal year, calculated as if charges or dividends, such debt, debt securities or preferred stock had been outstanding for the entire fiscal year; and

(e) the effect of any other material changes to an issuer's future net earnings.

(2) An "**affiliate**" is a person who, directly or indirectly, controls, is controlled by, or is under common control with the person specified herein.

(3) "**Aggregate revenues**" is the aggregate amount of revenues a promotional or development stage company has received within the last three consecutive fiscal years immediately preceding the public offering plus revenues

received during the period covered by any interim period financial information included in the prospectus. Revenues from interest and extraordinary items are to be excluded.

(4) An "**associate**", when used to indicate a relationship with a person, includes:

(a) corporations or legal entities, other than the issuer or majority-owned subsidiaries of the issuer, of which a person is an officer, director, partner or a direct or indirect legal or beneficial owner of five percent or more of any class of equity securities;

(b) trusts or other estates in which a person has a substantial beneficial interest or for which a person serves as a trustee or in a similar capacity; and

(c) a person's spouse and relatives, by blood or by marriage, if the person is a promoter of the issuer, its subsidiaries, its affiliates or its parent.

(5) "**Average promotional price**" is the average per share price paid for promotional shares and other shares issued prior to the public offering which are of the same class of shares being offered in the public offering as determined by reference to the audited financial statements of the issuer included in the prospectus.

(6) "**Cash analysis**" is the issuer's net cash provided by operating activities as reflected on the statement of cash flows and presented in conformity with generally accepted accounting principles. If debt securities are to be redeemed or retired from the proceeds from the public offering, a pro forma adjustment for the elimination of the related interest charges, net of applicable income taxes, must be made.

(7) "**Control**" is the power to direct or influence the direction of the management or policies of a person, directly or indirectly, through the ownership of voting securities, by contract or otherwise.

(8) "**Equity securities**" include shares of common stock or similar securities and convertible securities, warrants, options or rights that may be converted into, or exercised to purchase, shares of common stock or similar securities.

(9) An "**escrow agent**" is a financial institution whose principal place of business and domicile are in the United States. It may not be affiliated with the issuer, its promoters or associates. A financial institution may not be disallowed to act as an escrow agent merely because the issuer, its promoters or associates are customers thereof. An escrow agent may also include an attorney or certified public accountant, provided that the attorney or certified public accountant is not affiliated with the issuer, its promoters or associates, is licensed to do business in the state in which they practice and can demonstrate that they are adequately insured or can provide a fidelity bond.

(10) An "**impoundment agent**" is a financial institution that is domiciled and whose principal place of business is located in the United States and whose deposits are insured by the FDIC.

(11) An "**independent director**" is a member of issuer's board of directors who:

(a) is not an officer or employee of the issuer, its subsidiaries or their affiliates or associates and has not been an officer, or employee of the issuer, its subsidiaries, or their affiliates or associates within the last two years;

(b) is not a promoter as defined in Paragraph (15) of Subsection B of this section; and,

(c) does not have a material business or professional relationship with the issuer or any of its subsidiaries, affiliates or associates; for purposes of determining whether or not a business or professional relationship is material, the gross revenue derived by the independent director from the issuer, its subsidiaries, its affiliates and associates shall be deemed material per se if it exceeds five percent of the independent director's:

(i) annual gross revenue derived from all sources during either of the last two years; or

(ii) net worth, on a fair market value basis.

(12) "**Lock-in agreement**" is an agreement between an issuer and persons who hold promotional shares wherein, those persons agree, as a condition of registration, not to sell, pledge, hypothecate, assign, grant any option for the sale of, or otherwise transfer or dispose of, whether or not for consideration, directly or indirectly, promotional shares and all certificates representing stock dividends, stock splits, recapitalizations and other capital changes, that are granted to or received by the security holder for the period specified in the lock-in agreement.

(13) "**Net earnings**" are the issuer's after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, determined according to generally accepted accounting principles consistently applied.

(14) A "**person**" is an individual, a corporation, a limited liability company, a partnership, a limited liability partnership, an association, a joint-stock company, a trust, an unincorporated organization, a government or a political subdivision of a government or any other legal entity.

(15) A "**promoter**" may include:

(a) a person who, alone or in conjunction with one or more persons, directly or indirectly, took the initiative in founding or organizing the issuer or controls the issuer;

(b) a person who, directly or indirectly, receives as consideration for services or property rendered, five percent or more of any class of the issuer's equity securities or five percent or more of the proceeds from the sale of any class of the issuer's equity securities;

(c) a person who receives securities or proceeds solely as underwriting compensation, is excluded from the definition of promoter if that person falls outside the definition of Subparagraphs (a), (d) and (e) of this paragraph;

(d) a person who is an officer or director of the issuer or anyone who legally or beneficially owns, directly or indirectly, five percent or more of any class of the issuer's equity securities; and

(e) a person who is an affiliate or an associate of a person specified in Subparagraphs (a), (b) and (d) of this paragraph.

(16) "Promoters' equity investment" is the total of cash and tangible assets that has been contributed by the promoters to the issuer, provided that the value of the tangible assets is accepted by the director. Promoters' contributions of intangible assets may be considered as promoters' equity investment provided that the value thereof has been accepted by the director. Promoters' equity investment may be adjusted by the issuer's earned surplus immediately prior to the public offering.

(17) A "**promotional or development stage company**" may include an issuer who is not listed on the New York stock exchange, the American stock exchange or the NASDAQ national market system, and whose annual net earnings for each of the last two consecutive fiscal years or whose average annual net earnings for the last five fiscal years prior to the public offering have been less than five percent of the aggregate public offering.

(18) "Promotional shares" are equity securities that are to be issued or were issued:

(a) by an issuer which is a promotional or development stage company, to promoters for cash or other consideration, including services rendered, patents, copyrights and other intangibles (provided that the value thereof has been accepted by the director), that will be or was less than 85 percent of the proposed public offering price; or

(b) within three years prior to the filing of the registration statement to promoters for cash or other consideration, including services rendered, patents, copyrights and other intangibles (provided that the value thereof has been accepted by

the director), that will be or was less than 85 percent of the proposed public offering price by a company which is not a promotional or development stage company.

(19) "Public offering price" is the per share price at which a promotional or development stage company proposes to offer equity securities to the public.

(20) An "**unaffiliated institutional investor**" is:

(a) an unaffiliated bank or unaffiliated savings and loan company;

(b) an unaffiliated investment company registered under the Investment Company Act of 1940;

(c) an unaffiliated business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940;

(d) an unaffiliated small business investment company licensed by the U.S. small business administration under Section 301 of the Small Business Investment Act of 1958;

(e) an unaffiliated employee benefit plan, within the meaning of Title I of the Employee Retirement Income Security Act of 1974, and state and local government employees retirement and pension plans;

(f) an unaffiliated insurance company;

(g) an unaffiliated trust company;

(h) an unaffiliated private business development company, as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, or a comparable business entity that is engaged as a substantial part of its business in the purchase and sale of securities, and which will own less than 20 percent of the issuer's securities upon completion of the public offering; or

(i) an unaffiliated qualified purchaser as defined under the National Securities Markets Improvement Act of 1996.

(21) An "**underwriter**" is any person who has agreed with the issuer or other person on whose behalf a distribution is to be made to:

(a) purchase securities for distribution;

(b) distribute securities for or on behalf of the issuer or other person; or

(c) manage or supervise a distribution of securities for or on behalf of the issuer or other person.

[12.11.9.7 NMAC - Rp, 12 NMAC 11.4.8.1, 1-1-2010]

12.11.9.8 ADOPTION OF NASAA STATEMENTS OF POLICY FOR REGISTRATION OF CERTAIN TYPES OF SECURITIES:

In order to promote uniform regulation, the director adopts the following NASAA statements of policy set out in CCH NASAA reports published by commerce clearing house. An offering being registered pursuant to Sections 303 and 304 of the New Mexico Uniform Securities Act must comply with the requirements of said statements of policy or policies as adopted and as revised in subsequent amendments.

- A. Asset-backed securities.
- B. Cattle feeding programs.
- C. Commodity pool programs.
- D. Equipment programs.
- E. Mortgage programs.
- F. Oil and gas programs.
- G. Omnibus programs.
- H. Real estate investment trusts.
- I. Real estate programs.

[12.11.9.8 NMAC - Rp, 12 NMAC 11.4.10, 1-1-2010]

12.11.9.9 IMPOUNDMENT OF PROCEEDS:

A. When an impoundment agreement ("agreement") is necessary, the proceeds from the sale of the securities must be deposited in an interest bearing escrow or trust account with an impoundment agent. The impoundment agent may not be affiliated with the issuer, its affiliates, its officers or directors, the underwriter or any promoter.

B. The agreement:

(1) a signed copy of the agreement must be filed with the director and shall become part of the registration statement;

(2) the agreement must be signed by an officer of the issuer, an officer of the underwriter (if applicable) and an officer of the impoundment agent; the aforesaid individuals must have the authority to sign such documents;

(3) the agreement shall provide that the impounded proceeds (proceeds) are not subject to claims by creditors of the issuer, affiliates, associates or underwriters until the proceeds have been released to the issuer pursuant to the terms of the agreement;

(4) a summary of the principal terms shall be included in the registration statement; and

(5) the agreement shall provide that the director has the right to inspect and make copies of the records of the impoundment agent at any reasonable time wherever the records are located.

C. The impoundment agent shall notify the director in writing upon the release of the proceeds. If the proceeds are insufficient to meet the minimum requirements within the time prescribed by the agreement:

(1) the impoundment agent must release and return the proceeds directly to the investors; and

(2) the proceeds shall be released and returned to the investors without deduction for expenses including impoundment agent fees and shall include a pro rata share of interest earned.

D. If a person who is an underwriter or an officer, director, promoter, affiliate or an associate of the issuer purchases securities that are a part of the public offering being sold pursuant to the registration statement and if the proceeds from that purchase are used for the purpose of completing the impoundment requirements imposed under this rule, the following conditions shall be met:

(1) the persons are purchasing the securities on the same terms as unaffiliated public investors;

(2) the prospectus contains a disclosure that such persons may purchase securities of the issuer for purposes of completing the impoundment requirements imposed by this rule; and

(3) all securities so purchased will neither be defined as "promotional shares" nor be a part of the calculation of the promotional shares subject to escrow under 12.11.9.13 NMAC; however, all such securities shall be immediately subject to the escrow/lock-up provisions of 12.11.9.13 NMAC.

[12.11.9.9 NMAC - Rp, 12 NMAC 11.4.8.2, 1-1-2010]

12.11.9.10 LOANS AND OTHER MATERIAL AFFILIATED TRANSACTIONS:

A. Where there have been or will be loans and other material affiliated transactions as described in this section, the offer or sale of securities may be disallowed by the

director unless the issuer has, and represents in the prospectus or offering document that it will maintain, at least two independent directors on its board of directors.

B. The offer or sale of securities may be disallowed by the director if the issuer or its affiliates will have loans outstanding after the offering or intends to make loans to or loan guarantees on behalf of its promoters, other than:

(1) advances to officers, directors and employees for travel, business expenses and similar ordinary operating expenditures;

(2) loans or loan guarantees made for the purchase of an issuer's securities by its officers, directors and employees, and loans for relocation of officers, directors and employees, provided the loans or loan guarantees that are ongoing were approved by a majority of the independent directors of the issuer's board of directors who did not have an interest in the transactions and who had access, at the issuer's expense, to issuer's or independent legal counsel; or

(3) loans made by an issuer or its affiliates whose primary business is that of making loans, provided that:

(a) the loans will be evidenced by promissory notes naming the lender as payee;

(b) the loans will bear interest at rates which are comparable to those normally charged by other commercial lenders for similar loans made in the lender's locale;

(c) the loans will be repaid pursuant to appropriate amortization schedules and contain default provisions comparable to those normally used by other commercial lenders for similar loans made in the lender's locale;

(d) the loans will be made only if credit reports and financial statements show the loans to be collectible and the borrowers are satisfactory credit risks in light of the nature and terms of the loans and other circumstances;

(e) the loans meet the loan policies normally used by other commercial lenders for similar loans made in the lender's locale;

(f) the purposes of the loans and the disbursements of proceeds will be reviewed and monitored in a manner comparable to that normally used by other commercial lenders for similar loans made in the lender's locale; and

(g) the loans will not violate the requirements of any banking or other financial institutions regulatory authority.

C. Except for loans described in Subsection B of this section, all loans existing at the time of the application for registration shall be repaid in full prior to the offering. The director may waive this requirement if:

(1) repayment of the loans will be made pursuant to appropriate amortization schedules; or

(2) any portion of the offering is made on behalf of a promoter and the promoter undertakes to immediately repay the loans from the proceeds of the offering.

D. The offer or sale of securities may be disallowed by the director if the issuer or its affiliates have engaged in other material transactions with promoters unless the prospectus discloses the terms of the transactions and indicates whether such terms were as favorable to the issuer or its affiliates as those generally available from unaffiliated third parties, and:

(1) the transaction is ratified by a majority of the issuer's independent directors who did not have an interest in the transactions and who had access, at the issuer's expense, to issuer's or independent legal counsel; or

(2) for transactions which were entered into and when there were less than two such disinterested independent directors the prospectus discloses that the issuer lacked sufficient disinterested independent directors to ratify the transactions at the time the transactions were initiated.

E. The issuer shall disclose in the prospectus or offering document whether or not it or its affiliates have made or will make loans to, have made or will make loan guarantees on behalf of, or have engaged or will engage in material transactions with promoters, and the terms and details relating thereto. If material affiliated transactions or loans have been made, or may be made, the director may require the following representations to appear in the prospectus or offering document:

(1) all future loans and other material affiliated transactions will be made or entered into on terms that are no less favorable to the issuer than those that can be obtained from unaffiliated third parties; and

(2) all future loans and other material affiliated transactions, and any forgiveness of loans, must be approved by a majority of the issuer's independent directors who do not have an interest in the transactions and who had access, at the issuer's expense, to issuer's or independent legal counsel.

F. The issuer and its officers and directors should consider their due diligence and other obligations to affirmatively demonstrate a reasonable basis for the representations in Subsections D and E of this section. In particular, they should consider whether the representations in Paragraph (1) of Subsection D and Paragraph (2) of Subsection E of this section should be embodied in the issuer's charter or by-laws.

G. An issuer that engages in loans and other material affiliated transactions covered by Paragraph (2) of Subsection B, Paragraph (1) of Subsection D and Paragraph (2) of Subsection E of this section must have at least two independent directors on its board of directors. In the event the issuer has only two independent directors on its board or directors, both independent directors must be disinterested in and approve loans and other material transactions covered by Paragraph (2) of Subsection B, Paragraph (1) of Subsection D and Paragraph (2) of Subsection E of this section.

[12.11.9.10 NMAC - Rp, 12 NMAC 11.4.8.3, 1-1-2010]

12.11.9.11 OPTIONS AND WARRANTS:

A. Options or warrants may be issued to underwriters as compensation in connection with a public offering provided those options or warrants comply with the requirements of 12.11.9.15 NMAC, underwriting expenses, underwriter's warrants, selling expenses and selling security holders.

B. Options or warrants may be granted to unaffiliated institutional investors in connection with loans if:

(1) the options or warrants are issued contemporaneously with the issuance of the loan;

(2) the options or warrants are granted as the result of bona fide negotiations between the issuer and unaffiliated institutional investor;

(3) the exercise price of the options or warrants is not less than the fair market value of the issuer's shares of common stock underlying the options or warrants on the date that the loan was approved; and

(4) the number of shares issuable upon exercise of the options or warrants multiplied by the exercise price thereof does not exceed the face amount of the loan.

C. Options or warrants may be issued in connection with acquisitions, reorganizations, consolidations or mergers if:

(1) they are issued to persons who are unaffiliated with the issuer; and

(2) the earnings of the issuer at the time of issuance and after giving effect to the acquisition, reorganization, consolidation or merger would not be materially diluted by the exercise of the options or warrants.

D. Options and warrants may not be issued at an exercise price of less than 85 percent of fair market value of the issuer's underlying shares of common stock on the date of grant. The issuer, its officers and directors should consider the advisability of

obtaining a concurrent appraisal by a qualified independent appraiser of the value of the shares of common stock at the time of issuance as evidence of the fair market value.

E. The total number of options and warrants issued or reserved for issuance at the date of the public offering, excluding those options and warrants that were issued or reserved for issuance pursuant to Subsections C and D of this section, may not, for one year following the effective date of the offering, exceed fifteen percent of the issuer's shares of common stock outstanding at the date of the public offering plus the number of shares of common stock being offered that are firmly underwritten or, in the case of offerings not firmly underwritten, the number of shares of common stock required to be sold in order to meet the minimum offering amount. In calculating the number of options and warrants, the following are excluded:

(1) options and warrants that were issued or reserved for issuance pursuant to Subsections B, C and D of this section;

(2) options and warrants that were issued, or reserved for issuance, to employees or consultants who are not promoters, in connection with an incentive stock option plan qualified under Section 422 of the Internal Revenue Code; and

(3) options and warrants that are exercisable at or above the public offering price.

F. No options or warrants issued and outstanding at the date of the public offering, excluding those options and warrants issued pursuant to an incentive stock option plan qualified under Section 422 of the Internal Revenue Code, may be exercisable more than five years from the date of the public offering.

G. If the number of options and warrants that are issued and outstanding or reserved for issuance is material, the final offering circular shall disclose the potential dilutive effects of such options and warrants.

[12.11.9.11 NMAC - Rp, 12 NMAC 11.4.8.4, 1-1-2010]

12.11.9.12 PROMOTER'S EQUITY INVESTMENT:

A public securities offering by a promotional or development stage company may be disallowed by the director if the promoters' equity investment is less than:

A. ten percent of the first \$1,000,000 of the aggregate public offering;

B. seven percent of the next \$500,000 of the aggregate public offering;

C. five percent of the next \$500,000 of the aggregate public offering; and

D. two and one-half percent of the balance exceeding \$2,000,000 of the aggregate public offering, which may include items submitted by the promoter to meet this requirement whose value has been accepted by the director.

[12 NMAC 11.4.12.4, 12-30-95; 12 NMAC 11.4.8.5, 5-1-99; 12.11.9.12 NMAC - Rp, 12 NMAC 11.4.8.5, 1-1-2010]

12.11.9.13 PROMOTIONAL SHARES:

A. Escrow of promotional shares: The director may require that some or all of the promoters deposit some or all of their promotional shares into an escrow account ("escrow") with an escrow agent according to the terms of an escrow agreement ("agreement") as a condition to registering a public offering of equity securities. The promoters, who are required to deposit some or all of their promotional shares into escrow, are hereinafter collectively referred to as depositors. The director may, at his discretion, require a lock-in agreement on substantially the same terms and conditions as an agreement.

B. Release of promotional shares.

(1) The escrow agent shall release the promotional shares in the following manner, if:

(a) the issuer's aggregate revenues are:

(i) \$500,000 or more, provided that neither the auditor's report nor any footnote to the issuer's latest audited financial statement contains an opinion or statement regarding the ability of the issuer to continue as a going concern; beginning one year from the date the offering is declared effective, two and one-half percent of promotional shares held in escrow may be released each quarter pro rata among the depositors; all remaining promotional shares shall be released from escrow on the second anniversary from the date the offering is declared effective; or

(ii) less than \$500,000; beginning two years from the date the offering is declared effective, two and one-half percent of promotional shares held in escrow may be released each quarter pro rata among the depositors; all remaining promotional shares shall be released from escrow on the third anniversary from the date the offering is declared effective;

(b) the public offering has been terminated and no securities were sold pursuant thereto; or

(c) the public offering has been terminated and all of the gross proceeds that were derived therefrom have been returned to the public investors.

(2) In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a person who is not a promoter which results in the distribution of the issuer's assets or securities ("distribution"), while this agreement remains in effect, the depositors agree that:

(a) all holders of the issuer's equity securities will initially share on a pro rata, per share basis in the distribution, in proportion to the amount of cash or other consideration that they paid per share of equity securities (provided that the director has accepted the value of the other consideration), until the public shareholders have received, or have had irrevocably set aside for them, an amount that is equal to 100 percent of the public offering's price per share times the number of shares of equity securities that they purchased pursuant to the public offering and which they still hold at the time of the distribution, adjusted for stock splits, stock dividends, recapitalizations and the like;

(b) all holders of the issuer's equity securities shall thereafter participate on an equal, per share basis times the number of shares of equity securities they hold at the time of the distribution, adjusted for stock splits, stock dividends, recapitalizations and the like; and

(c) a distribution may proceed on lesser terms and conditions than the terms and conditions stated in Paragraph (1) of this subsection if a majority of the equity securities that are not held by promoters or their associates or affiliates, vote or consent by consent procedure, to approve the lesser terms and conditions at a special meeting called for that specific purpose.

(3) In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the issuer's assets or securities (including by way of tender offer) or any other transaction or proceeding with a person who is a promoter, which results in a distribution while this agreement remains in effect, the depositors' promotional shares shall remain in escrow subject to the terms of the agreement.

(4) In the event securities in the escrow become "covered securities" as defined in the National Securities Markets Improvement Act of 1996, all securities in the escrow shall be released.

C. Documentation regarding the termination of the escrow agreement or the release of promotional shares or both.

(1) A request for the release of any of the promotional shares from escrow shall be in writing and be forwarded to the escrow agent.

(2) The issuer shall provide to the escrow agent the documentation showing that the requirements of Subsection B of this section have been met.

(3) The escrow agent shall terminate the agreement, or release some or all of the promotional shares from escrow, or both, if all the applicable provisions of the agreement have been satisfied. The escrow agent shall maintain all records relating to the agreement for a period of three years following the termination of the agreement. Copies of all records retained by the escrow agent shall be forwarded to the director promptly upon written request.

D. Restrictions on the transfer, sale or disposal of promotional shares.

(1) Promotional shares may be transferred by will, the laws of descent and distribution, operation of law or any court of competent jurisdiction and proper venue.

(a) The promotional shares of a deceased depositor may be hypothecated to pay the expenses of the deceased depositor's estate provided that the hypothecated promotional shares shall remain subject to the terms of the agreement.

(b) No promotional shares may be transferred, sold or disposed of ("transferred") until the escrow agent has received a written statement signed by the proposed transferee ("transferee") which states that the transferee has full knowledge of the terms of the agreement, the transferee accepts the promotional shares subject to the terms of the agreement, and the transferee realizes that the promotional shares shall remain in escrow until they are released pursuant to Subsection B of this section.

(2) With the exception of Subparagraph (a) of Paragraph (1) of this subsection, promotional shares may not be pledged to secure a debt.

(3) Promotional shares may be transferred by gift to the depositor's family members, provided that the promotional shares shall remain subject to the terms of the agreement.

(4) With the exception of Paragraph (1) of this subsection, no promotional shares, any interest therein or any right or title thereto, may be transferred.

(5) In the case of a self-underwritten offering, notwithstanding the provisions of Paragraph (1) of Subsection B of this section, promoters shall be prohibited from selling any of the promotional shares that are not subject to escrow during the time that the issuer is offering its securities to the public.

E. Terms of the escrow.

(1) Except as noted in Subparagraph (c) of Paragraph (2) of Subsection B, depositors shall have the same voting rights as shareholders who purchased equity securities pursuant to the public offering ("public shareholders").

(2) All certificates representing stock dividends and shares resulting from stock splits of escrowed shares, recapitalizations and the like that are granted to or

received by depositors while their promotional shares are held in escrow shall be deposited with and held by the escrow agent subject to the terms of the agreement. Any cash dividends that are granted to or received by depositors while their promotional shares are held in escrow, shall be deposited with and held by the escrow agent subject to the terms of the agreement. The escrow agent shall invest such cash dividends as directed by the depositors. The cash dividends and any interest earned thereon will be disbursed in proportion to the number of shares released from the escrow.

(3) Equity securities that are received by depositors as the result of the conversion or exercise of convertible securities, warrants, options or rights to purchase common stock or similar securities, while their promotional shares are in escrow, shall be deposited with and held by the escrow agent subject to the terms of the escrow.

(4) A summary of the agreement shall be included in the prospectus and subsequent amendments thereto, annual reports to shareholders, proxy statements and other disclosure materials that are used to make investment decisions until the public offering has been terminated.

(5) The escrow agent shall be entitled to reasonable compensation from the issuer for its services as set forth in the agreement. If the escrow agent is required to render additional services that are not expressly provided for therein, or if it is made a party to or intervenes in any action, suit or proceeding pertaining to the agreement, it shall be entitled to receive reasonable compensation from the issuer and the depositors. If additional services are provided, the escrow agent, after giving written notice to the depositors and issuer, may deduct reasonable compensation from any cash dividends, interest and other offering proceeds that are being held by it for distribution pursuant to the agreement.

(6) The issuer and the depositors shall hold the escrow agent harmless from, and indemnify it for, any cost or liability regarding any administrative proceeding, investigation, litigation, interpretation, implementation or interpleading relating to the agreement, including the release of promotional shares and the disbursement of dividends, interest or other offering proceeds, unless the cost or the liability arises from the escrow agent's failure to abide by the terms of the agreement.

(7) The agreement shall be binding upon the depositors, their heirs and assignees, and upon the issuer and escrow agent and their successors.

(8) Except for the escrow agent's compensation and indemnification provisions which shall survive until they are satisfied, the agreement will be terminated when all of the promotional shares have been released or the issuer's equity securities or the assets have been distributed pursuant to the agreement.

[12.11.9.13 NMAC - Rp, 12 NMAC 11.4.8.6, 1-1-2010]

12.11.9.14 SPECIFICITY IN USE OF PROCEEDS:

A. A registration statement not complying with the requirements of this section may be denied registration by the director.

B. The issuer's prospectus shall disclose in a tabular form for both the minimum and maximum amounts proposed, if applicable, the percentages and dollar amounts of the following:

- (1) the estimated cash proceeds to be received by the issuer from the offering;
- (2) the purposes for which the proceeds are to be used by the issuer;
- (3) the amount to be used for each purpose; and
- (4) the order or priority in which the proceeds will be used for the purposes stated.

C. Additionally, the issuer's prospectus shall disclose:

- (1) the amounts of any funds to be raised from other sources to achieve the purposes stated, whether the sources are firm or contingent and any contingencies;
- (2) the sources of any such funds, whether the sources are firm or contingent and any contingencies;
- (3) if any part of the proceeds is to be used to acquire any property (including goodwill) other than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition); and
- (4) the amount and basis for any proceeds used to pay indebtedness, including unpaid salaries, to promoters.

D. The issuer normally may not reserve more than 15 percent proceeds for working capital or general corporate purposes (or for any other unspecified use). In the event the issuer's business plans require greater flexibility in the use of unspecified proceeds, the issuer must:

- (1) disclose all potential uses of such proceeds with qualifying language that such uses may be subject to change; and
- (2) indicate the specific circumstances leading to reallocation and the potential areas of reallocation.

E. The issuer must demonstrate that the offering proceeds, together with all other sources of financing currently available to the issuer, are sufficient to sustain the issuer's proposed activities. If such proceeds are insufficient to sustain the issuer's activities for at least 12 months following the offering, the issuer must provide the appropriate risk disclosure in the prospectus.

F. In the event the offering is not firmly underwritten, the issuer must set a minimum amount of proceeds to be raised consistent with the business plan set forth in the prospectus. These proceeds must be impounded until such minimum amount is reached. In the event money is impounded in a non-interest bearing account, the prospectus must disclose this fact to investors. Additionally, the prospectus must disclose if officers, directors or other promoters have the right to purchase shares for the purpose of meeting the impound requirements.

[12.11.9.14 NMAC - Rp, 12 NMAC 11.4.8.7, 1-1-2010]

12.11.9.15 UNDERWRITING EXPENSES, UNDERWRITER'S WARRANTS, SELLING EXPENSES AND SELLING SECURITY HOLDERS:

A. An offer or sale of securities may be disallowed by the director if the underwriting expenses to be incurred exceed 17 percent of the gross proceeds from the public offering.

B. Underwriting expenses include, but are not limited to:

(1) commissions to underwriters or broker-dealers;

(2) non-accountable fees or expenses to be paid to the underwriters or broker-dealers;

(3) underwriter's warrants, which shall be valued using the following formula: $.5 \text{ multiplied by } ((165 \text{ percent of the offering price}) \text{ minus } (\text{the exercise price multiplied by the number of shares offered to the public})) \text{ multiplied by } (\text{the number of shares underlying the warrants divided by the number of shares offered to the public}) \text{ equals Warrant Value}$; the value may be reduced by 20 percent if the exercise period of the warrants is extended from one year after the public offering to two years after the public offering and by 40 percent if the exercise period of the warrants is extended from one year after the public offering to three years after the public offering; warrants granted to underwriters are subject to the following restrictions:

(a) the underwriter is a managing underwriter;

(b) the public offering is either a firmly underwritten offering or a "minimum-maximum" offering; options or warrants may be issued in a "minimum-maximum" public offering only if:

- (i) the options or warrants are issued on a pro rata basis;
- (ii) the "minimum" amount of securities has been sold;
- (iii) the exercise price of the warrants is at least equal to the public offering price;
- (iv) the number of shares covered by underwriter's options or warrants does not exceed ten percent of the shares of common stock actually sold in the public offering;
- (v) the life of the options or warrants does not exceed a period of five years from the completion date of the public offering;
- (vi) the options or warrants are not exercisable for the first year after the completion date of the public offering; and

(c) options or warrants are not transferred, except:

- (i) to partners of the underwriter, if the underwriter is a partnership;
- (ii) to officers and employees of the underwriter, who are also shareholders of the underwriter if the underwriter is a corporation; or
- (iii) by will, pursuant to the laws of descent and distribution, or by the operation of law;

(d) the warrant agreement does not allow for a reduction in the exercise price of the options or warrants resulting from the subsequent issuance of shares by the issuer except where such issuances are pursuant to a:

- (i) stock dividend or stock split; or
- (ii) merger, consolidation, reclassification, reorganization, recapitalization or sale of assets;

(4) right of first refusal, which shall be valued at 1 percent of the public offering or the amount payable to the underwriter if the issuer terminates the right of first refusal;

(5) solicitation fees payable to the underwriter, which shall be valued at the lesser of actual cost or one percent of the public offering if the fees are payable within one year of the offering;

(6) financial consulting or financial advisory agreements with an underwriter or any other similar type of agreement or fees, however designated, which shall be valued at actual cost;

(7) underwriter's due diligence expenses;

(8) payments made either six months prior to or required to be made six months following the public offering to investor relations firms designated by the underwriter; and

(9) other underwriting expenses incurred in connection with the public offering of securities as determined by the director.

C. Underwriting expenses shall not include financial consulting or financial advisory agreements with the underwriter payable at the time the services are rendered, provided that such agreement was entered into at least twelve months before the registration is filed with the SEC.

D. An offer or sale of securities may be disallowed by the director if the direct and indirect selling expenses of the offering exceed 20 percent of the gross proceeds from the public offering.

E. Selling expenses include, but are not limited to:

(1) commissions to underwriters or broker-dealers;

(2) non-accountable fees or expenses to be paid to the underwriters or broker-dealers;

(3) auditors' and accountants' fees;

(4) legal fees;

(5) the cost of printing prospectuses, circulars and other documents required to comply with securities laws and regulations;

(6) charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, engineers, appraisers and other experts;

(7) the cost of authorizing and preparing the securities, including issue taxes and stamps;

(8) financial consulting or financial advisory agreements with an underwriter or any similar type agreement or fees, however designated, which shall be valued at actual cost, excluding financial and consulting agreements which are entered into at least 12 months before the registration is filed with the SEC;

(9) payments made either six months prior to or required to be made six months following the public offering to investor relations firms designated by the underwriter; and

(10) other selling expenses incurred in connection with the public offering of securities as determined by the director.

F. A public offering or sale of securities that includes selling security holders offering in aggregate more than ten percent of the securities to be sold in the public offering may be disallowed by the director unless:

(1) selling security holders offering or selling in aggregate more than 10 percent but less than 50 percent of the securities to be sold in the public offering pay a pro rata share of all selling expenses of the public offering, excluding the legal and accounting expenses of the public offering;

(2) selling security holders offering in aggregate more than 50 percent of the securities to be sold in the offering pay a pro rata share of all selling expenses of the public offering; and

(3) the prospectus or offering document discloses the amount of selling expenses which the selling security holders will pay.

G. With the exception of underwriter's or broker-dealer's compensation, the provisions of Subsection F of this section shall not apply if the selling security holders have a written agreement with the issuer that was entered into in an arms-length transaction, whereby the issuer has agreed to pay all of the selling security holders' selling expenses.

[12.11.9.15 NMAC - Rp, 12 NMAC 11.4.8.8, 1-1-2010]

12.11.9.16 UNEQUAL VOTING RIGHTS:

The offer and sale of securities that have less-than-equal voting rights may be deemed to be inconsistent with public investor protection and against public policy by the director unless:

A. the securities are given preferential treatment as to dividends and liquidation or the less than equal voting rights are justified to the satisfaction of the director; and

B. the terms of the voting rights are prominently disclosed on the cover page of the issuer's offering circular or prospectus.

[12.11.9.16 NMAC - Rp, 12 NMAC 11.4.8.9, 1-1-2010]

12.11.9.17 UNSOUND FINANCIAL CONDITION:

A. An issuer shall be deemed to be in unsound financial condition if the financial statements contain:

(1) a footnote to the financial statements or an explanatory paragraph in the independent auditor's report regarding the issuer's ability to continue as a going concern; and

(2) at least one of the following, or a similar fact:

(a) an accumulated deficit;

(b) negative shareholder equity;

(c) an inability to satisfy current obligations as they come due; or

(d) negative cash flow (or revenues not being generated by operations).

B. If the application for registration contains audited financial statements which were issued more than 90 days from the date of application, the accompanying interim unaudited financial statements are subject to the scrutiny of this section.

C. An application for registration by an issuer in unsound financial condition may be denied by the director.

D. An application for registration by an issuer in unsound financial condition may be registered by the director if the chief financial officer of the issuer provides pro forma financial data acceptable to the director that:

(1) demonstrate that the issuer's financial condition will improve either as a direct result of the offering proceeds or as a proximate result of the offering proceeds (as part of a long-term business plan);

(2) demonstrate when profitability is expected to occur; and

(3) are supported with documentation of, and the bases for, any assumptions.

E. In addition to satisfying the requirements of Subsection D of this section, the issuer must:

(1) include prominent disclosure that the issuer is considered to be in unsound financial condition and that persons should not invest unless they can afford to lose their entire investment; and

(2) disclose the following risk factors, as applicable:

(a) the presence of an explanatory paragraph in the independent auditor's report;

(b) if the issuer has not been generating revenues from operations, the means by which the issuer has been financing its operations;

(c) the amount of any accumulated deficit;

(d) the presence and amount of any negative shareholder's equity; and

(e) the need for future financing.

F. Nothing in this section shall prevent the director from imposing net worth standards or limiting the sales of securities to accredited investors in lieu of, or in addition to, the requirements of Subsections D and E of this section. The imposition of these minimal net worth standards does not relieve a dealer from the responsibility of making an independent determination of suitability required under industry standards. Unless the director determines that the risks associated with the offering would require lower standards, public investors shall have the following:

(1) a minimum annual gross income of \$70,000 and a minimum net worth of \$70,000, exclusive of automobile, home and home furnishings; or

(2) a minimum net worth of \$250,000, exclusive of automobile, home and home furnishings.

[12.11.9.17 NMAC - Rp, 12 NMAC 11.4.8.10, 1-1-2010]

12.11.9.18 PREFERRED STOCK:

A. A public offering of preferred stock may be disallowed by the director if the issuer's adjusted net earnings for the last fiscal year or its average adjusted net earnings for the last three fiscal years prior to the public offering were insufficient to pay its fixed charges and preferred stock dividends, whether or not accrued, and to meet the redemption requirements, if applicable, of the preferred stock being offered.

B. As an alternative to Subsection A of this section, the director may choose to apply a cash analysis. The director may consider the statement of cash flows if the statement demonstrates that the issuer has had positive "net cash provided by operating activities" for its last fiscal year. The director may request that the issuer submit a financial statement demonstrating an average positive "net cash provided by operating activities" for the last three fiscal years prior to the public offering. In either instance there must be sufficient cash to cover the preferred stock dividend whether or not declared.

C. Subsections A and B of this section shall not apply to public offerings of convertible preferred stock that are superior in right to payment of dividends, interest and liquidation proceeds to any convertible debt and preferred stock that are or may be legally or beneficially, directly or indirectly, owned by promoters. The risks of failure to declare or pay dividends and the equity characteristics of the convertible preferred stock must be disclosed in the offering prospectus. An offering of such securities may be reviewed using guidelines for equity offerings.

D. If the issuer's net earnings are subject to cyclical fluctuations or if the director deems it necessary for investor protection, the director may require that the issuer establish redemption requirements.

E. A public offering of equity securities may be disallowed by the director if the issuer's articles of incorporation authorize its board of directors to issue preferred stock in the future without a vote of the common shareholders unless:

(1) the issuer represents in its prospectus or offering document that it will not offer preferred stock to promoters except on the same terms as it is offered to all other existing shareholders or to new shareholders; or

(2) the issuance of preferred stock is approved by a majority of the issuer's independent directors who do not have an interest in the transaction and who have access, at the issuer's expense, to issuer's or independent legal counsel.

[12.11.9.18 NMAC - Rp, 12 NMAC 11.4.8.11, 1-1-2010]

12.11.9.19 DEBT SECURITIES:

A. The following definitions shall apply to this section.

(1) "**Adjusted cash flow**" is the issuer's cash flow adjusted on a pro forma basis to reflect:

(a) the elimination of interest and fees on debt or debt securities and of cash dividends on preferred stock that are to be retired with the proceeds derived from the offering;

(b) the effect of any acquisitions or capital expenditures that were made by the issuer after its last fiscal year, or which are proposed or required for the current fiscal year, which materially affect the issuer's cash flow;

(c) the effect of interest and fees on debt or debt securities or cash dividends paid after the issuer's last fiscal year;

(d) the effect of any interest and fees or debt securities and of cash dividends on preferred stock or common stock that were issued during the issuer's last fiscal year,

as if such debt, debt securities, preferred stock or common stock had been outstanding for the entire fiscal year;

(e) the effect of imputed or deferred charges of zero coupon debt or debt securities for the issuer's last fiscal year and any additional charges on such debt or debt securities issued after the issuer's last fiscal year;

(f) except as provided in Subsection C of this section, the effect of accrued dividends on preferred stock for the issuer's last fiscal year and any additional dividends on such preferred stock issued after the issuer's last fiscal year; and

(g) the effect of any other material changes to the issuer's future cash flow.

(2) "**Cash flow**" is the issuer's after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, less interest and dividends, plus certain noncash charges against earnings such as depreciation, depletion and amortization, determined according to generally accepted accounting principles consistently applied.

(3) A "**promoter**" may include:

(a) a person who, alone or in conjunction with one or more persons, directly or indirectly, founded or organized the issuer or controls the issuer;

(b) a person who, directly or indirectly, receives as consideration for services or property rendered, five percent or more of any class of the issuer's equity securities or five percent or more of the proceeds from the sale of any class of the issuer's equity securities;

(c) a person who receives securities or proceeds solely as underwriting compensation is excluded from the definition of promoter if that person falls outside of the definitions of Subparagraphs (a), (d) and (e) of Paragraph (3) of this subsection;

(d) a person who is an officer or director of the issuer;

(e) a person who legally or beneficially, directly or indirectly, owns five percent or more of any class of the issuer's equity securities ("five percent shareholder") if that person was in control of the issuer at the time of acquiring five percent of any class of the issuer's equity securities or if that person is in control of the issuer at the time of public offering of the issuer's equity securities; or

(f) a person who is an affiliate or an associate of a person specified in Subparagraphs (a), (b), (c) or (d) of Paragraph (3) of this subsection.

B. A public offering of debt securities may be disallowed by the director if the issuer's adjusted cash flow for the last fiscal year or its average adjusted cash flow for

the last three fiscal years prior to the public offering was insufficient to cover its fixed charges, meet its debt obligations as they became due, and service the debt securities being offered.

C. Notwithstanding Subparagraph (f) of Paragraph (1) of Subsection A of this section, accrued dividends of cumulative preferred stock having a stated interest rate may be excluded from adjusted cash flow at the discretion of the director.

D. The director, in the director's sole discretion, may choose not to apply Subsection B of this section to a public offering of convertible securities that are superior in right of payment of interest and liquidation proceeds to any convertible debt that is or may be legally or beneficially, directly or indirectly, owned by promoters. The risks of failure to meet debt service obligations and the equity characteristics of such securities must be disclosed in the prospectus. An offering of such securities may be reviewed using guidelines for equity offerings.

E. Unless the director permits otherwise, public offerings of debt securities shall be offered and sold pursuant to a trust indenture ("indenture") which adequately protects the rights of the purchasers. Some of these protections are:

(1) the indenture shall comply with the provisions of the Trust Indenture Act of 1939; this shall be disclosed in the offering document;

(2) the events of default of the indenture shall be disclosed in the offering document;

(3) the trustee shall be provided with adequate reports, including any compliance reports from independent auditors, to allow the trustee to ensure compliance with the indenture;

(4) neither the trustee nor the promoters may be major creditors of the issuer or its affiliates;

(5) the indenture shall provide that upon any consolidation, merger, recapitalization, reorganization, pledge foreclosure, equity or share exchange, conveyance or transfer of the properties and assets of the issuer substantially as an entirety, or any other transaction having a substantially equivalent effect, the successor person shall expressly assume the payment obligations on the debt securities and the duty to perform the covenants of the indenture;

(6) the indenture shall provide that interest will accrue and be paid to the date(s) of redemption or conversion of the debt securities.

F. If the issuer's cash flow is subject to cyclical fluctuations or if the director deems it necessary for investor protection, the director may require that the issuer establish a sinking fund or redemption requirements.

[12.11.9.19 NMAC - Rp, 12 NMAC 11.4.8.12, 1-1-2010]

PART 10: SMALL COMPANY OFFERING REGISTRATION (SCOR)

12.11.10.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.10.1 NMAC - N, 1-1-2010]

12.11.10.2 SCOPE:

All persons, whether natural or legal entities, that transact business in the state of New Mexico as a broker-dealer, an investment adviser, or an issuer of securities, and their representatives and agents.

[12.11.10.2 NMAC - N, 1-1-2010]

12.11.10.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.10.3 NMAC - N, 1-1-2010]

12.11.10.4 DURATION:

Permanent.

[12.11.10.4 NMAC - N, 1-1-2010]

12.11.10.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.10.5 NMAC - N, 1-1-2010]

12.11.10.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.10.6 NMAC - N, 1-1-2010]

12.11.10.7 DEFINITIONS:

[RESERVED]

12.11.10.8 QUALIFICATIONS FOR USE OF SCOR:

SCOR is intended to allow small companies to conduct limited offerings of securities. The requirements contained in this subpart shall apply to registrations that utilize form U-7 for registration and are exempt from federal registration under Rule 504 of Regulation D or that utilize model A of form 1-A for offerings that are exempt under Regulation A of the Securities Act of 1933.

A. The issuer must be a corporation or centrally managed limited liability company organized under the laws of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia and have its principal place of business in one of the foregoing jurisdictions.

B. The securities may be offered and sold only on behalf of the company. Form U-7 may not be used by any selling security holder (including purchasing underwriters in a firm commitment underwriting) to register his securities for resale.

C. The offering price for common stock (and the exercise price, if the securities offered are options, warrants or rights for common stock; or the conversion price if the securities are convertible into common stock) or membership interest in a limited liability company or limited liability partnership must be equal to or greater than \$1.00 per share or unit of interest.

D. By filing for SCOR registration in this state, the registrant agrees with the director that the registrant will not split its common stock, or declare a stock dividend, for two years after the effectiveness of the registration if such action has the effect of lowering the price below \$1.00.

[12.11.10.8 NMAC - Rp, 12 NMAC 11.4.6.1, 1-1-2010]

12.11.10.9 INELIGIBLE ISSUERS:

The following issuers are ineligible to use SCOR:

A. investment companies subject to the Investment Company Act of 1940;

B. companies subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934;

C. companies engaged in or which propose to engage in petroleum exploration and production, mining, or other extractive industries;

D. development stage companies that either have no specific business plan or purpose or have indicated that their business plan is to engage in a merger or acquisition with an identified company or companies or other entity or person;

E. holding companies or companies whose principal purpose is owning stock in, or supervising the management of, other companies; and

F. issuers disqualified under 12.11.10.21 NMAC.

[12.11.10.9 NMAC - Rp, 12 NMAC 11.4.6.2, 1-1-2010]

12.11.10.10 REGISTRATION:

A. A corporation issuing securities that are exempt from registration with the SEC under Rule 504 of Regulation D of the Securities Act of 1933 shall use registration form U-7, small company offering registration form, when registering such securities in this state.

B. Use of SCOR is available to any offering of securities by a company relying upon an exemption from registration pursuant to Regulation A or Rule 504 of Regulation D of the Securities Act of 1933. The aggregate offering under Regulation A, within and outside this state, shall not exceed \$5,000,000. The aggregate offering under Rule 504, within and outside this state, shall not exceed \$1,000,000, less the aggregate offering price of all securities sold within the previous twelve months in reliance on Rule 504.

C. Any reference in this rule to form U-7 means the small company offering registration form (form U-7) as adopted by NASAA, on April 29, 1989, as amended, which is incorporated herein by reference. Copies of form U-7 are available from the division and from NASAA.

D. Securities issued under this Part 10 shall be registered by qualification under Section 58-13B-23.

[12.11.10.10 NMAC - Rp, 12 NMAC 11.4.6.3, 1-1-2010]

12.11.10.11 APPLICATION:

A. In addition to filing a properly completed and signed form U-7 or model A of form 1-A, a company must file with the director an executed form U-1, uniform application to register securities, and a signed original form U-2, consent to service of process. References in form U-1 to SEC registration and effectiveness and questions 6 and 8(a) of form U-1 should be disregarded. Form U-1 should set forth the amount of securities being registered in this state. Once registration is effective in this state, the effective date should be noted at the bottom of the cover page of the form U-7 or model A of form 1-A. Any changed or revised disclosure document must also be signed. A company that intends to conduct a SCOR offering in two or more states should contact the states to

determine if the offering can be filed for regional review. In filing for regional review, the company will, in most cases, confer with a lead state that will coordinate the review and comments of all states in which the offering is to be made. Upon completion, the offering will become effective in all these states.

B. A response shall be provided to each question in each paragraph of form U-7 or model A of form 1-A. If the question or series of questions is inapplicable, so indicate. Each answer should be clearly and concisely stated in the space provided; however, notwithstanding the specificity of the questions, responses should not involve nominal, immaterial or insignificant information. If the provided space is insufficient, additional space should be created by adding more lines. No cover other than that provided in these forms may be used.

C. The disclosure document on form U-7 or model A of form 1-A constitutes the offering circular or prospectus and either of these forms, once filled out, filed and declared effective, may be reproduced by the company by copy machine or otherwise for dissemination to potential investors. Care should be taken to assure that whichever form is used, if reproduced, is accurate, readable, and complete. Small size type, script or italic style type should not be used.

D. There must be submitted to the director an opinion of an attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and, when issued upon payment of the offering price, will be legally and validly issued, fully paid and nonassessable and binding on the company in accordance with their terms.

[12.11.10.11 NMAC - Rp, 12 NMAC 11.4.6.4, 1-1-2010]

12.11.10.12 EXHIBITS:

In addition to filing a properly completed form U-7, applicants for SCOR registration shall file, to the extent applicable, the following documents with the director:

- A.** form of selling agency agreement;
- B.** the issuer's articles of incorporation or other charter documents and all amendments thereto;
- C.** the issuer's bylaws, as amended to date;
- D.** copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued;
- E.** any indenture, form of note or other contractual provision containing terms of notes or other debt, or of options, warrants, or rights to be offered;

- F. specimen of security to be offered (including any legend restricting resale);
- G. form U-2, uniform consent to service of process, accompanied by an appropriate form U-2A, uniform corporate resolution;
- H. copy of all advertising or other materials directed to or to be furnished investors in the offering;
- I. form of escrow agreement for escrow of proceeds;
- J. consent to inclusion in disclosure document of accountant's report;
- K. consent to inclusion in disclosure document of tax advisor's opinion or description of tax consequences;
- L. consent to inclusion in disclosure document of any evaluation of litigation or administrative action by counsel;
- M. form of any subscription agreement for the purchase of securities in this offering;
- N. schedule of residential addresses of officers, directors, principal stockholders, and limited liability company and limited liability partnership members; and
- O. work sheets showing computations of responses to questions 33, 36(a), 40(a), 41, 68(a) and 68(b) of form U-7.

[12.11.10.12 NMAC - Rp, 12 NMAC 11.4.6.5, 1-1-2010]

12.11.10.13 REGISTRATION FEE:

An application for registration under this regulation shall be accompanied by a non-refundable fee as provided in Section 58-13C-305B. Checks shall be made payable to the New Mexico securities division.

[12.11.10.13 NMAC - Rp, 12 NMAC 11.4.6.6, 1-1-2010]

12.11.10.14 EFFECTIVENESS:

A. The company should expect that the director may have comments and questions concerning the answers set forth on form U-7 and that changes may be required to be made to the answers before the registration is declared effective. Comments and questions may either be included in a letter or made by telephone communication initiated by the director in response to the filing. Comments may include requests for disclosure of additional information or may also require that certain terms of the offering be modified to comply with the state's substantive fairness criteria. Failure to resolve outstanding comments may lead to denial of registration.

B. No offers or sales may be made in this state until the registration has been declared effective by the director. To make offers or sales before the registration is effective could lead to a stop order or other proceeding which would preclude use of SCOR in this or any other state and could give rise to a right of rescission by investors enforceable against management, principal stockholders and the selling agents, as well as the company. When the registration has been declared effective in this state, offers and sales may be made in this state even though registration in other states has not been declared effective. The registration statement will be effective only for the time period specified by the director, which may be different for different states; however, no registration statement shall remain effective for a period greater than one year unless an extension is granted by the director.

C. After the registration has been declared effective and while the offering is still in progress, if any portion of the form U-7 should need to be changed or revised because of a material event concerning the company or the offering to make it accurate and complete, it shall be so changed, revised, or supplemented. If changed, revised or supplemented (including an addition on the cover page of another state in which the offering has been registered) the form U-7 as so changed, revised or supplemented, clearly marked to show changes from the previously filed version, should be filed and cleared with the director before use. If any of the changes or revisions are of such significance that they are material to the making of an investment decision by an investor, the disclosure document on this form as so changed, revised or supplemented should be recirculated to persons in this state that have previously subscribed and who should be given the opportunity to rescind or reconfirm their investment.

D. Options, warrants and similar rights to purchase securities constitute a continuous offering of the underlying securities during the exercise period and require the securities to be registered and the disclosure document to be kept continuously current throughout the exercise period through the use of the amendment procedure set forth in Subsection C of this section or by means of a supplement, as appropriate. Upon any change, revision or supplement to the disclosure document, a copy must be promptly furnished to the holders of options, warrants and similar rights.

[12.11.10.14 NMAC - Rp, 12 NMAC 11.4.6.7, 1-1-2010]

12.11.10.15 DELIVERY OF DISCLOSURE DOCUMENT:

The disclosure document and any supplements thereto must be delivered to each investor before the earliest of any of the following events: (a) any order is accepted; (b) any subscription agreement is signed; or (c) any part of the purchase price is received. The foregoing information shall not be delivered to any investor prior to the effective date of the registration.

[12.11.10.15 NMAC - Rp, 12 NMAC 11.4.6.8, 1-1-2010]

12.11.10.16 REPORTING:

A. Within 30 days after the expiration date of the registration, the completion of the offering, or the termination of the offering, whichever occurs first, the issuer shall deliver to the director a report setting forth the application of proceeds, the total number of purchasers, the number of purchasers residing in this state, the total dollar amount sold, the dollar amount sold to residents of this state and any other information the director, in his discretion, may require. Annually thereafter, the issuer shall file reports with the director setting forth, in reasonable detail, the application of the offering proceeds until all proceeds are expended.

B. The director has discretion to require that additional information be provided and may specify the forms necessary to fulfill the reporting requirements of Subsection A of this section.

[12.11.10.16 NMAC - Rp, 12 NMAC 11.4.6.9, 1-1-2010]

12.11.10.17 OTHER REQUIREMENTS:

The following standards apply to registration of SCOR equity securities:

A. 12.11.9.9 NMAC, Impoundment of Proceeds; if the proposed business of the company requires a minimum amount of proceeds to commence or continue the business in the manner proposed, the company shall establish an escrow provided that the escrow agent shall be a bank, savings and loan association, or other similar depository institution, or an independent escrow agent approved by the director in accordance with Subsection H of 58-13B-24;

B. 12.11.9.10 NMAC, Loans and Other Material Affiliated Transactions;

C. 12.11.9.11 NMAC, Options and Warrants;

D. 12.11.9.12 NMAC, Promoter's Equity Investment, provided that the amounts set forth therein may be reduced at the discretion of the director for good cause shown;

E. 12.11.9.13 NMAC, Promotional Shares;

F. 12.11.9.15 NMAC, Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders; and

G. 12.11.9.19 NMAC, Debt Securities.

[12.11.10.17 NMAC - Rp,, 12 NMAC 11.4.6.10, 1-1-2010]

12.11.10.18 FINANCIAL STATEMENTS:

Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. If appropriate, a reconciliation note should be

provided. If the company has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; provided, however, that if each of the following four conditions are met, such financial statements, in lieu of being audited, may be reviewed by independent certified public accountants in accordance with the *accounting and review service standards* promulgated by the American institute of certified public accountants or the Canadian equivalent:

A. the company shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, "cold call" telephone solicitation, or any other method directed toward the public;

B. the company has not been previously required under federal, state, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities;

C. the aggregate amount of all previous sales of securities by the company (exclusive of debt financing with banks and similar commercial lenders) shall not exceed \$1,000,000; and

D. the amount of the present offering does not exceed \$1,000,000.

[12.11.10.18 NMAC - Rp, 12 NMAC 11.4.6.11, 1-1-2010]

12.11.10.19 SELLING AGENTS:

A. The company may engage broker-dealers or issuer representatives to sell the securities. Commissions, fees, or other remuneration for soliciting any prospective purchaser in this state in connection with this offering may only be paid to persons who, if required to be registered, the company reasonably believes are appropriately registered in this state.

B. 12.11.2.16 NMAC provides an exemption from registration for persons representing a SCOR issuer who do not receive compensation for sales.

[12.11.10.19 NMAC - Rp, 12 NMAC 11.4.6.12, 1-1-2010]

12.11.10.20 ADVERTISING:

All selling literature or advertisements announcing the offering shall be filed with the director prior to publication or circulation. An announcement containing no more than the following need not be filed with the director:

A. the name of the company;

B. characterization of the company as indicated on the cover page of the disclosure document;

C. address and telephone number of the company;

D. a brief indication in ten words or less of the company's business or proposed business;

E. the number and type of securities offered and the offering price per security;

F. the name, address, and telephone number of any selling agent authorized to sell the securities;

G. a statement that the announcement does not constitute an offer to sell or solicitation of an offer to purchase and that any such offer must be made by official disclosure document;

H. how a copy of the disclosure document may be obtained;

I. the company's logo; and

J. clip and return coupons, requesting a copy of the disclosure document, used in printed announcements.

[12.11.10.20 NMAC - Rp, 12 NMAC 11.4.6.13, 1-1-2010]

12.11.10.21 DISQUALIFICATION:

SCOR shall not be available for the securities of any company if the company or any of its officers, directors, 10 percent stockholders or members, promoters or any selling agents of the securities to be offered, or any officer, director or partner of such selling agent:

A. has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the application for registration hereunder;

B. has been convicted within five years prior to the filing of the application for registration hereunder of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

C. is currently subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the application for registration hereunder or is subject to any federal or state administrative enforcement order or

judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the application for registration hereunder;

D. is subject to any federal or state enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities;

E. is currently subject to any order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security or involving the making of any false filing with any state entered within five years prior to the filing of the application for registration hereunder;

F. the prohibitions of Subsections A, B, C and D of this section shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the jurisdiction in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is registered in this state and the form BD filed with this state discloses the order, conviction, judgment, or decree relating to such person; no person disqualified under this section may act in a capacity other than that for which the person is licensed or registered;

G. any disqualification caused by this section is automatically waived if the securities administrator or agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that registration be denied; or

H. if any of the circumstances in Subsections B, C or E of this section have occurred more than five years from the date of the application for registration hereunder, these circumstances must be described in response to question 118 of form U-7, Other Material Factor.

[12.11.10.21 NMAC - Rp, 12 NMAC 11.4.6.14, 1-1-2010]

PART 11: EXEMPT SECURITIES

12.11.11.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.11.1 NMAC - Rp, 12 NMAC 11.4.1.1, 1-1-2010]

12.11.11.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their representatives and agents.

[12.11.11.2 NMAC - Rp, 12 NMAC 11.4.1.2, 1-1-2010]

12.11.11.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.11.3 NMAC - Rp, 12 NMAC 11.4.1.3, 1-1-2010]

12.11.11.4 DURATION:

Permanent.

[12.11.11.4 NMAC - Rp, 12 NMAC 11.4.1.4, 1-1-2010]

12.11.11.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.11.5 NMAC - Rp, 12 NMAC 11.4.1.5, 1-1-2010]

12.11.11.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.11.6 NMAC - Rp, 12 NMAC 11.4.1.6, 1-1-2010]

12.11.11.7 DEFINITIONS:

[RESERVED]

12.11.11.8 NEW MEXICO MUNICIPAL AND INDUSTRIAL REVENUE BONDS NOT FEDERAL COVERED:

Municipal securities exempt under Section 3(a)(2) of the Securities Act of 1933 are covered securities under Section 18(b)(4)(C) of that act, except offers and sales of such securities in states in which issuers of such municipal securities are located. New Mexico municipal and other industrial revenue bonds that are not covered securities

may still qualify for the exemption from registration pursuant to Section 58-13C-201A of the New Mexico Uniform Securities Act and no filing notice or filing fee shall be due except that if the requirements of Section 58-13C-201A are not met, such securities shall be registered pursuant to Section 58-13C-301 of the New Mexico Uniform Securities Act.

[12.11.11.8 NMAC - Rp, 12 NMAC 11.4.7.1.3, 1-1-2010]

12.11.11.9 EXCHANGE LISTED EXEMPTION:

A. The following are additional securities markets designated by the director pursuant to Section 58-13C-201F:

- (1) Chicago stock exchange (tier I only); and
- (2) Pacific stock exchange (tiers I and II only).

B. The exemption provided by Section 58-13C-201F shall include any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase any of the foregoing.

[12.11.11.9 NMAC - Rp, 12 NMAC 11.4.7.1.4, 1-1-2010]

PART 12: EXEMPT TRANSACTIONS

12.11.12.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.12.1 NMAC - Rp, 12.11.12.1 NMAC, 1-1-2010]

12.11.12.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their representatives and agents.

[12.11.12.2 NMAC - Rp, 12.11.12.2 NMAC, 1-1-2010]

12.11.12.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.12.3 NMAC - Rp, 12.11.12.3 NMAC, 1-1-2010]

12.11.12.4 DURATION:

Permanent.

[12.11.12.4 NMAC - Rp, 12.11.12.4 NMAC, 1-1-2010]

12.11.12.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.12.5 NMAC - Rp, 12.11.12.5 NMAC, 1-1-2010]

12.11.12.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.12.6 NMAC - Rp, 12.11.12.6 NMAC, 1-1-2010]

12.11.12.7 DEFINITIONS: [RESERVED]

12.11.12.8 SECTION 58-13C-202A - ISOLATED NON-ISSUER TRANSACTIONS:

A. An "isolated non-issuer transaction" pursuant to Section 58-13C-202A shall mean an offer or sale of a security that meets both of the following conditions:

- (1)** no 12-month period in which the date of the sale can be included contains more than three sales of the security in New Mexico by the seller or affiliates, and
- (2)** no person offers or sells the security by means of a general solicitation, except as permitted under Subsection C of this section.

B. For purposes of this section, a husband and wife shall be considered as one purchaser. A corporation, partnership, limited liability company, association, joint stock company, trust or unincorporated organization shall be considered as one purchaser unless the entity was organized for the purpose of acquiring the purchased securities. If the entity was organized for the purpose of acquiring the purchased securities, each beneficial owner of equity interest or equity securities in the entity shall be considered a separate purchaser.

C. For purposes of this section, if an offer or sale is conducted through an issuer-controlled trading system maintained in an electronic form or another form for the

purpose of facilitating trades of that issuer's securities between nonissuers, the offer or sale shall not be considered to have been made by general solicitation.

[12.11.12.8 NMAC - Rp, 12.11.12.8 NMAC, 1-1-2010]

12.11.12.9 SECTION 58-13C-202B(4) - MANUAL OR ELECTRONICALLY AVAILABLE INFORMATION EXEMPTION:

A. For purposes of the registration exemption in Section 58-13C-202B, any Standard & Poor's, Mergent or Fitch securities manual that contains, in whatever format, the information specified in Section 58.202B4(a) to (d) is designated as a "nationally recognized securities manual" under Section 58-202B(4)(a) to (d).

B. All information provided pursuant to Section 58-202B4(a) to (d) must be current. The time for determining whether the entries are current is at the date of the particular sale, not the date the manual listings are published. If a manual listing is not continually updated, the exemption would not be available once the published balance sheet becomes more than 18 months old or the list of officers and directors is not reasonably current.

[12.11.12.9 NMAC - Rp, 12.11.12.10 NMAC, 1-1-2010]

12.11.12.10 SECTION 58-13C-202K - TRANSACTIONS IN SECURED DEBT INSTRUMENTS:

A. The exemption provided in Section 58-13C-202K is not available for any transaction in which the evidence of indebtedness, regardless of form, is offered or sold to more than one investor. Transactions fractionalizing, serializing, or forming partnerships, corporations, or other associations solely for the purpose of acquiring evidence of indebtedness will not qualify for the exemption.

B. For purposes of Subsection A of this section:

(1) a husband, wife and minor children of either spouse, or any two or more of them, residing in the same household shall count as one investor; and

(2) a limited partnership, limited liability company, trust, corporation or limited liability partnership shall count as one investor if it was not formed for the purpose of investing or trading in the securities of the issuer claiming this exemption and such entity has substantial other business or investments; an industrial revenue bond that is sold to an affiliate of the entity on whose behalf the bond was issued shall count as one investor provided that such affiliate is wholly owned, directly or indirectly, by the entity on whose behalf the bond was issued or its parent company.

[12.11.12.10 NMAC - Rp, 12.11.12.12 NMAC, 1-1-2010]

12.11.12.11 SECTION 58-13C-202X - SMALL OFFERINGS BY ISSUERS WITH LOCAL OPERATIONS:

A. Pursuant to Section 58-13C-202X, notification must be given on the securities division's form X and filed with the division ten business days prior to any offer of securities.

B. No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state.

C. No exemption shall be available under Section 58-13C-202X for the securities of any issuer if any of the persons described in the Securities Act of 1933, Regulation A, Rule 230.262 (a), (b) or (c):

(1) has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption;

(2) has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

(3) is currently subject to any administrative enforcement order or judgment entered by any state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment, in which fraud or deceit including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption;

(4) is subject to any state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(5) is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security or involving the making of any false filing with any state entered within five years prior to the filing of the notice required under this exemption.

D. The requirements set forth in Subsection C of this section may be waived by the director if the director determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

E. At a minimum, the following information shall be disclosed to potential investors in offerings claiming the exemption provided in Section 58-13C-202X:

(1) a general description of the offering and the business activity to be engaged in including:

- (a)** the general nature of the securities being offered;
 - (b)** the maximum aggregate amount of the offering;
 - (c)** the subscription price;
 - (d)** the period of the offering;
 - (e)** the maximum amount of any sales or underwriting commission to be paid and the nature of any sharing arrangement and fees;
 - (f)** the federal exemption under the Securities Act of 1933 on which the issue is being offered;
 - (g)** the specific purposes for which the registrant intends to employ its funds in the event that the minimum capital is received; and
 - (h)** the estimated amount to be paid during the first 12 months following commencement of operations for administrative and similar services;
- (2)** for corporate offerings, a statement of dilution;
- (3)** for partnership offerings, suitability requirements for investors;
- (4)** the business experience of the sponsors and affiliates, particularly with regard to the business of the offeror;
- (5)** all compensation, direct or indirect, which is to be paid to the sponsor, officers, directors or control persons;
- (6)** a statement of the purposes for which the net proceeds of the offering are intended to be used and the approximate amount and percentages intended to be used for each such purpose;

(7) for partnership offerings, a statement prominently set forth as to whether additional assessments are provided for and, if so, the method of assessment and the penalty for default;

(8) a description of the proposed business activity including, where applicable, prior business history;

(9) a full description of any transactions and the dollar amount thereof which may be entered into between the offeror and the sponsor or control persons or affiliates, including a full description of the material terms of any agreement and dollar amount thereof between the offeror and the sponsor or control persons or affiliates;

(10) where the sponsor originates or promotes other offerings, a full description of the equitable principles which will apply in resolving any conflict between the offerings;

(11) in the case where the offeror has been in existence, a full description of all transactions and contracts of the offeror with the sponsor or any affiliate during the period of such existence;

(12) all conflicts set forth in one section entitled "Conflict of Interest and Transactions with Affiliates";

(13) in the case of offerings of direct participation programs as defined in Paragraph 2310(a)(4) of the FINRA manual, an opinion of counsel complying with American bar association opinion 346 as to the material tax consequences; and

(14) a brief description of any pending legal proceedings which might materially affect the venture.

F. Notice to prospective investors of material changes in the condition of the issuer occurring after the effective date of offering or when new information is substituted for that contained in the prospectus shall be effected through an amendment. Such amendments will not become effective until the director so orders and a corrected offering document will be sent to present stockholders including stockholders who may already have sold their shares. Post-effective amendments to change the price of securities will not be permitted. Post-effective amendments to lower the minimum amount of the offering will not be permitted. Amendments to increase the minimum amount of the offering, however, will be permitted.

G. Unless extended by the director, an offering shall be completed no later than one year from the date of acknowledgment by the director of the claim of exemption.

H. No offering document is required for sales of securities by a professional corporation or association to persons duly licensed in the corporation's area of business.

[12.11.12.11 NMAC - Rp, 12.11.12.13 NMAC, 1-1-2010]

12.11.12.12 SECTION 58-13C-202Y - LIMITED OFFERING EXEMPTION:

For exemptions provided in Section 58-13C-202Y, a notice filing on the securities division's form Y shall be completed by issuers that are not organized or incorporated in New Mexico to give notice of intent to claim the exemption afforded by Section 58-13C-202Y for offerings of issuers that result in there being no more than 25 security holders. Form 202Y is optional for issuers organized or incorporated in New Mexico. No fee is required for these exemptions.

[12.11.12.12 NMAC - Rp, 12.11.12.14 NMAC, 1-1-2010]

12.11.12.13 SECTION 58-13C-202O - EXISTING SECURITY HOLDERS EXEMPTION:

A. The exemption contained in Subsection O of Section 58-13C-202 shall only be available for the offer and sale of equity securities where an offer is made pro rata to all such security holders of record who are residents of this state.

B. As used in Subsection O of Section 58-13C-202:

(1) the term "security holder" shall not include persons who are holders of equity securities issued in violation of or without compliance with the New Mexico Uniform Securities Act and the rules and regulations adopted thereunder; and

(2) the term "standby commission" shall mean the commission payable to a broker-dealer registered under the New Mexico Uniform Securities Act for its firm commitment to purchase all securities offered to existing security holders which are not purchased by such security holders.

[12.11.12.13 NMAC - Rp, 12.11.12.15 NMAC, 1-1-2010]

12.11.12.14 SECTION 58-13C-202N - SALES TO TEN OR FEWER PURCHASERS:

A. Filings required. To claim the exemption provided by Section 58-13C-202N, a completed form 202N must be filed with the director no less than five business days before the first sale of securities in this state.

B. Counting purchasers and security holders. The following rules apply in counting the number of purchasers pursuant to Section 58-13C-202N(1) and the number of beneficial owners pursuant to Section 58-13C-202N(3)(b):

(1) a husband, wife and minor children of either spouse, or any two or more of them, residing in the same household shall count as one purchaser or beneficial owner; and

(2) a limited partnership, limited liability company, trust, corporation or limited liability partnership shall count as one purchaser or beneficial owner if it was not formed for the purpose of investing or trading in the securities of the issuer claiming this exemption and such entity has substantial other business or investments.

C. Reasonable belief of purchase for investment. An issuer will be presumed to have a reasonable belief that all of the purchasers of its securities in this state are purchasing for investment pursuant to Section 58-13C-202N(3)(a) if:

(1) the issuer, prior to a sale of its securities to a purchaser, obtains from that purchaser a signed statement that the purchaser is acquiring the securities for its own account and does not intend to resell the securities within twelve months of the purchase date;

(2) the issuer maintains a record of all statements obtained pursuant to Paragraph (1) of this subsection;

(3) written disclosure is provided to each purchaser prior to sale that the securities have not been registered under the New Mexico Uniform Securities Act and cannot be resold unless the securities are so registered or can qualify for an exemption from registration; and

(4) a legend is placed on the certificate or other document that evidences the security stating that the securities have not been registered under the New Mexico Uniform Securities Act and cannot be resold unless the securities are so registered or can qualify for an exemption from registration.

D. Reasonable belief of fifty or fewer beneficial owners. An issuer will be presumed to have a reasonable belief that its securities are held by fifty or fewer beneficial owners pursuant to Section 58-13C-202N(3)(b) if:

(1) the issuer or the issuer's transfer agent maintains an adequate record of security holders and requires security holders to notify the issuer or the issuer's transfer agent of its intent to sell or otherwise dispose of securities of the issuer; and

(2) a legend is placed on the certificate or other document that evidences the security stating that the securities have not been registered under the New Mexico Uniform Securities Act and cannot be resold unless the securities are so registered or can qualify for an exemption from registration.

[12.11.12.14 NMAC - Rp, 12.11.12.16 NMAC, 1-1-2010]

12.11.12.15 SECTION 58-13C-202U - EMPLOYEE BENEFIT PLANS:

A. For purposes of the exemption provided in Section 58-13C-202U, employee benefit plans that require advance cash contributions from employees may be denied

the benefit of this exemption where employee money is used to purchase securities of the employer or its affiliates unless:

(1) the formula price at which employees may purchase shares is calculated at least annually and is not less than 85 percent of the fair market value of the stock at the beginning of the one-year purchase period or the end of the purchase period, whichever is lower, and shares purchased are fully paid for at the end of each period, stock certificates are issued and no fractional shares are issued;

(2) the issuer delivers to all participating employees copies of the issuer's annual financial statements;

(3) a participating employee has the right to withdraw from the plan at any time without penalty;

(4) if there is no adequate public market for the issuer's shares, the issuer offers to repurchase the shares at a price determined by the same formula pursuant to which the shares were purchased by the employee under the issuer's plan, upon the happening of either of the following events:

(a) the employee ceases to be employed by the issuer (or a subsidiary) and a written request for repurchase is received by the issuer within 180 days after termination of employment; or

(b) the employee experiences severe financial hardship due to illness or death in the immediate family, major uninsured casualty loss or other unforeseen events, and delivers to the issuer a written irrevocable election to have the issuer repurchase the shares, including a statement in reasonable detail as to the nature of the employee's financial hardship, and within 20 days the issuer's board of directors does not determine that no severe financial hardship exists;

(5) all funds contributed to the plan for the purchase of shares are protected from claims of creditors of the issuer;

(6) any withholding from an employee's compensation is limited to not more than ten percent of the compensation each pay period;

(7) all shares issued under the plan have voting, dividend and liquidation rights; and

(8) if the securities to be purchased under the plan are not registered under the Securities Act of 1933, the issuer has a satisfactory opinion of counsel as to its exempt status under that act.

B. The following transactions are exempted pursuant to Section 58-13C-203: offers or sales of a security by an issuer pursuant to a written compensatory benefit plan

including, without limitation, a purchase, savings, option, bonus, stock appreciation, profit-sharing, thrift, incentive, pension or similar plan, and interests in any such plan, provided that the offers and sales qualify for use of the registration exemption in Rule 230.701 under Section 28 of the Securities Act of 1933.

[12.11.12.15 NMAC - Rp, 12.11.11.9 NMAC, 1-1-2010]

12.11.12.16 SECTION 58-13C-202CC - TRANSACTIONS INVOLVING INTERESTS IN OIL, GAS AND MINING RIGHTS:

A. Sponsors and persons selling programs and claiming therefor the exemption provided in Section 58-13C-202CC shall make every reasonable effort to assure that the investment is suitable for the persons being offered or sold interests, taking into consideration each person's financial situation, investment objectives and business acumen.

B. For purposes of determining suitability, sponsors and persons offering or selling the investment shall ensure that the investors meet one of the following financial criteria:

(1) a minimum net worth of \$100,000 (exclusive of home, furnishings and automobiles); or

(2) a minimum net worth of \$50,000 (exclusive of home, furnishings and automobiles) and an annual income of \$50,000.

C. An offer or sale claiming the exemption provided in Section 58-13C-202CC must require a total minimum investment of \$5,000 and a minimum initial investment of \$2,500.

D. At a minimum, the following information shall be disclosed to potential investors in programs claiming the exemption provided in Section 58-13C-202CC:

(1) a general description of the program and the business activity to be engaged in including: the general nature of the units being offered; the maximum aggregate amount of the offering; subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid or the nature of any sharing arrangement and fees; and, the estimated amount to be paid during the first 12 months following commencement of operations for administrative and similar services;

(2) a carefully organized series of concise paragraphs, under subcaptions where appropriate, describing the risk factors to be considered before making an investment in the program;

(3) suitability requirements for investors;

(4) the business experience of the sponsors and affiliates, particularly with regard to the oil, gas or mining business;

(5) all compensation, direct or indirect, which is to be paid to the sponsor;

(6) a statement of the purposes for which the net proceeds to the program are intended to be used and the approximate amount and percentages intended to be used for each such purpose;

(7) a statement prominently set forth as to whether additional assessments are provided for and, if so, the method of assessment and the penalty for default;

(8) a statement describing the location and general character of all materially important oil, gas or mining interests now held or presently intended to be acquired by the program;

(9) a full description of any transactions and the dollar amount thereof which may be entered into between the program and sponsor or any affiliate, including a full description of the material terms of any agreement and the dollar amount thereof between the program and the sponsor or any affiliate; where the sponsor originates or promotes other programs, describe the equitable principles which will apply in resolving any conflict among the programs; in the case where the program has been in existence, include all transactions and contracts of the program with the sponsor or any affiliate during the period of such existence; all conflicts shall be set forth in one section and shall be entitled "Conflicts of Interest and Transactions with Affiliates"; and

(10) a brief description of any pending legal proceedings which may materially affect the venture.

E. For the purposes of Section 58-13C-202CC, "principally operating in New Mexico" includes a limited liability company organized under the laws of this state or a limited liability company in which a majority in interest of the members are residents of this state.

[12.11.12.16 NMAC - Rp, 12.11.11.17 NMAC, 1-1-2010]

12.11.12.17 SECTION 58-13C-203 - TRANSACTIONS INVOLVING SECURITIES OF AN INVESTMENT CLUB: By authority delegated to the director in Section 58-13C-203 to promulgate rules, the issuance of securities by an investment club shall be exempt from Section 58-13C-301 provided that:

A. the membership is limited to not more than 75 members and provided that a husband and wife may be counted as one member;

B. periodic contributions are equal;

C. if a licensed or registered broker-dealer or investment adviser or employee of such broker-dealer or investment adviser is an organizer or member, such relationship is fully disclosed to the director;

D. the management of the funds of the club is not in the hands of a licensed or registered broker-dealer or investment adviser or employee of such broker-dealer or investment adviser;

E. securities in which the club invests are not bought on margin nor is any money borrowed or assets pledged;

F. unanimous consent of the members is required for any major investment policy change;

G. no member receives any fee or remuneration for services in the operation of the club except for administrative services; the members of the board of directors may be given token remuneration for their services on the board provided that such remuneration has been approved by majority vote of the membership;

H. the books of the club shall be open for inspection by members at any reasonable time;

I. memberships in the club are nontransferable;

J. the articles of incorporation or other organizational documents provide that club members may withdraw from the club and that, upon such withdrawal, the club will pay a pro rata share of the club's net asset value to such member; memberships that have been forfeited, repurchased by or otherwise returned to the club shall not be subject to resale;

K. the monthly payment by each member is not in excess of \$50.00 dollars per month; and

L. the initial payment for entry into the club does not exceed \$250.00 per membership.

[12.11.12.17 NMAC - Rp, 12.11.11.18 NMAC, 1-1-2010]

12.11.12.18 SECTION 58-13C-203 - WORLD-CLASS SECURITIES EXEMPTION:

A. In addition to the transactions exempt from registration pursuant to Section 58-13C-202W, pursuant to the authority delegated to the director by Section 58-13C-202W and Section 58-13C-203 of the New Mexico Uniform Securities Act, transactions meeting the following criteria are exempted from Sections 58-13C-301 and 58-13C-504:

(1) any transaction by a licensed or registered broker-dealer in a security (or an American depositary receipt representing such a security) of an issuer domiciled in a foreign country with which the United States currently maintains diplomatic relations, of a class that has been outstanding in the hands of the public for not less than 180 days, if at the time of the transaction, either Moody's investor service, *Moody's international manual* or Standard & Poor's corporation records, or any other securities manual designated by rule or order of the director, contains a description of the issuer's business or operations, the names of the issuer's officers and directors or their corporate equivalents in the issuer's country of domicile, an audited balance sheet of the issuer as of a date within 18 months and audited profit and loss statements for each of the issuer's two fiscal years immediately preceding that date and all of the following criteria are met:

(a) the security is traded on or through the facilities of one of the following foreign securities exchanges or foreign securities markets, which are hereby designated by the director pursuant to Section 58-13C-202W: Helsinki, Mexico, Oslo, Alberta, Istanbul, Eurobond Market, Amsterdam, Australia, Brussels, Frankfurt, Hong Kong, London Stock Exchange, Johannesburg, Luxembourg, Milan, Montreal, Paris, Stockholm, Tokyo, Zurich, or such other foreign securities exchange or foreign securities market designated by the director by rule or order;

(b) the issuer of the security, including any predecessor(s), has been in continuous operation for at least five years and is a going concern actually engaged in business and neither in the organizational stage nor in bankruptcy or receivership;

(c) the issuer has net tangible assets as reflected in the manual of at least \$100,000,000; and

(d) the issuer had an average annual income after taxes, as reflected in the manual, of at least \$10,000,000 cumulative for the most recent two years of operation with a minimum annual income after taxes of \$2,000,000 for either of the two years;

(2) the exemption provided in Paragraph (1) of Subsection A of this section shall not be available for any security unless:

(a) the security is sold at a price reasonably related to the current market price of such security at the time of the transaction; and

(b) the security does not constitute the whole or part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of such security.

B. The director may by rule or order deny, suspend or revoke this exemption with respect to any specific transaction, security or broker-dealer upon a finding that such action is necessary for the protection of the public.

C. The director may by rule or order exempt any security of an issuer domiciled in a foreign country upon a finding that such an exemption is in the public interest.

[12.11.12.18 NMAC - Rp, 12.11.11.19 NMAC, 1-1-2010]

12.11.12.19 SECTION 58-13C-203 - ACCREDITED INVESTOR EXEMPTION:

By authority delegated to the director in Section 58-13C-203, any offer or sale of a security by an issuer in a transaction that meets the requirements of this section is exempt from the registration requirements of Section 58-13C-301.

A. Sales of securities shall be made only to persons who are, or the issuer reasonably believes are, accredited investors. "Accredited investor" is defined in Rule 501, Regulation D, of the Securities Act of 1933.

B. The exemption is not available to an issuer that is in the developmental stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

C. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Sections 58-13C-303 and 58-13C-304 or to an accredited investor pursuant to an exemption available under the New Mexico Uniform Securities Act.

D. The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, and of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

(2) within the last five years, has been convicted of any criminal offense in connection with the offering, purchase or sale of any security involving fraud or deceit;

(3) is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(4) is currently subject to any order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security or involving the making of any false filing with any state entered within five years prior to the filing of the notice required under this exemption.

E. Paragraph (1) of Subsection D of this section shall not apply if:

(1) the party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment or decree, waives the disqualification; or

(3) the issuer establishes that it did not know and, in the exercise of reasonable care based on a factual inquiry, could not have known that a disqualification existed under Paragraph (1) of Subsection D of this section.

F. A general announcement of the proposed offering may be made by any means, but shall include only the following information, unless additional information is specifically permitted by the director:

(1) the name, address and telephone number of the issuer of the securities;

(2) the name, a brief description and price (if known) of any security to be issued;

(3) a brief description of the business of the issuer in 25 words or less;

(4) the type, number and aggregate amount of securities being offered;

(5) the name, address and telephone number of the person to contact for additional information; and

(6) a statement that:

(a) sales will only be made to accredited investors;

(b) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(c) the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

G. The issuer, in connection with an offer, may provide information in addition to the general announcement under Paragraph (6) of Subsection F of this section if such information:

(1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

H. No telephone solicitation shall be permitted unless, prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

I. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

J. The issuer shall file with the division a New Mexico uniform notice of transaction; form U-2, uniform consent to service of process; a copy of the general announcement; and, a fee of \$350.00 within 15 days after the first sale in this state.

[12.11.12.19 NMAC - Rp, 12.11.11.20 NMAC, 1-1-2010]

12.11.12.20 USE OF ADVERTISEMENT OR PUBLIC SOLICITATION:

No claim of exemption may be made under Subsections A, N, Z, Y or CC of Section 58-13C-202 for any transaction in which use is made of advertisement or public solicitation.

[12.11.12.20 NMAC - Rp, 12.11.11.21 NMAC, 1-1-2010]

12.11.12.21 CONFIRMATION OF FILING:

Any person filing a claim of exemption may receive confirmation that the claim has been received by the securities division by sending a copy of the claim or letter and a stamped, self-addressed envelope with the original notice or letter to the division. Any person not following the foregoing procedures will not receive a confirmation of receipt of the claim by the division. Confirmation of receipt of the claim by the division does not constitute a determination on the availability or appropriateness of the exemption.

[12.11.12.21 NMAC - Rp, 12.11.11.22 NMAC, 1-1-2010]

12.11.12.22 SECTION 58-13C-203 - OFFERS OF SECURITIES ON THE INTERNET:

A. Pursuant to Section 58-13C-203, offers made by, or on behalf of, issuers on or through the internet shall be exempt from Sections 58-13C-301 and 58-13C-504 if the following conditions are met:

(1) the internet offer indicates, directly or indirectly, that the securities are not being offered to residents of this state;

(2) the internet offer is not specifically directed to any person in this state by, or on behalf of, the issuer of the securities; and

(3) no sales of the issuer's securities are made in this state until such time as the securities being offered have been registered or an exemption perfected under the applicable provisions of the New Mexico Uniform Securities Act and, to the extent required, a final prospectus or form U-7 is delivered to New Mexico investors prior to such sales.

B. Nothing in this section shall preclude an issuer or a person acting on behalf of an issuer which offers securities on the internet or effects sales to New Mexico residents following such an offering from relying upon any other applicable exemption pursuant to the provisions of the New Mexico Uniform Securities Act, nor shall this section otherwise relieve such persons from liability under the New Mexico Uniform Securities Act.

[12.11.12.22 NMAC - Rp, 12.11.11.23 NMAC, 1-1-2010]

12.11.12.23 SECTION 58-13C-203 - OFFERS AND SALES OF SECURITIES BY EXEMPT CANADIAN BROKER-DEALERS AND AGENTS: Any offer or sale of a security effected by a Canadian broker-dealer or agent of such broker-dealer exempted from registration pursuant to 12.11.2.17 NMAC is exempted from the securities registration requirements of Section 58-13C-301 and the filing requirements of Section 58-13C-504 provided that such offer or sale meets the requirements in Subsection D of 12.11.2.17 NMAC.

[12.11.12.23 NMAC - Rp, 12.11.12.24 NMAC, 1-1-2010]

PART 13: UNIFORM LIMITED OFFERING EXEMPTION

12.11.13.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.13.1 NMAC - 12 NMAC 11.4.1.1, 1-1-2010]

12.11.13.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their representatives or agents.

[12.11.13.2 NMAC - 12 NMAC 11.4.1.2, 1-1-2010]

12.11.13.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to -701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.13.3 NMAC - 12 NMAC 11.4.1.3, 1-1-2010]

12.11.13.4 DURATION:

Permanent.

[12.11.13.4 NMAC - 12 NMAC 11.4.1.4, 1-1-2010]

12.11.13.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.13.5 NMAC - 12 NMAC 11.4.1.5, 1-1-2010]

12.11.13.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.13.6 NMAC - 12 NMAC 11.4.1.6, 1-1-2010]

12.11.13.7 DEFINITIONS:

[RESERVED]

12.11.13.8 UNIFORM LIMITED OFFERING EXEMPTION:

By authority delegated to the director in Section 58-13C-203, any offer or sale of securities is exempt from the registration provisions of the New Mexico Uniform Securities Act if such securities are offered or sold in compliance with the Securities Act of 1933, Regulation D. Rules 230.501 to 230.503, 230.505, 230.507 and 230.508 and the conditions and limitations set forth in this section.

A. No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state.

B. No exemption under this rule shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262, sections (a), (b), or (c):

(1) has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption;

(2) has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

(3) is currently subject to any administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption;

(4) is subject to any state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(5) is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security or involving the making of any false filing with any state entered within five years prior to the filing of the notice required under this exemption.

C. The prohibitions of Paragraphs (1) to (3) and (5) of Subsection B of this section shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if such person is registered in this state and the form BD or form U-4 filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered.

D. Any disqualification caused by Subsection B of this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

[12.11.13.8 NMAC - Rp, 12 NMAC 11.4.7.2.11.1, 1-1-2010]

12.11.13.9 NOTICE:

A. The issuer shall file with the director a notice on form D (17 C.F.R. 239.500):

(1) five days prior to making any offer in this state and at such other times and in the form required under Regulation D, Rule 230.503 of the Securities Act of 1933 to be filed with the SEC;

(2) including with or in the notice a consent to service of process, unless otherwise available; and

(3) a filing fee of \$350.00.

B. The notice shall contain the information furnished by the issuer to offerees. In the case of offerings of direct participation programs as defined in Paragraph 2310(a)(4) of the FINRA manual, delivery of a disclosure document containing the information required by Rule 502(b)(2) of Regulation D to individuals covered by Subsections (5), (6), and (7) of Rule 501(a) of Regulation D is required.

[12.11.13.9 NMAC - Rp, 12 NMAC 11.4.7.2.11.2, 1-1-2010]

12.11.13.10 SUITABILITY:

The exemption provided for in this section is available for sales to non-accredited investors in this state provided that the issuer, and any person acting on the issuer's behalf, after having made reasonable inquiry, reasonably believes that one of the following conditions is satisfied:

A. the investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs; for the purpose of this condition only, it may be presumed that, if the investment does not exceed ten percent of the investor's net worth, it is suitable; or

B. the purchaser either alone or with the purchaser's representative(s) has such knowledge and experience in financial and business matters that the purchaser is capable of evaluating the merits and risks of the prospective investment.

[12.11.13.10 NMAC - Rp, 12 NMAC 11.4.7.2.11.3, 1-1-2010]

12.11.13.11 ADEQUATE DISCLOSURE:

Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy Section 58-13C-501 of the New Mexico Uniform Securities Act.

[12.11.13.11 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.1, 1-1-2010]

12.11.13.12 EXEMPTION NOT AVAILABLE:

In view of the objective of this rule and the purposes and policies underlying the New Mexico Uniform Securities Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

[12.11.13.12 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.2, 1-1-2010]

12.11.13.13 KNOW-YOUR-CUSTOMER STANDARDS:

Nothing in this rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know-your-customer standards or any other requirements of law otherwise applicable to such registered persons.

[12.11.13.13 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.3, 1-1-2010]

12.11.13.14 EXEMPTION AVAILABLE ONLY TO ISSUERS:

The exemption provided by 12.11.13 NMAC is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person from resales of the issuer's securities. 12.11.13 NMAC provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

[12.11.13.14 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.4, 1-1-2010]

12.11.13.15 AVAILABILITY OF OTHER EXEMPTIONS:

Transactions that are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of the New Mexico Uniform Securities Act. However, nothing in this limitation shall act as an election. Should for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

[12.11.13.15 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.5, 1-1-2010]

12.11.13.16 DIRECTOR'S DISCRETION:

The director may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

[12.11.13.16 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.6, 1-1-2010]

12.11.13.17 CITATION:

The exemption authorized by 12.11.13 NMAC shall be known and may be cited as the "Uniform Limited Offering Exemption".

[12.11.13.17 NMAC - Rp, 12 NMAC 11.4.7.2.11.4.7, 1-1-2010]

PART 14: NOTICE FILINGS FOR OFFERINGS OF COVERED SECURITIES

12.11.14.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.14.1 NMAC - N, 1-1-2010]

12.11.14.2 SCOPE:

All persons, whether natural or legal entities, that transact business in the state of New Mexico as a broker-dealer, an investment adviser, or an issuer of securities, and their representatives and agents.

[12.11.14.2 NMAC - N, 1-1-2010]

12.11.14.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.14.3 NMAC - N, 1-1-2010]

12.11.14.4 DURATION:

Permanent.

[12.11.14.4 NMAC - N, 1-1-2010]

12.11.14.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.14.5 NMAC - N, 1-1-2010]

12.11.14.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.14.6 NMAC - N, 1-1-2010]

12.11.14.7 DEFINITIONS:

[RESERVED]

12.11.14.8 NOTICE FILINGS FOR OFFERINGS OF INVESTMENT COMPANY SECURITIES:

A. Forms and fees. Uniform investment company notice filing (form NF), accompanied by uniform consent to service of process (form U-2) for initial filings, shall be used to notify the securities division of the intent to sell securities as required by Section 58-13C-302A(1). The issuer or person filing a notice filing on behalf of the issuer shall pay a filing fee of \$525 as authorized under Section 58-13C-302A(1). A separate form NF, accompanied by appropriate fee, shall be filed for each portfolio or class of securities and shall be deemed to cover an indefinite amount of securities.

B. Federal registration documents need not be filed. No document which is part of a federal registration statement filed with the securities and exchange commission or part of an amendment to such federal registration statement need be filed to complete a notice filings either prior to the initial offer or after the initial offer in this state unless requested by the director. The division will not require filing of annual or periodic reports of the value of investment company securities sold or offered in this state, unless the fund or trust is specifically requested to submit such reports.

C. Term of notice filing. Notice filings will be made effective upon receipt by the director of the filing and payment of fees and will expire one year from such date. The term of the notice filing will not be based on the SEC effectiveness date.

D. Permits. The director will acknowledge the effectiveness of the initial notice filing by returning a date stamped copy of form NF or through electronic process. The director will assign a new file number to each portfolio or class of securities. A notice filing will not be considered as filed unless form NF has been properly completed and is accompanied by a filing fee as discussed in Subsection A of this section.

E. Completion of form NF. Item 4 of form NF must identify, on the separate lines provided, the name of the fund or trust. Do not repeat the name of the trust or fund on the space provided for portfolio name; do not repeat the name of the trust, fund, or portfolio in the space provided for class(es).

F. Renewals. A notice filing may be renewed by filing two copies of form NF, or electronically, with the director no earlier than 90 days prior to or less than 14 business days prior to the expiration date of the notice currently in effect. The notice must be accompanied by applicable filing fee in accordance with Section 58-13C-302B. The division may suspend fund or trust sales for failure to pay fees and may assess penalties or impose other available remedies for late or underpaid fees. The renewal will be effective for one year from the date of the expiration of the previous notice filing. A person who has filed a form U-2 in connection with a previous registration or notice filing need not file another.

G. Amendments. Amendments to notice filings may be made by filing form NF marked "amendment" in the appropriate box. The change should be explained under item 3, "other". Amendments to the name of the fund, trust, portfolio, or class must include the former name under item 3 of form NF in the line reserved for that purpose and must be accompanied by a fee of \$50. A change in the name of the trust or fund must be accompanied by an amended form U-2. Withdrawal or termination of a notice filing may be made by filing form NF or providing the director with other notice of the withdrawal or termination and shall be effective upon receipt by the director of such notice.

H. Other amendments. Amendments to the name and address of the contact person (item 6) must be submitted on an amended form NF.

[12.11.14.8 NMAC - Rp, 12 NMAC 11.4.11.1, 1-1-2010]

12.11.14.9 NOTICE FILING PROCEDURES FOR RULE 506 OFFERINGS:

Pursuant to Section 58-13C-302C, an issuer offering a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933 shall file with the director no later than 15 days after the first sale of such federal covered security in this state the following: a notice on SEC form D and a fee of \$350. If the notice filing is late but within 10 days after the due date, the fee accompanying the late filing shall be \$700. If the notice filing is more than 10 days after the due date, the fee accompanying the late filing shall be \$1050. For purposes of this rule, the securities and exchange commission "form D" is defined as the document, as adopted by the securities and exchange commission and in effect on September 1, 1996, as may be amended by the securities and exchange commission from time to time, entitled "form D: notice of sale of securities pursuant to Regulation D, Section 4(6), and/or uniform limited offering exemption," including part E and the appendix. A notice filing shall be considered filed with the New Mexico securities division as of the date on which it is received by the New Mexico securities division.

[12.11.14.9 NMAC - Rp, 12 NMAC 11.4.11.2, 1-1-2010; A, 7-1-2010; A, 12-1-2010]

12.11.14.10 INDUSTRIAL REVENUE BONDS:

Municipal securities which are covered securities pursuant to Section 18(b)(4)(C) of the Securities Act of 1933 shall file a notice prior to any offer or sale of such security in this state on form U-1, uniform application to register securities, unless the securities meet the requirements of the exemption pursuant to Section 58-13C-201A. The form U-1 shall be stamped "notice filing" and shall be accompanied by the appropriate fee calculated pursuant to Section 58-13C-305B, which shall be based on the amount estimated to be sold in this state.

[12.11.14.10 NMAC - Rp, 12 NMAC 11.4.11.3, 1-1-2010]

12.11.14.11 NON-ISSUER TRANSACTIONS BY BROKER DEALERS IN VOLUNTARY REGISTERED COMPANIES SECURITIES:

A security will not be considered to be a federal covered security pursuant to Section 18(b)(4)(A) of the Securities Act of 1933, unless the issuer is current in its reporting pursuant to Section 13 and 15(d) of the Securities Exchange Act of 1934.

[12.11.14.11 NMAC - Rp, 12 NMAC 11.4.11.5, 1-1-2010]

PART 15: FRAUDULENT PRACTICES

12.11.15.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.15.1 NMAC - Rp, 12 NMAC 11.5.1.1, 1-1-2010]

12.11.15.2 SCOPE:

All persons that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their agents and representatives.

[12.11.15.2 NMAC - Rp, 12 NMAC 11.15.1.2, 1-1-2010]

12.11.15.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.15.3 NMAC - Rp, 12 NMAC 11.15.1.3, 1-1-2010]

12.11.15.4 DURATION:

Permanent.

[12.11.15.4 NMAC - Rp, 12 NMAC 11.15.1.4, 1-1-2010]

12.11.15.5 EFFECTIVE DATE:

January 1, 2010, unless a later dated is cited at the end of a section.

[12.11.15.5 NMAC - Rp, 12 NMAC 11.15.5, 1-1-2010]

12.11.15.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.15.6 NMAC - Rp, 12 NMAC 11.15.1.6, 1-1-2010]

12.11.15.7 DEFINITIONS:

[RESERVED]

12.11.15.8 APPLICATION OF PROCEEDS:

An issuer of securities or any person who is an officer, director or controlling person of the issuer is deemed to employ a "device, scheme or artifice to defraud" the purchasers of the securities within the meaning of Section 58-13C-501A of the New Mexico Uniform Securities Act if the person applies, authorizes or causes to be applied any material part of the proceeds from the sale of the securities in any material way contrary to the purposes specified in the prospectus used in the offering of the securities and not reasonably related to the business of the issuer as described in the prospectus.

[12.11.15.8 NMAC - Rp, 12 NMAC 11.15.2, 1-1-2010]

12.11.15.9 STOCK DISTRIBUTION:

A person authorizing or causing the distribution of securities as a stock dividend by a corporation other than the issuer, without registration of the securities under the New Mexico Uniform Securities Act or the federal Securities Act of 1933, is deemed to employ a "device, scheme or artifice to defraud" the purchasers of the securities in broker-dealer transactions, within the meaning of Section 58-13C-501A of the New Mexico Uniform Securities Act, if:

A. the issuer of the securities was organized or the securities were acquired for the purpose of distribution or in connection therewith, either by the distributing corporation or by any person in control of, controlled by, or under common control with, the distributing corporation; or

B. the issuer has nominal assets or income at the time of the distribution and the person has reason to believe that the distribution will be followed by transactions in securities effected by broker-dealers.

[12.11.15.9 NMAC - Rp, 12 NMAC 11.15.3, 1-1-2010]

12.11.15.10 SECURITIES TRANSFERS:

An issuer of outstanding securities, registered under the New Mexico Uniform Securities Act or exempt from registration, or any controlling person of the issuer, is deemed to employ a "device, scheme or artifice to defraud" the purchasers of the securities within the meaning of Section 58-13C-501A if the issuer fails to provide adequate facilities for the transfer and delivery of the securities to the purchasers thereof without unreasonable delay, either directly or through its transfer agent for the securities.

[12.11.15.10 NMAC - Rp, 12 NMAC 11.15.4, 1-1-2010]

12.11.15.11 BROKER-DEALER ACTIVITIES:

The terms "device, scheme or artifice to defraud" within the meaning of Subsection A of Section 58-13C-501 of the New Mexico Uniform Securities Act and "an act, practice or course of business that operates or would operate as a fraud or deceit upon another person" within the meaning of Section 58-13C-501C are defined to include the failure to comply with the requirements of 17 C.F.R. 240.15(g), as well as the activities described in 17 C.F.R. 240.15(c)1-1 through 240.15(c)1-9.

[12.11.11.15.11 NMAC - Rp, 12 NMAC 11.15.5, 1-1-2010]

12.11.15.12 MARKET MANIPULATION:

Without limiting the general applicability of Section 58-13C-501 of the New Mexico Uniform Securities Act, a person is deemed to employ a "device, scheme or artifice to defraud" within the meaning of Section 58-13C-501A or "an act, practice or course of business that operates or would operate as a fraud or deceit upon another person" within the meaning of Section 58-13C-501C if the person directly or indirectly:

A. quotes a fictitious price with respect to a security;

B. effects a transaction in a security which involves no change in the beneficial ownership of the security for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

C. enters an order for the purchase of a security with the knowledge that an order of substantially the same size and at substantially the same time and price for the sale of the security has been or will be entered by or for the same or affiliated person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

D. enters an order for the sale of a security with knowledge that an order of substantially the same size and at substantially the same time and price for the purchase of the security has been or will be entered by or for the same or affiliated person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

E. effects, alone or with one or more other persons, a series of transactions in a security to:

(1) create active trading, actual or apparent, in that security; or

(2) raise or depress the price of the security, in each case for the purpose of inducing the purchase or sale of that security or of other securities of the same or another issuer by others; or

F. employs any other deceptive or fraudulent device, scheme or artifice to manipulate the market in a security.

[12.11.15.12 NMAC - Rp, 12 NMAC 11.15.6, 1-1-2010]

12.11.15.13 INSIDE INFORMATION:

A. An issuer or any person who is an officer, director or affiliate of an issuer or any other person whose relationship to the issuer gives him access, directly or indirectly, to material information about the issuer not generally available to the public is deemed to employ a "device, scheme or artifice to defraud" within the meaning of Section 58-13C-501A or "an act, practice or course of business that operates or would operate as a fraud or deceit upon another person" within the meaning of Section 58-13C-501C, who purchases or sells any security of the issuer in this state at a time when he knows material information about the issuer gained from such relationship, which information:

(1) would significantly affect the market price of that security;

(2) is not generally available to the public; and

(3) is not intended to be available to the public unless he has reason to believe and believes that the person selling to or buying from him is also in possession of the information.

B. Notwithstanding Subsection A of this section, activities permitted under the Securities Exchange Act of 1934, its rules and regulations shall not constitute a violation of this section.

[12.11.15.13 NMAC - N, 1-1-2010]

12.11.15.14 APPLICATION OF PART NOT EXCLUSIVE:

Nothing in this part shall limit the director's authority to enforce existing provisions of law.

[12.11.15.14 NMAC - N, 1-1-2010]

PART 16: FORMS

12.11.16.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.16.1 NMAC - Rp, 12.11.16.1 NMAC, 1-1-2010]

12.11.16.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer, an investment adviser or an issuer of securities, and their representatives and agents.

[12.11.16.2 NMAC - Rp, 12.11.16.2 NMAC, 1-1-2010]

12.11.16.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.16.3 NMAC - Rp, 12.11.16.3 NMAC, 1-1-2010]

12.11.16.4 DURATION:

Permanent.

[12.11.16.4 NMAC - Rp, 12.11.16.4 NMAC, 1-1-2010]

12.11.16.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.16.5 NMAC - Rp, 12.11.16.5 NMAC, 1-1-2010]

12.11.16.6 OBJECTIVE:

To implement new rules and revise existing rules to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

[12.11.16.6 NMAC - Rp, 12.11.16.6 NMAC, 1-1-2010]

12.11.16.7 DEFINITIONS:

[RESERVED]

12.11.16.8 FORMS RELATING TO REGISTRATION OF SECURITIES:

The forms set forth in this part 16 are prescribed for registration or exemption matters under the New Mexico Uniform Securities Act. For exemptions where no form is prescribed, a letter setting forth details and claiming the exemption is acceptable.

A. Form U-1, uniform application to register securities, shall be used for registrations by filing, coordination and qualification.

B. Form U-2, uniform consent to service of process, shall be used for all securities registrations.

C. Form U-2A, uniform corporate resolution, shall be used for all corporate securities registrations.

D. Form U-7, small company offerings registration, may be used for all registrations of securities from small corporate offerings.

E. Security escrow agreement may be used in connection with escrow of promotional shares as set forth in 12.11.9.13 NMAC.

[12.11.16.8 NMAC - Rp, 12.11.16.8 NMAC, 1-1-2010]

12.11.16.9 FORMS RELATING TO EXEMPTION FROM REGISTRATION OF SECURITIES:

A. Form 202X, notice of claim of exemption pursuant to Section 58-13C-202X, shall be used to give notice of intent to claim the exemption afforded by Section 58-13C-202X for offerings of issuers seeking no more than \$2,500,000 from the sale of securities and shall include the following:

(1) general information regarding the company claiming the exemption including:

(a) name and mailing address of company;

(b) type of entity (corporation, limited partnership, limited liability company, limited liability partnership or other);

(c) date and place of creation (incorporation, organization, filing or date of partnership agreement);

(d) term of the entity (if applicable);

(e) purpose or objective of business;

(f) address where books and records, stock certificates or capital accounts are kept and by whom;

(g) name, address and telephone number of person who should be contacted about the notice of claim of exemption;

(2) information about the offering including:

(a) type of security, number of shares or units to be offered;

(b) offering price per share or unit;

(c) aggregate offering price;

(d) name and address of, and compensation to be received by, each person who will be effecting or attempting to effect sales of securities;

(e) if monies from sales of securities are to be escrowed until a certain amount is raised, a copy of the escrow agreement showing name and address of the escrow bank;

(f) general description of use of proceeds;

(g) general description of property, including location, in which such proceeds are to be invested;

(h) a statement as to whether the issuer, underwriter, or their affiliates, is subject to disqualification pursuant to Subsection C of 12.11.12.11 NMAC;

(i) a copy of the prospectus or offering memorandum describing the offering which will be utilized to offer the securities and comply with the disclosure requirements

set forth in Subsection E of 12.11.12.11 NMAC and copies of all advertising or promotional literature;

(3) governing instruments including a copy of the articles of incorporation,, articles of organization, certificate of limited partnership or other instruments of creation of the issuer, including all amendments; and

(4) the signature and title of the person authorized to execute the notice of claim of exemption and the date of execution of the notice.

B. Form 202Y, notice of claim of exemption under Section 58-13C-202Y, described in this subsection, shall be used by issuers that are not organized or incorporated in New Mexico to give notice of intent to claim the exemption afforded by Section 58-13C-202Y for offerings of issuers that result in there being no more than 25 security holders. Form 202Y is optional for issuers organized or incorporated in New Mexico. Form 202Y shall include the following:

(1) general information regarding the company claiming the exemption including:

- (a) name and mailing address of company;
- (b) type of entity (corporation, limited partnership, limited liability company, limited liability partnership or other);
- (c) date and place of creation (incorporation, organization, filing or date of partnership agreement);
- (d) term of the entity (if applicable);
- (e) purpose or objective of business;
- (f) address where books and records, stock certificates or capital accounts are kept and by whom;
- (g) estimated number of persons to whom offers will be made;
- (h) number of current security holders;
- (i) name and address of each person who will be effecting or attempting to effect sales of securities;

(2) copies of governing instruments including the articles of incorporation, articles of organization, certificate of limited partnership or other instruments of creation of the issuer, including all amendments;

(3) representations by the signator authorized to file the notice of claim of exemption that:

(a) the number of security holders will not in consequence of any sale made under the exemption afforded by Section 58-13C-202Y exceed 25;

(b) sales have been and will be made only to buyers believed to be purchasing for investment;

(c) no commissions or other remunerations have been, are being, or will be paid or given, directly or indirectly, for soliciting prospective buyers except to broker-dealers and agents registered pursuant to the New Mexico Uniform Securities Act;

(d) no news releases, advertisements in newspapers, radio, television nor any other form of public advertising will be used in any manner to contact prospective buyers;

(e) the issuer understands that acceptance of the issuer's notice filing does not constitute approval or recommendation by the director of the securities division of the securities to be issued and sold;

(f) the promoters and persons listed in the notice pursuant to Subparagraph (i) of Paragraph (1) of Subsection B of this section understand the provisions of Section 58-13C-501 of the New Mexico Uniform Securities Act which states that it is unlawful for a person, in connection with the offer to sell, sale, offer to purchase or purchase of a security, directly or indirectly, to employ a device or artifice to defraud; make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances pursuant to which it is made, not misleading; or to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person;

(4) the signature and title of the person authorized to execute the notice of claim of exemption and the date of execution of the notice.

C. Form D, notice of sale of securities pursuant to Regulation D, shall be used for offerings made in compliance with Rules 504, 505 and 506 of Regulation D of the 1933 Securities Act.

D. Form 202N, notice of claim of exemption under Section 58-13C-202N, shall be used to give notice of intent to claim the exemption afforded by Section 58-13C-202N and shall include the following:

(1) general information regarding the company claiming the exemption with respect to offers and sales of its securities including:

(a) name and mailing address of company;

(b) type of entity (corporation, limited partnership, limited liability company, limited liability partnership or other);

(c) date and place of creation (incorporation, organization, filing or date of partnership agreement);

(d) term of the entity (if applicable);

(e) purpose or objective of business;

(f) address where books and records, stock certificates or capital accounts are kept and by whom;

(2) information regarding number of purchasers including:

(a) estimated number of persons to whom offers will be made in New Mexico;

(b) number of current security holders in New Mexico;

(c) date(s) securities acquired by security holders in New Mexico;

(d) total number of security holders inside and outside of New Mexico;

(e) date of issuer's last sale of securities;

(3) information about offering including:

(a) name and address of each person who will be effecting or attempting to effect sales of securities;

(b) aggregate amount of offering, type of security ((debt, equity (common); equity (preferred), partnership interests, membership interests));

(c) minimum investment that will be accepted from any individual security purchaser;

(4) copies of governing instruments including the articles of incorporation, articles of organization, certificate of limited partnership or other instruments of creation of the issuer, including all amendments;

(5) representations by the signator authorized to file the notice of claim of exemption that:

(a) the number of security holders in New Mexico will not in consequence of any sale made under the exemption afforded by Section 58-13C-202N exceed ten during any twelve months;

(b) sales have been and will be made only to buyers believed to be purchasing for investment or the issuer reasonably believes that the securities of the issuer will be held by fifty or fewer investors following the offering and the aggregate offering does not exceed \$1,000,000 during any twelve consecutive months, and specifying which alternative;

(c) no commissions or other remunerations have been, are being, or will be paid or given, directly or indirectly, for soliciting prospective buyer except to broker-dealers and agents registered pursuant to the New Mexico Uniform Securities Act;

(d) no news releases, advertisements in newspapers, radio, television nor any other form of public advertising will be used in any manner to contact prospective buyers;

(e) no commissions or other remunerations have been, are being, or will be paid or given, directly or indirectly, for soliciting prospective buyers except to broker-dealers and agents registered pursuant to the New Mexico Uniform Securities Act;

(f) the issuer understands that acceptance of the issuer's notice filing does not constitute approval or recommendation by the director of the securities division of the securities to be issued and sold;

(g) the promoters and persons listed in the notice pursuant to Subparagraph (i) of Paragraph (1) of Subsection B of this section understand the provisions of Section 58-13C-501 of the New Mexico Uniform Securities Act which states that it is unlawful for a person, in connection with the offer to sell, sale, offer to purchase or purchase of a security, directly or indirectly, to employ a device or artifice to defraud; make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances pursuant to which it is made, not misleading; or to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person;

(6) the signature and title of the person authorized to execute the notice of claim of exemption and the date of execution of the notice.

E. Notice of transaction, accredited investor exemption, shall be used for offerings of issuers which meet the criteria of 12.11.12.19 NMAC and shall include the following:

(1) general information regarding the company claiming the exemption including:

(a) name, mailing address, web site address and telephone number of company;

(b) type of entity (corporation, limited partnership, limited liability company, limited liability partnership or other);

(c) date and place of creation (incorporation, organization, filing or date of partnership agreement);

(d) identity of officers and directors, managing members or other individuals acting in a similar capacity, including names addresses and telephone numbers of each;

(e) purpose or objective of business;

(f) address where books and records, stock certificates or capital accounts are kept and by whom;

(g) name, address and telephone number of person who should be contacted about the notice of claim of exemption;

(2) information about the offering including:

(a) description of security ((debt, equity (common); equity (preferred), convertible, partnership interests, membership interests, other (specify));

(b) price per security;

(c) number of securities to be offered or sold;

(d) aggregate dollar amount of offering.

(3) description of business and business address;

(4) name of broker-dealer who has solicited or intends to solicit purchasers in New Mexico;

(5) representations by issuer that:

(a) sales of securities shall be made only to accredited investors as defined in 17 C.F.R. 230.501(a);

(b) the issuer is not an issuer in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person;

(c) the issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security; any resale of a security sold in reliance on this exemption within 12 months of

sale, except a resale to an accredited investor or pursuant to a registration statement effective under applicable state securities laws, shall be presumed to be with a view to distribution and not for investment; securities issued under this exemption may only be resold pursuant to registration or an exemption under applicable state securities laws;

(d) the issuer is familiar with the conditions that must be satisfied to be entitled to the accredited investor exemption in New Mexico and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied;

(e) the signator for the issuer has read this notification and knows the contents to be true and is duly authorized by the issuer to sign on the issuer's behalf; and

(6) the signature and title of the person authorized to execute the notice of claim of exemption and the date of execution of the notice.

F. Form NF, uniform investment company notice filing, shall be used by investment companies which are required to file notice under the New Mexico Uniform Securities Act.

[12.11.16.9 NMAC - Rp, 12.11.16.9 NMAC, 1-1-2010]

12.11.16.10 FORMS RELATING TO REGISTRATION, REPORTING AND RENEWALS OF BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES:

A. Form BD, uniform application for broker-dealer registration, shall be used for initial registration and periodic reporting by broker-dealers.

B. Form BDW, uniform request for broker-dealer withdrawal, shall be used for withdrawal from registration by broker-dealers.

C. Form U-2, uniform consent to service of process, shall be used for initial registration by broker-dealers and investment advisers.

D. Form U-4, uniform application for securities industry registration or transfer, shall be used for initial registration and periodic reporting by broker-dealer agents, investment adviser representatives and issuer sales representatives.

E. Form U-5, uniform termination notice for securities industry registration, shall be used to report termination of employment of broker-dealer agents and investment adviser representatives.

F. Form ADV, uniform application for investment adviser registration, shall be used for initial registration and periodic reporting of investment advisers required to be

registered under the New Mexico Uniform Securities Act and for notice filings of federal covered advisers.

G. Form ADV-W, notice of withdrawal from registration as investment advisor, shall be used for withdrawal from registration by investment advisers.

H. Form ADV-E, certificate of accounting of client securities and funds in the possession or custody of an investment adviser, shall be used annually for filing with the renewal report by investment advisers who retain custody of client funds or securities.

I. BF-2, securities registrant's blanket bond, or its substantial equivalent, shall be used for initial registration of investment advisers that are not federal covered advisers, that have custody of clients' funds or securities, for initial registration of issuer agents, and for initial registration of broker-dealers that are not registered under the Securities Exchange Act of 1934. This bond shall be signed by the registrant and the surety, dated, verified and acknowledged; and contain the following terms and conditions:

(1) that the registrant, as principal, and the named surety, as surety, are bound unto the state of New Mexico in the penal sum of (*setting forth the specific dollar amount required by 12.11 NMAC and the director*) for the payment of which the registrant and the surety bind themselves;

(2) that the conditions of this obligation is such that whereas the above-named principal (name of registrant) has applied to the director of the New Mexico securities division for registration as a (*insert type of registration sought*);

(3) that the if the named principal and those registrants employed by him and registered as provided by law shall strictly comply with the duties and obligations imposed upon such registrants by the New Mexico Uniform Securities Act and shall satisfy any loss or damages suffered by a purchaser injured by a sale or contract for sale made in violation of the New Mexico Uniform Securities Act or of any order issued by the director of the New Mexico securities division under any provision of the New Mexico Uniform Securities Act, then this obligation shall be void, otherwise it shall remain in full force and effect; provided further that any such purchaser having a cause of action shall have the right to bring an action on this bond except, however, no action may be maintained to enforce any liability on the bond unless such action is brought within five years after the sale or other act on which such action is based;

(4) that the surety shall have the right to terminate its obligation under this bond by filing written notice with the director of the New Mexico securities division 30 days prior to the effective date of such termination;

(5) that, in no event shall the liability of the surety exceed the penal sum of (*insert same dollar amount set forth in Paragraph (1) of this subsection*); and

(6) setting forth the bond number and attaching a power of attorney authorizing the signator to execute bonds for the surety for any signator for the surety who is not a corporate officer of the surety.

J. Affidavit of no sales, shall be used for initial registration by broker-dealers. This affidavit shall be a sworn written statement, dated, signed, verified and acknowledged, under oath by an official of the broker-dealer firm on whose behalf the affidavit is made who is authorized to make the affidavit on behalf of the broker-dealer. The affidavit shall contain the following representations and recitals by the affiant:

(1) the affiant is an official of the broker-dealer firm on whose behalf the affidavit is made and identifying the broker-dealer firm by name;

(2) the broker-dealer has not transacted business as a broker-dealer in New Mexico;

(3) the broker-dealer agrees to comply with the New Mexico Uniform Securities Act and to refrain from transacting business as a broker-dealer in New Mexico until such time as both the broker-dealer and an agent thereof are duly registered by the New Mexico securities division;

(4) the affiant executed the affidavit on behalf of the broker-dealer after reading and understanding the contents thereof, and with knowledge that the representations contained in the affidavit will be verified with the broker-dealer's clearing broker(s); and

(5) that all information contained in the affidavit is true, current and complete, to the best of the affiant's knowledge and belief.

[12.11.16.10 NMAC - Rp, 12.11.16.10 NMAC, 1-1-2010]

PART 17: USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS

12.11.17.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.17.1 NMAC - Rp, 12.11.17.1 NMAC, 1-1-2010]

12.11.17.2 SCOPE:

All persons that engage in providing advice as to value of or the advisability of investing in, purchasing or selling securities.

[12.11.17.2 NMAC - Rp, 12.11.17.2 NMAC, 1-1-2010]

12.11.17.3 STATUTORY AUTHORITY:

Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the "New Mexico Uniform Securities Act".

[12.11.17.3 NMAC - Rp, 12.11.17.3 NMAC, 1-1-2010]

12.11.17.4 DURATION:

Permanent.

[12.11.17.4 NMAC - Rp, 12.11.17.4 NMAC, 1-1-2010]

12.11.17.5 EFFECTIVE DATE:

January 1, 2010, unless a later date is cited at the end of a section.

[12.11.17.5 NMAC - Rp, 12.11.17.5 NMAC, 1-1-2010]

12.11.17.6 OBJECTIVE:

To prohibit use of certifications and professional designations in such a way as to mislead investors regarding whether the user has special expertise in advising or serving senior citizens or retirees in connection with the offer and sale of securities.

[12.11.17.6 NMAC - Rp, 12.11.17.6 NMAC, 1-1-2010]

12.11.17.7 DEFINITIONS:

[RESERVED]

[12.11.17.7 NMAC - Rp, 12.11.17.7 NMAC, 1-1-2010]

12.11.17.8 USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS:

The use of a senior-specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person is prohibited and, in addition, shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking,

finance, or insurance business within the meaning of Section 58-13C-412C(13). The prohibited use of such certifications or professional designations includes, but is not limited to, the following:

A. use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

B. use of a non-existent or self-conferred certification or professional designation;

C. use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or designation does not have; and

D. use of a certification or professional designation that was obtained from a designating or certifying organization that:

(1) is primarily engaged in the business of instruction in sales or marketing;

(2) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(3) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(4) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

[12.11.17.8 NMAC - Rp, 12.11.17.8 NMAC, 1-1-2010]

[The text of this rule is consistent with the model rule on use of senior-specific certifications and professional designations adopted by NASAA on 3-20-2008.]

12.11.17.9 DESIGNATIONS AWARDED BY RECOGNIZED DESIGNATED OR CERTIFYING ORGANIZATIONS:

There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of Subsection D of 12.11.17.8 NMAC when the organization has been accredited by:

A. the American national standards institute; or

B. the national commission for certifying agencies; or

C. an organization that is on the United States department of education's list entitled *accrediting agencies recognized for Title IV purposes* and the designation or credential issued therefrom does not primarily apply to sales or marketing.

[12.11.17.9 NMAC - Rp, 12.11.17.9 NMAC, 1-1-2010]

12.11.17.10 FACTORS TO BE CONSIDERED TO DETERMINE WHETHER A TERM IS A SENIOR-SPECIFIC CERTIFICATION OR PROFESSIONAL DESIGNATION:

In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

A. use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

B. the manner in which those words are combined.

[12.11.17.10 NMAC - Rp, 12.11.17.10 NMAC, 1-1-2010]

12.11.17.11 EXCEPTION FOR CERTAIN JOB TITLES:

For purposes of this section, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940. For purposes of this part, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

A. indicates seniority or standing within the organization; or

B. specifies an individual's area of specialization within the organization.

[12.11.17.11 NMAC - Rp, 12.11.17.11 NMAC, 1-1-2010]

12.11.17.12 APPLICATION OF PART NOT EXCLUSIVE:

Nothing in this part shall limit the director's authority to enforce existing provisions of law.

[12.11.17.12 NMAC - Rp, 12.11.17.12 NMAC, 1-1-2010]

PART 18: TRAINING AND REPORTING GUIDELINES UNDER THE VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT

12.11.18.1 ISSUING AGENCY:

Regulation and Licensing Department - New Mexico Securities Division.

[12.11.18.1 NMAC - N, 9/11/2018]

12.11.18.2 SCOPE:

All persons, whether natural or legal entities, that transact business in New Mexico as a broker-dealer, an agent, an investment advisor, an investment adviser representative, or who serve in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser.

[12.11.18.2 NMAC - N, 9/11/2018]

12.11.18.3 STATUTORY AUTHORITY:

Subsection A of Section 58-13C-605 NMSA 1978 authorizes the director to adopt rules necessary or appropriate to carry out the New Mexico Uniform Securities Act. Subsection A of Section 58-13D-7 NMSA 1978 instructs the director to promulgate, by rule, training guidelines that broker-dealers and investment advisors may use to comply with the requirements of the Protecting Vulnerable Adults from Financial Exploitation Act, Section 58-13D-1 to 8 NMSA 1978.

[12.11.18.3 NMAC - N, 9/11/2018]

12.11.18.4 DURATION:

Permanent.

[12.11.18.4 NMAC - N, 9/11/2018]

12.11.18.5 EFFECTIVE DATE:

September 11, 2018, unless a later date is cited at the end of a section.

[12.11.18.5 NMAC - N, 9/11/2018]

12.11.18.6 OBJECTIVE:

To provide training guidelines to broker-dealers and investment advisers who shall provide training concerning the financial exploitation of vulnerable adults to its employees who are required to be registered in New Mexico as agents or investment adviser representatives and who have contact with eligible adults and access to account information on a regular basis and as part of their job.

[12.11.18.6 NMAC - N, 9/11/2018]

12.11.18.7 DEFINITIONS:

[RESERVED]

12.11.18.8 TRAINING AND REPORTING GUIDELINES UNDER THE PROTECTING VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT:

A. The standardized training curriculum for training provided pursuant to the Protecting Vulnerable Adults from Financial Exploitation Act shall include adequate detail and explanation regarding:

- (1)** The agencies to which disclosures must be made, including:
 - (a)** agency contact information;
 - (b)** the designated functions and respective roles of the agencies; and
 - (c)** how to make a required disclosure to each agency;
- (2)** The key terms from Section 2, particularly:
 - (a)** eligible adult;
 - (b)** financial exploitation;
 - (c)** incapacitated person; and
 - (d)** qualified individual;
- (3)** delaying disbursements or transactions; and
- (4)** immunity.

B. Training developed by a broker-dealer or investment advisor shall cover all topics addressed in Subsection A of this section and shall be submitted to the director of the securities division for approval. Notice of approval of standardized training curriculum will be issued by the director after review of the curriculum and determination that it is satisfactory.

C. A broker-dealer or investment advisor specifically employing personnel that manage, oversee or perform the type of reporting mandated by the Protecting Vulnerable Adults from Financial Exploitation Act must provide documentation to the securities division showing that:

- (1)** the personnel identified in Section C are given the appropriate training required by Section A and

(2) the broker-dealer's or investment advisor's reporting protocols comply with the provisions of the Protecting Vulnerable Adults from Financial Exploitation Act.

D. As a condition of registration, broker-dealers and investment advisors shall file a report pursuant to Paragraph (2) of Subsection A of Section 58-13C-406 NMSA 1978, confirming compliance with Section 7B of the Protecting Vulnerable Adults from Financial Exploitation Act.

E. A disbursement or transaction may be delayed pursuant to Section 58-13D-5 NMSA 1978 of the Protecting Vulnerable Adults from Financial Exploitation Act only if the broker-dealer, investment advisor or qualified individual who reasonably believes that executing the disbursement or transaction may directly result in the financial exploitation of an eligible adult and all other requirements provided in Section 58-13D-5 of the act are met.

[12.11.18.8 NMAC; N, 9/11/2018]

CHAPTER 12: COMMODITIES

PART 1: GENERAL PROVISIONS

12.12.1.1 ISSUING AGENCY:

Regulation and Licensing Department, Securities Division.

[Recompiled 10/15/01]

12.12.1.2 SCOPE:

[RESERVED]

[Recompiled 10/15/01]

12.12.1.3 STATUTORY AUTHORITY:

A. Short title: These rules shall be known and may be cited as "Commodity Code Rules."

B. Authority:

(1) Introduction. Pursuant to the authority granted by the Model State Commodity Code, the director promulgates the following rules in order to carry out the provisions of the code.

(2) Public interest and investor protection. The director finds that the rules contained herein are in the public interest, necessary and appropriate for the protections of investors, and consistent with the purposes of the code.

(3) Severability. If any provision of these rules be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of these rules are declared severable.

[CC 86-101 and CC 86-102, 10/3/86; Recompiled 10/15/01]

12.12.1.4 DURATION:

Permanent.

[Recompiled 10/15/01]

12.12.1.5 EFFECTIVE DATE:

These rules shall become effective on October 3, 1986. [Filed October 22, 1986]

[CC 86-102, 10/3/86; Recompiled 10/15/01]

12.12.1.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/15/01]

12.12.1.7 DEFINITIONS:

In the code, and unless the context otherwise requires:

A. "financial institution" for purposes of Section 58-13A-2 NMSA 1978 means an institution which is regulated, supervised and examined for protection of depositors by an official or agency of a state or the United States and is insured by the federal depository insurance corporation, the federal savings and loan insurance corporation or the national credit union share insurance fund;

B. "futures contract" means an agreement for the purchase or sale of a commodity for delivery in the future at a price that is agreed upon when the contract is initiated, and which is undertaken primarily to assume or shift price risk without transferring title to the underlying commodity. In order to constitute a futures contract both parties are obligated to fulfill t]he contract at the specified price. Future contracts which contain provisions for delivery may be fulfilled by making or taking delivery or by offset.

[CC 86-201, 10/3/86; Recompiled 10/15/01]

12.12.1.8 COMMODITY CODE INDEX:

A. Chapter 1 - Title and authority [now 12.12.1.3 NMAC]

(1) CC 86-101 Short title [now Subsection A of Section 12.12.1.3]

(2) CC 86-102 Authority [now Subsection B of Section 12.12.1.3 NMAC]

B. Chapter 2 - Definitions [now 12.12.1.7 NMAC]

C. Chapter 3 - Exempt transactions [now 12.12.1.9 NMAC]

D. Chapter 4 - Administrative procedure [now 12.12.1.10 NMAC]

(1) CC 86-401 Administrative conferences [now Subsection A of Section 12.12.1.10 NMAC]

(2) CC 86-402 Motions [now Subsection B of Section 12.12.1.10 NMAC]

(3) CC 86-403 Venue [now Subsection C of Section 12.12.1.10 NMAC]

(4) CC 86-404 Evidence [now Subsection D of Section 12.12.1.10 NMAC]

(5) CC 86-405 Findings of fact and conclusions of Law [now Subsection E of Section 12.12.1.10 NMAC]

(6) CC 86-406 Costs on appeal [now Subsection F of Section 12.12.1.10 NMAC]

[CC 86-0, 10/3/86; Recompiled 10/15/01]

12.12.1.9 EXEMPT TRANSACTIONS:

A financial institution shall not be deemed to be a depository for purposes of Section 58-13A-5(2)(A) NMSA 1978 if it is holding the precious metals for collateral or acting in any manner as the financing agent for the purchaser of the commodity. A depository for purposes of Section 58-13A-5 NMSA 1978 may hold the metals for safekeeping purposes only.

[CC 86-301, 10/3/86; Recompiled 10/15/01]

12.12.1.10 ADMINISTRATIVE PROCEDURE:

A. Administrative conferences:

(1) Any person entitled to a hearing pursuant to Section 58-13A-20 NMSA 1978 may submit a written request to the director for an informal conference to discuss an order issued or proposed to be issued by the director. A request for an informal conference will not affect a person's right to a formal hearing pursuant to Section 58-13A-20 NMSA 1978 provided that a proper request for a hearing is made pursuant to that Section. However, any person requesting an informal conference with the director must specifically waive in writing the time deadlines for setting a formal 58-14A-24(B). Upon the granting of an informal conference the formal hearing will be indefinitely postponed pending the outcome of the informal conference. A person who has formerly waived the right to have a hearing set may reinstate a request for a formal hearing by written notice to the director.

(2) The director may, in his discretion, grant a request for an informal conference for the purpose of settlement or simplification of the issues. Evidence of conduct or statements made in informal conferences is not admissible to prove either liability or a violation of this act or the rules thereunder. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution.

(3) If consistent with Section 58-13A-20 NMSA 1978, the director may dispose of proceedings pending pursuant to that section by stipulation, agreed settlement, consent order or default.

B. Motions. Any motion made prior to the commencement of any hearing must be made in writing to the director. Motions other than those for an extension of time or for additional discovery must be accompanied by a memoranda of law and served on the opposing party. Motions shall be a maximum of ten pages in length. The director may in the director's discretion rule without a hearing upon any procedural or discovery motion not disposing of the merits of the proceeding. All motions not specifically acted upon by the director shall be deemed denied upon the filing of the final order of the director in the proceeding.

C. Venue. All hearings conducted pursuant to Section 58-13A-20 NMSA 1978 shall be conducted in the offices of the securities division or other convenient place within Santa Fe county. A party may request that the director hold the hearing in another county of the state only if the requesting party agrees to pay all costs and expenses of such a hearing.

D. Evidence. In a proceeding held pursuant to Section 58-13A-20 NMSA 1978, the formal rules of evidence do not apply and the director or hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs.

E. Findings of fact and conclusions of law. The director or hearing officer may require all parties of record to file proposed findings, conclusions or orders at the close of the hearing.

F. Costs on appeal. The party seeking review pursuant to Section 58-13A-21 NMSA 1978 shall bear all costs of appeal, including the expenses of preparation of the record and transcript.

[CC 86-401, CC 86-402, CC 86-403, CC 86-404, CC 86-405 and CC 86-406, 10/3/86; Recompiled 10/15/01]

CHAPTER 13: [RESERVED]

CHAPTER 14: FREE TRADE ZONES [RESERVED]

CHAPTER 15: FINANCIAL INSTITUTIONS - GENERAL

PART 1: ANNUITIES

12.15.1.1 ISSUING AGENCY:

Financial Institutions Division, Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87501. Telephone No. (505) 827-7100

[12/15/95; Recompiled 10/15/01]

12.15.1.2 SCOPE:

All New Mexico state chartered lending institutions.

[12/15/95; Recompiled 10/15/01]

12.15.1.3 STATUTORY AUTHORITY:

Sections 58-1-51 and 58-1-54 NMSA 1978.

[12/15/95; Recompiled 10/15/01]

12.15.1.4 DURATION:

Permanent.

[12/15/95; Recompiled 10/15/01]

12.15.1.5 EFFECTIVE DATE:

December 15, 1995[unless a later date is cited at the end of a section].

[12/15/95; Recompiled 10/15/01]

12.15.1.6 OBJECTIVE:

The objective of Part 1 [now 12.15.1 NMAC] is to establish the framework within which a New Mexico lending institution or its affiliate may plan a program and obtain licensure for the distribution and sale of annuities products in order to: bring about parity between state and federally-chartered lending institutions; promote public convenience and advantage in the sale of annuities by state-chartered lending institutions; provide uniformity in the disclosure of annuities products to assist the public to distinguish between a deposit product that is insured by the federal deposit insurance corporation ("FDIC") or by the national credit union administration ("NCUA") and an annuity that is not insured by the FDIC or NCUA; and ensure that lending institutions, affiliates and/or annuity agents market annuities in a safe and sound manner.

[12/15/95; Recompiled 10/15/01]

12.15.1.7 DEFINITIONS:

A. "Affiliate" means a person that directly or indirectly is controlled by, is under common control with or controls another person as defined in Section 59A-37-2 NMSA 1978.

B. "Annuity" means a contract under which an obligation is assumed by the issuer to make periodic payments for a specific term or terms where the making or continuance of all or some such payments or the amount of any such payment is dependent upon continuance of human life. This definition is found in Section 59A-20-2 NMSA 1978. "Annuity" also includes variable contracts as provided in Section 59A-20-30 NMSA 1978.

C. "Annuity agent" means an individual who is appropriately licensed and registered, if applicable, to sell annuities in the state of New Mexico.

D. "Bank holding company" means any company which has control over any bank or over another company that is or becomes a bank holding company as defined by Section 58-1-2B NMSA 1978.

E. "Lending institution" means any institution whose primary business is accepting deposits and lending money from a place of business in the state, including banks, savings and loan associations and credit unions but does not include insurance companies as defined by Section 59A-12-10(C)1 NMSA 1978.

F. "Person" means an individual, corporation, association, partnership, joint stock company, trust, unincorporated organization or any similar entity or combination of entities as defined in Section 59A-37-2F NMSA 1978.

G. "Third-party provider" means insurance companies, securities broker dealers, insurance brokerages and agencies and all other authorized nonbank providers, whether or not an affiliate of the lending institution, of annuities and variable contract products.

H. "Underwrite" means to directly insure, undertake, guarantee or assume liability for annuity contracts as a principal in whole or in part.

[12/15/95; Recompiled 10/15/01]

12.15.1.8 ANNUITY SALES:

A. A lending institution or its affiliate may engage in the sale of annuities subject to the following.

(1) All lending institution/affiliate employees who are engaged in the sale of annuities must be licensed to the extent required by the Insurance Code Section 59A-12-6 NMSA 1978.

(2) The lending institution/affiliate must provide and retain a copy of the disclosure and written statement signed by the purchaser of the annuity as provided by Section 13 of this regulation [now 12.15.1.13 NMAC].

(3) The lending institution may provide to affiliates and/or third-party providers only customer name, address, telephone number and types of products owned. It may not share confidential information, such as specific or aggregate dollar amounts of investments, deposit balances, net worth, etc., without the customer's prior acknowledgment and written consent. The written consent will be on a form specified by the financial institutions division. This does not limit the lending institution's obligation to provide information to the insurer in the sale of an annuity product.

(4) the lending institution may not underwrite annuities.

B. A lending institution or its affiliate may enter into an arrangement with a third-party provider under which the lending institution/affiliate may refer customers directly to the annuity agent for the sale of annuities. A lending institution or its affiliate may enter into arrangements with a third-party provider to provide space on lending institution premises for sale of annuities. Any arrangement between a lending institution or its affiliate and a third party provider that utilizes space on the premises of the lending institution to facilitate the sale of annuities shall be subject to the following general conditions.

(1) The arrangements between a lending institution/affiliate and a third party provider must be governed by a written agreement that:

(a) sets forth the responsibilities of the parties;

(b) specifies the compensation to be received by the lending institution;

(c) requires that annuities may be sold only by an annuity agent;

(d) reserves the right of the lending institution to disapprove the placement or retention of any annuity agent;

(e) requires the annuity agent to provide and retain copies of the disclosure and written statement signed by the purchaser of the annuity in accordance with Section 13 [now 12.15.1.13 NMAC];

(f) requires the annuity agent or third party provider to receive prior approval of the lending institution before engaging in any advertising/solicitation that identifies the name, address or telephone number of the lending institution.

(2) When the annuities sales program is operated independently by a person that is not an employee or affiliate of the lending institution and annuities are sold on the premises of the lending institution, the lending institution must include in the written agreement with the third party provider language that expressly:

(a) negates a partnership or joint venture between the lending institution and the annuity agent; and

(b) states that the lending institution has no right to, and may not attempt to, exercise control over the sale of annuities by the annuity agent other than as expressly permitted by this regulation.

(3) When the annuity sales program is operated by an annuity agent who is also an employee of the lending institution or affiliate, the written agreement between the lending institution and third-party provider shall:

(a) define the supervisory responsibilities of each party to the agreement;

(b) specify the rights of the respective parties to control the compensation of the annuity agent;

(c) specify that the annuity agent will not use bank customer confidential information for solicitation of annuity products, other than procedures otherwise expressly authorized by this regulation;

(d) specify that if a dual employee is terminated by either party to the agreement, the party causing the termination shall notify the other party of such termination and the reasons, if any, therefore;

(e) specify that each party to the agreement shall notify the other party of any investigation or proceeding by a regulatory or law enforcement authority regarding the employee except as otherwise prohibited by law.

C. A lending institution shall serve written notice to the financial institutions division when it has entered into an agreement required by this regulation.

[12/15/95; Recompiled 10/15/01]

12.15.1.9 LICENSING PROCEDURES:

Annuity agents as defined in this regulation must be licensed by the New Mexico department of insurance to sell annuities.

[12/15/95; Recompiled 10/15/01]

12.15.1.10 LENDING INSTITUTION RESPONSIBILITY:

The lending institution has on-going responsibility to ensure that the annuities sales program is in compliance with the provisions of this regulation and is consistent with the institution's strategies and objectives.

A. The lending institution shall establish a policy addressing the management of the sale of annuities. Such policy must contain provisions to ensure compliance with the limitations and restrictions enumerated in this regulation. The compliance function should be independent of the operating sales program and report directly to the lending institution's board of directors or a designated committee thereof. The policy shall specifically prohibit the lending institution from selling or providing to any person other than a third party provider the name of an individual that has purchased annuities through that lending institution without the customer's prior acknowledgment and written consent.

B. The lending institution shall formulate, prior to engaging directly in the sale of annuities or prior to entering into an agreement with a third party provider, written objectives, and strategies to achieve those objectives, and shall designate an senior officer to be responsible for oversight of the on-premises annuities sales program. Policy objectives, including the process for selecting and continuing review of the contracted third party provider, and strategies to achieve those objectives should be reviewed at least annually by the lending institution's board of directors.

[12/15/95; Recompiled 10/15/01]

12.15.1.11 ADVERTISING AND PROMOTION:

The promotion and sale of annuities must be effected in such a manner as to avoid confusion between federally-insured deposit products offered by the lending institution and the non-federally insured annuities sold.

- A. Advertisements or other promotional material must be accurate and not misleading or deceptive.
- B. Advertising materials prepared by the annuity agent or third party provider may be included in mailings by the lending institution/affiliate.
- C. Advertisements and promotional materials regarding annuities sold on the premises of the lending institution must include the disclosures enumerated in Section 13.3 [now Subsection C of 12.15.1.13 NMAC].
- D. Any marketing efforts engaged in, or marketing materials distributed by, the annuity agent or third party provider relating to the sale of annuities must first receive the prior approval of the lending institution/affiliate.

[12/15/95; Recompiled 10/15/01]

12.15.1.12 ADEQUATE SEPARATION OF FACILITIES:

- A. The space utilized by the annuity agent to transact business with the public must be distinct from the area where retail deposits are taken in such a manner as to prevent confusion in the public's mind between the lending institution and the annuity agent.
- B. The space utilized by the annuity agent to transact business with the public must be separately identified through the use of signs, labeling, etc. so that the public will understand that it is doing business with an annuity agent and not the federally insured lending institution.
- C. The space utilized by the annuity agent shall contain the disclosure notice, conspicuously posted, required in Section 13 [now 12.15.1.13 NMAC].

[12/15/95; Recompiled 10/15/01]

12.15.1.13 DISCLOSURES:

A lending institution/affiliate or any third-party provider that sells or arranges for the sale of annuities on the premises of a lending institution shall:

- A. conspicuously post a notice that is clearly visible to anyone who may purchase annuities that annuities are not deposit accounts insured by a federal deposit insuring agency;

B. orally inform a prospective purchaser of annuities that annuities are not deposit accounts insured by a federal deposit insuring agency;

C. provide a written disclosure to the customer containing the following statements before a sale of annuities is completed:

(1) annuities are not lending institution deposits and are not insured by its federal deposit insuring agency (FDIC, NCUA);

(2) annuities are not obligations of, or guaranteed by, the lending institution;
and

(3) annuities may involve investment risks, including possible loss of principal.

D. require before a sale of annuities is completed that the annuity agent obtain a written statement signed by the purchaser of the annuity stating that the purchaser has received the oral and written notices required by this section.

[12/15/95; Recompiled 10/15/01]

12.15.1.14 FEDERAL/STATE REGULATIONS:

It is recognized that the federal deposit insurance corporation, the federal reserve system, the comptroller of the currency, the national credit union administration, the office of thrift supervision and the financial institutions division have promulgated, or may, in the future, promulgate regulations governing the manner in which a lending institution or any of its affiliates and an annuity agent may engage in the sale of annuities. It is further recognized that there may exist differences in scope and coverage between this regulation and those promulgated by federal regulatory agencies. It is not the intent of this regulation to permit any practice which is not permitted by the appropriate state or federal agency. To the contrary, besides any other restriction or limitation stated herein, each lending institution or any of its affiliates and each annuity agent must fully comply with the regulations of the applicable state or federal regulatory agency.

[12/15/95; Recompiled 10/15/01]

PART 2: APPROVAL OF FORMS FOR DISCLOSURE OF INFORMATION BY LENDERS AND CREDITORS

12.15.2.1 ISSUING AGENCY:

Financial Institutions Division, Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100

[7/1/81; 8/30/97; Recompiled 10/15/01]

12.15.2.2 SCOPE:

All banks chartered by the state of New Mexico.

[8/30/97; Recompiled 10/15/01]

12.15.2.3 STATUTORY AUTHORITY:

A. This approval of forms is issued pursuant to the authority granted to the financial institutions division by New Mexico Laws 1981, Chapter 263.

B. This part is issued pursuant to the authority granted by the banking laws of the state of New Mexico Sections 58-1-1 through 58-9-13 NMSA 1978, the savings and loan laws of the state of New Mexico Sections 58-10-1 through 58-10-111 NMSA 1978, the small loan company (consumer finance company) laws of the state of New Mexico Sections 58-15-1 to 58-15-31 NMSA 1978, the credit union laws of the state of New Mexico Sections 58-11-1 to 58-11-33, and pursuant to the New Mexico Bank Installment Loan Act Section 58-7-9 NMSA 1978, the Residential Home Loan Act, Sections 56-8-27 NMSA 1978, and the specific authority granted by Sections 58-1-5, 58-1-32, 58-1-54, 58-7-9 and 58-11-6 NMSA 1978.

[7/1/81; 8/30/ 97; Recompiled 10/15/01]

12.15.2.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.15.2.5 EFFECTIVE DATE:

July 1, 1981, unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format effective August 30, 1997.

[7/1/81; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.15.2.6 OBJECTIVE:

The objective of this part is to establish uniform disclosures, for all lenders supervised by the financial institutions division which represent the major portion of the credit granting industry in this state, in order to reduce the administrative burden upon the financial institutions division insofar as possible in reviewing forms for approval and,

more importantly, to standardize disclosures to better protect the public through a greater understanding of the disclosure requirements.

[7/1/81; 8/30/97; Recompiled 10/15/01]

12.15.2.7 DEFINITIONS:

[RESERVED]

[8/30/97; Recompiled 10/15/01]

12.15.2.8 RESERVE REQUIREMENTS:

A. In reviewing the disclosures required by New Mexico Laws 1981, Chapter 263, Section 2A, and in reviewing the requirements for disclosure under the federal Truth in Lending Act, Title 15 U.S.C. Section 1601 *et seq.* and Regulation Z issued pursuant thereto, the financial institutions division finds that there are some inconsistencies in disclosure requirements between state and federal law. In order to standardize and make the disclosures as uniform as possible, the financial institutions division, pursuant to New Mexico Laws 1981, Chapter 263, Section 2D, which states in pertinent part: "...any form which is in compliance with federal law regarding disclosure of information by creditors to borrowers, such as the federal Truth in Lending Act, shall be deemed to be in compliance with Subsection A of this section." hereby approves any and all disclosure forms currently in use or subsequently adopted by lenders or credit sellers regulated by the financial institutions division provided the forms meet the standards for disclosure set forth in the federal Truth in Lending Act and Regulation Z, as amended from time to time. If a credit sale or a loan is exempt from the federal Truth in Lending Act and Regulation Z, the disclosure of information by a creditor which would otherwise comply with the federal Truth in Lending Act and Regulation Z shall be deemed to comply with the disclosures required by Section 2A of New Mexico Laws 1981, Chapter 263.

B. The financial institutions division finds that it is in the public health, peace, safety and welfare for the public and borrowers in the state to have uniform disclosures in order to promote a better understanding and knowledge of the cost of borrowing. Therefore, to avoid inconsistency and to promote uniformity in disclosures the financial institutions division hereby adopts the standards for disclosure of the federal Truth in Lending Act and Regulation Z, as amended from time to time, in accordance with New Mexico Laws 1981, Chapter 263, Section 2D for business, commercial and agricultural loans or credit sales of \$50,000.00 or less and henceforth will require all lenders and credit sellers supervised by the financial institutions division to meet the above described disclosure standards. Use of those standards will be deemed to comply with New Mexico Laws 1981, Chapter 263, Section 2D.

[7/1/81; 8/30/97; Recompiled 10/15/01]

PART 3: HOME LOAN PROTECTION ACT- GENERAL PROVISIONS

12.15.3.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.15.3.1 NMAC - N, 01/23/2004]

12.15.3.2 SCOPE:

All persons subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003, as amended through 2004) ("Act").

[12.15.3.2 NMAC - N, 01/23/2004, A, 06/30/2004]

12.15.3.3 STATUTORY AUTHORITY:

Section 58-21A-13 NMSA 1978.

[12.15.3.3 NMAC - N, 01/23/2004]

12.15.3.4 DURATION:

Permanent.

[12.15.3.4 NMAC - N, 01/23/2004]

12.15.3.5 EFFECTIVE DATE:

January 23, 2004, unless a later date is cited at the end of a section.

[12.15.3.5 NMAC - N, 01/23/2004]

12.15.3.6 OBJECTIVE:

The objective of this rule is to clarify and interpret certain terms used in the act.

[12.15.3.6 NMAC - N, 01/23/2004]

12.15.3.7 DEFINITIONS:

For purposes of this rule, the definitions set forth in the act shall apply unless otherwise noted.

A. "Grossed up income" means income that is not taxable by the federal government and has been increased to reflect the amount of tax savings attributed to

this type of income. The maximum amount of grossed up income allowable is twenty-five percent, but could be less based on the tax savings of the borrower. (Example: Non-taxable income is \$1000.00 per month. Assuming a tax savings of 25%, the allowable grossed up income would be \$1250.00 per month.)

B. "Scheduled long-term monthly debt payments" means the monthly payments of all installment debts, revolving charge accounts, open accounts and lines of credit that would be used to determine a borrower's ability to repay per the current underwriting guidelines of the federal housing administration (FHA), the federal national mortgage association (FNMA), the federal home loan mortgage corporation (FHLMC) or the department of veteran's affairs (VA).

[12.16.3.7 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.8 ANNUAL PERCENTAGE RATE:

The phrase "annual percentage rate" as used in Section 58-21A-3 (C) and (G) NMSA 1978, has the same meaning as the term "annual percentage rate" defined in 15 U.S.C. Section 1606(a).

[12.15.3.8 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.9 PUBLISHED ANNUAL YIELD ON CONVENTIONAL MORTGAGES:

The phrases "most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor," as used in Section 58-21A-3 (F) NMSA 1978, and "conventional mortgage rate" as used in Section 58-21A-3 (C) (F) and (G) (1) NMSA 1978, refer to the conventional mortgage index published in the federal reserve "selected interest rates" (statistical release H-15). The creditor must use the most recently published weekly yield immediately preceding the 15th.

[12.15.3.9 NMAC - N, 01/23/2004, A, 06/30/2004; A, 06/01/10]

12.15.3.10 CONFORMING LOAN SIZE LIMIT:

The "conforming loan size limit for a single-family dwelling established by the federal national mortgage association," referred to in Section 58-21A-3 (J) NMSA 1978, is the maximum original principal obligation set forth in, and from time to time adjusted, according to the provisions of 12 U.S.C. Section 1454(a)(2), applicable to first mortgages. "The federal national mortgage association" refers to fannie mae, the corporation initially organized pursuant to 12 USC 1716(b).

[12.15.3.10 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.11 POINTS AND FEES:

The categories listed under the definition of "points and fees" in Section 58-21A-3 (M) NMSA 1978, are not exclusive.

[12.15.3.11 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.12 RATE THRESHOLD:

The phrase "comparable periods of maturity", as used in Section 58-21A-3 (N) NMSA 1978, refers to the "treasury constant maturities" published in the federal reserve "selected interest rates" (statistical release H-15).

A. Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity or the lower yield if the loan's maturity is midway between constant maturities published in the statistical release.

B. If the 15th day of the month immediately preceding the month in which the loan is made is not a business day, the creditor must use the yield calculated as of the business day immediately preceding the 15th.

C. A loan is considered "made," within the meaning of Section 58-21A-3 (N), NMSA 1978, when the consumer becomes contractually obligated on a credit transaction.

D. When calculating the interest rate for adjustable rate loans, the creditor shall not use any introductory rate. The interest rate will be based on the loan's disclosed index plus the margin, which is the fully indexed rate, at the time the loan is made. As an example, if the index is 2% and the margin is 3% for a first lien mortgage, the interest rate is 5% (fully indexed rate).

[12.15.3.12 NMAC - N, 01/23/2004; Repealed, 06/01/10; 12.15.3.12 NMAC - Rn, 12.15.3.13 NMAC & A, 06/01/10; A, 12/31/10]

12.15.3.13 CREDIT PROPERTY INSURANCE:

For purposes of the act, the term "credit property insurance," does not include fire and hazard insurance, flood insurance, federal housing administration (FHA) mortgage insurance, veteran's administration (VA) loan guarantees, guaranteed rural housing (GRH) loan guarantees and private mortgage insurance that would compensate the holder of a home loan directly for any shortfall between the value of the real property securing the loan and the amount owed on an obligation in default.

[12.15.3.13 NMAC - N, 01/23/2004; A, 06/30/2004; 12.15.3.13 NMAC - Rn, 12.15.3.14 NMAC, 06/01/10]

12.15.3.14 TOTAL PRINCIPAL LOAN AMOUNT:

For purposes of the act, the term "total principal loan amount," as used in Section 58-21A-3 (Q) (1) and (2), NMSA 1978, refers to the total principal loan amount as stated in the promissory note.

[12.15.3.14 NMAC - N, 01/23/2004, A, 06/30/2004; 12.15.3.14 NMAC - Rn, 12.15.3.15 NMAC & A, 06/01/10]

12.15.3.15 "POINTS AND FEES" EXCLUSION FOR UPFRONT PREMIUM PRIVATE MORTGAGE INSURANCE:

In reference to 58-21A-3(M)(1)(d)(14) NMSA 1978, the "percentage rate" will be set biannually on the financial institutions division's mortgage lending website on the first business day in January and July.

[12.15.3.15 NMAC - N, 01/23/2004; 12.15.3.15 NMAC - N, 06/01/10]

PART 4: HOME LOAN PROTECTION ACT - HIGH COST LOANS: REPAYMENT ABILITY

12.15.4.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.15.4.1 NMAC - N, 01/30/2004]

12.15.4.2 SCOPE:

All creditors subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003) ("Act").

[12.15.4.2 NMAC - N, 01/30/2004]

12.15.4.3 STATUTORY AUTHORITY:

Section 58-21A-13 NMSA 1978.

[12.15.4.3 NMAC - N, 01/30/2004]

12.15.4.4 DURATION:

Permanent.

[12.15.4.4 NMAC - N, 01/30/2004]

12.15.4.5 EFFECTIVE DATE:

January 30, 2004, unless a later date is cited at the end of a section.

[12.15.4.5 NMAC - N, 01/30/2004]

12.15.4.6 OBJECTIVE:

The objective of this part is to establish the reasonable ability to repay a home loan required by Section 58-21A-4 (C) NMSA 1978.

[12.15.4.6 NMAC - N, 01/30/2004; A, 08/31/09]

12.15.4.7 DEFINITIONS:

For purposes of this rule, the definitions set forth in the act and regulations adopted pursuant to the act shall apply unless otherwise noted. **"Reasonably reliable documentation"** means any documentation that is required by a mortgage loan company to satisfy the requirements of a loan product that meets the borrower's requested terms and qualifications, documents the source of repayment and includes verifiable written documentation obtained from the borrower or a third party. Reasonably reliable documentation may include but may not be limited to verbal verifications.

[12.15.4.7 NMAC - N, 01/30/2004; A, 08/31/09; A, 06/01/10]

12.15.4.8 REASONABLE ABILITY TO REPAY:

The documentation of "reasonable ability to repay" in Section 58-21A-4(C) NMSA 1978, will depend upon the totality of facts and circumstances relating to a specific residential mortgage loan transaction and the borrower's financial condition and circumstances. While the documentation of certain residential mortgage loan transactions may clearly demonstrate the borrower's reasonable ability to repay, others may require closer scrutiny to determine whether the documentation for a particular residential mortgage loan transaction sufficiently demonstrates ability to repay. The "reasonable ability to repay" standard shall be demonstrated through reasonably reliable documentation.

[12.15.4.8 NMAC - N, 01/30/2004; A, 08/31/09; A, 06/01/10]

12.15.4.9 [RESERVED]

[12.15.4.9 NMAC - N, 01/30/2004; Repealed, 08/31/09]

PART 5: HOME LOAN PROTECTION ACT - FLIPPING

12.15.5.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.15.5.1 NMAC - N, 06/30/2004]

12.15.5.2 SCOPE:

All creditors subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003, as amended through 2004) ("Act").

[12.15.5.2 NMAC - N, 06/30/2004]

12.15.5.3 STATUTORY AUTHORITY:

Section 58-21A-13 NMSA 1978.

[12.15.5.3 NMAC - N, 06/30/2004]

12.15.5.4 DURATION:

Permanent.

[12.15.5.4 NMAC - N, 06/30/2004]

12.15.5.5 EFFECTIVE DATE:

June 30, 2004, unless a later date is cited at the end of a section.

[12.15.5.5 NMAC - N, 06/30/2004]

12.15.5.6 OBJECTIVE:

The objective of this rule is to provide guidance to creditors covered by the act regarding the application of Section 58-21A-4(B) NMSA 1978, which prohibits creditors from engaging in the unfair act or practice of flipping a home loan.

[12.15.5.6 NMAC - N, 06/30/2004]

12.15.5.7 DEFINITIONS:

For purposes of this rule, the definitions set forth in the act and regulations adopted pursuant to the act shall apply unless otherwise noted.

[12.15.5.7 NMAC - N, 06/30/2004]

12.15.5.8 KNOWINGLY AND INTENTIONALLY ENGAGING IN THE ACT OR PRACTICE OF FLIPPING:

For purposes of Section 58-21A-4(B) NMSA 1978, a creditor shall not have "knowingly and intentionally" engaged in the unfair act or practice of flipping a home loan when the new loan provides a "reasonable, tangible net benefit" to the borrower. A creditor shall have "knowingly and intentionally" engaged in the unfair act or practice of flipping a home loan when the new loan does not provide a "reasonable, tangible net benefit" to the borrower and the creditor made the new loan with the intent and knowledge that the new loan did not provide a reasonable, tangible net benefit to the borrower.

[12.15.5.8 NMAC - N, 06/30/2004]

12.15.5.9 REASONABLE, TANGIBLE NET BENEFIT TO THE BORROWER:

A. The reasonable, tangible net benefit" standard in Section 58-21A-4 B NMSA 1978, is inherently dependent upon the totality of facts and circumstances relating to a specific transaction. While the refinancing of certain home loans may clearly provide a reasonable, tangible net benefit, others may require closer scrutiny to determine whether a particular loan provides the requisite benefit to a borrower.

B. Because of the fact-specific nature of the "reasonable, tangible net benefit" inquiry, lenders are not expected to create a single one-size-fits-all test to use for every loan application. While the majority of loans may be evaluated using an appropriate economic analysis of the old and new loan, each lender should develop and maintain policies and procedures for evaluating loans in circumstances where an economic test, standing alone, may not be sufficient to determine that the transaction provides the requisite benefit.

C. In evaluating whether lenders are in compliance with the flipping provision, the financial institutions division will focus on whether a lender has policies and procedures in place and that were used to determine that borrowers received a reasonable, tangible net benefit in connection with the refinancing of loans. For example, lenders may wish to create procedures for additional upper-level management review in cases where the benefit to the customer is not clear based on a simple calculation of savings. Lenders may also wish to devise worksheets for collecting relevant information from the borrower such as the borrower's financial status, objectives for use of the funds and knowledge of other alternatives.

D. Examples of factors that could be relevant include, but are not limited to, the following:

(1) Terms of the new and old loan, including, but not limited to, note rate, amortization schedule, and balloon payment provisions, provided that costs associated with (and paid at or before closing of) the old loan, such as closing costs or points and fees other than prepayment penalties, are not normally relevant to the determination of flipping;

(2) Costs of the new loan, including points and fees charged on the new loan as well as other closing costs associated with the transaction as routinely disclosed on the closing statement;

(a) loan-to-value ratio of the new loan compared to that associated with the outstanding balance on the existing loan;

(b) debt-to-income ratio of the borrower before and after the transaction;

(c) amount of time that has lapsed between the new loan and the origination of the old loan or previous refinancing; and

(d) in cases where economic benefits do not demonstrably indicate that a reasonable, tangible net benefit has occurred, a significant reason that explains the need for, and proposed use of, the loan proceeds.

E. Lenders may use other management controls to assess whether a loan transaction provides the requisite benefit.

F. While the financial institutions division will not mandate that lenders use a prescribed form or system for evaluating the economic or non-economic benefits of a particular home loan, lenders are encouraged to maintain records in the loan file to demonstrate that they performed an analysis of the reasonable, tangible net benefit standard in each refinancing transaction.

G. Borrowers are responsible for the disclosure of information provided on the application for a home loan. Truthful disclosure of all relevant facts and financial information concerning the borrower's circumstances is required in order for lenders to evaluate and determine that the refinance loan transaction provides a reasonable, tangible net benefit to the borrower. Lenders cannot, however, disregard known facts and circumstances that may place in question the accuracy of information contained in the application.

H. An appropriate analysis reflected in the loan documentation can be helpful in determining that a lender satisfies the statutory requirement. As part of a lender's analysis, a lender may wish to obtain and document an explanation from the borrower regarding any non-economic benefits the borrower associates with the loan transaction. It should be noted, however, that because it is incumbent on the lender to conduct an analysis of whether the borrower received a reasonable, tangible net benefit, a borrower certification, standing alone, would not necessarily be determinative of whether a loan provided that benefit.

[12.15.5.9 NMAC - N, 06/30/2004]

PART 6: HOME LOAN PROTECTION ACT - REASONABLE DUE DILIGENCE STANDARD FOR DETERMINING HIGH-COST HOME LOANS

12.15.6.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.15.6.1 NMAC - N, 06/30/2004]

12.15.6.2 SCOPE:

Any person or his agent who purchases or is otherwise assigned a high-cost home loan subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003, as amended through 2004) ("Act").

[12.15.6.2 NMAC - N, 06/30/2004]

12.15.6.3 STATUTORY AUTHORITY:

Section 58-21A-13 NMSA 1978.

[12.15.6.3 NMAC - N, 06/30/2004]

12.15.6.4 DURATION:

Permanent.

[12.15.6.4 NMAC - N, 06/30/2004]

12.15.6.5 EFFECTIVE DATE:

June 30, 2004, unless a later date is cited at the end of a section.

[12.15.6.5 NMAC - N, 06/30/2004]

12.15.6.6 OBJECTIVE:

The objective of this rule is to generally describe the type of circumstances the financial institutions division will consider in determining whether the reasonable due diligence standard set forth in Section 58-21A-11 of the act is satisfied.

[12.15.6.6 NMAC - N, 06/30/2004]

12.15.6.7 DEFINITIONS:

For purposes of this rule, the definitions set forth in the act and regulations adopted pursuant to the act shall apply unless otherwise noted.

[12.15.6.7 NMAC - N, 06/30/2004]

12.15.6.8 REASONABLE DUE DILIGENCE:

A. Section 58-21A-11 of the act provides that a person who purchases or is otherwise assigned a high-cost home loan is not subject to an action for certain claims and defenses if the person can demonstrate by a preponderance of the evidence that a reasonable person exercising reasonable due diligence could not determine that the mortgage in question was a high-cost home loan. Due diligence means that degree of review that reasonably may be expected from a purchaser or assignee given the circumstances surrounding the transaction or the conditions existing at the time the review is exercised, including, consideration of the purchaser's or assignee's involvement with, or the proximity in time to the loan' origination.

B. In each case what constitutes reasonable due diligence by a person who purchases or is otherwise assigned a high-cost home loan is dependent on the totality of the facts and circumstances surrounding that person's loan review, policies and practices. The purpose of this rule is to make clear that in the vast majority of cases, reasonable due diligence does not require a loan-by-loan individualized review. Because the vast majority of home loans purchased or assigned in New Mexico are transacted in secondary markets through large loan pools or mortgage backed securities, the due diligence conducted need only be reasonable, not perfect.

C. Purchasers and assignees should have in effect and utilize reasonable compliance policies and conduct quality control review of appropriate loan documentation, whether by sampling methods or otherwise, to identify and avoid the purchase or acceptance of high-cost home loans.

(1) If none of the loans reviewed is a high-cost home loan, and if all of the other requirements of Subsection A of Section 11 are met, then there shall be a rebuttable presumption that a purchaser or assignee has exercised reasonable due diligence.

(2) When a reasonable review discloses one or more high-cost home loans, then an upgraded compliance review shall be required. The level of an upgraded compliance review may depend upon a number of factors, such as prior experience with the seller or assignor, the number of high-cost home loans identified during the initial review and the procedures used to identify and exclude high-cost home loans from submission for purchase or assignment. For example, where, after initial review, one or more high-cost home loans are uncovered in a large loan pool, there should be a more extensive review of the loan pool to evaluate: (1) a reasonable number of the remaining loans, (2) the reliability of any representations and warranties in place that there are no high-cost home loans in the pool; and (3) the extent to which there are other high cost home loans in the pool. The level of this review depends upon a number of factors, including the overall size of the pool, the reliability of the loan source, the number of high-cost home loans identified during the initial due diligence process, how extensive that initial review process was, and the procedures in place by originators to identify high-cost home loans and exclude them from the loan pool.

[12.15.6.8 NMAC - N, 06/30/2004]

PART 7: HOME LOAN PROTECTION ACT - LIABILITY EXPOSURE OF CREDITORS AND ASSIGNEES

12.15.7.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.15.7.1 NMAC - N, 06/30/2004]

12.15.7.2 SCOPE:

All creditors and assignees subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003 as amended through 2004) ("Act").

[12.15.7.2 NMAC - N, 06/30/2004]

12.15.7.3 STATUTORY AUTHORITY:

Section 58-21A-13 NMSA 1978.

[12.15.7.3 NMAC - N, 06/30/2004]

12.15.7.4 DURATION:

Permanent.

[12.15.7.4 NMAC - N, 06/30/2004]

12.15.7.5 EFFECTIVE DATE:

June 30, 2004, unless a later date is cited at the end of a section.

[12.15.7.5 NMAC - N, 06/30/2004]

12.15.7.6 OBJECTIVE:

The objective of this rule is to clarify the legal liability exposure of creditors and assignees for actions that may be brought for violations of the act.

[12.15.7.6 NMAC - N, 06/30/2004]

12.15.7.7 DEFINITIONS:

For purposes of this rule, the definitions set forth in the act and regulations adopted pursuant to the act shall apply unless otherwise noted.

[12.15.7.7 NMAC - N, 06/30/2004]

12.15.7.8 LEGAL LIABILITY EXPOSURE OF CREDITORS AND ASSIGNEES:

A. The purpose of this rule is to clarify the inter-relationship of Sections 58-21A-9, 58-21A-11 and 58-21A-12 of the act and the various levels of exposure to legal liability and damages that may apply for violations of the act.

B. The legal liability of creditors, and assignees is set forth, variously, in Sections 58-21A-9, 58-21A-11 and 58-21A-12 of the act.

C. Subject to certain provisions regarding timely restitution and adjustments by a creditor, Section 58-21A-9 NMSA 1978 generally authorizes a borrower to bring a civil action for violations of the act. This section authorizes actual damages, specified statutory damages, punitive damages, costs and reasonable attorney fees, as well as injunctive, declaratory and other relief. The civil action authorized in Section 58-21A-9 NMSA 1978 is non-exclusive; it will lie in addition to any other action or remedy available to a borrower under applicable law. Punitive damages are recoverable under Section 58-21A-9 NMSA 1978 only if it is proven that the violation in question was malicious or reckless. In the sense that malicious and reckless, interpreted broadly, suggest the absence of either a good faith reason or of an innocent mistake, it follows that any person who, in good faith, exercises reasonable due diligence when seeking to comply with the act will not be liable for punitive damages under Section 58-21A-9 NMSA 1978.

D. Section 58-21A-11 NMSA 1978 limits the liability of a purchaser or assignee of a high-cost home loan where the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising reasonable due diligence could not determine that the mortgage was a high-cost home loan. Section 58-21A-11 NMSA 1978 also specifies circumstances under which a purchaser or assignee shall be deemed to have exercised due diligence. The circumstances listed in Section 58-21A-11 NMSA 1978 are not intended as exclusive proof of due diligence.

E. Section 58-21A-11 NMSA 1978 also provides the limiting time periods during which there may be individual actions brought against a creditor or any subsequent holder or assignee for certain violations of the act. Section 58-21A-11 NMSA 1978 further specifies that in an individual action that is authorized under this section the borrower may recover only the amounts necessary to reduce or extinguish the borrower's liability under the loan plus costs and reasonable attorney fees. An action, claim or counterclaim under Subsection B of Section 58-21A-11 NMSA 1978 may be brought only in the borrower's individual capacity and not as a class action lawsuit. Subsection C of Section 58-21A-11 NMSA 1978 precludes a borrower from recovering punitive damages in an action brought under Subsection B of this section.

F. Section 58-21A-12 NMSA 1978 specifies that a violation of this act also constitutes an unfair or deceptive trade practice under the Unfair Practices Act (Sections 57-12-1 et seq. NMSA 1978) The maximum exposure for damages under the Unfair Practices Act is:

- (1) actual damages or the sum of \$100, whichever is greater; and
- (2) where the practice was willfully engaged in, the court may award up to three times actual damages or \$300, whichever is greater; plus
- (3) reasonable attorneys' fees and costs. See Section 57-12-10 NMSA 1978.

G. The trebling of damages under the Unfair Practices Act is permissible only when a "willful" violation of the act is proven. Willful conduct is generally interpreted as the intentional doing of an act with knowledge that harm may result. It follows, therefore, that any person who, in good faith, exercises reasonable due diligence when seeking to comply with the act will not be liable for treble damages or unspecified punitive damages under the Unfair Practices Act.

H. In any class action that is authorized under the Unfair Practices Act, the class members may only recover any actual damages that were suffered, while the named plaintiffs in the action may recover in addition up to three times the actual damages as specified above. See Subsections B and E of Section 57-12-10 NMSA 1978. Willful violations of the law may expose a person to a civil penalty of not more than \$5,000 for each violation.

I. While the Home Loan Protection Act allows a borrower to assert multiple types of claims, the borrower may not recover damages for the same injury or loss under Section 58-21A-11 NMSA 1978 and another cause of action. While multiple claims may be asserted in the same cause of action, only one recovery for the same injury or loss may be awarded.

[12.15.7.8 NMAC - N, 06/30/2004]

PART 8: HOME LOAN PROTECTION ACT - APPROVED THIRD-PARTY, NONPROFIT COUNSELORS [RESERVED]

[This part was repealed on June 1, 2010.]

PARTS 9-14: [RESERVED]

PART 15: LINKED DEPOSIT PROGRAM

12.15.15.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.15.15.1 NMAC - N, 11/30/07]

12.15.15.2 SCOPE:

Insured banks, (trust and) thrift institutions, and credit unions participating in and/or desiring to participate in the Linked Deposit Program.

[12.15.15.2 NMAC - N, 11/30/07]

12.15.15.3 STATUTORY AUTHORITY:

Section 6-10-24.2 NMSA 1978.

[12.15.15.3 NMAC - N, 11/30/07]

12.15.15.4 DURATION:

Permanent.

[12.15.15.4 NMAC - N, 11/30/07]

12.15.15.5 EFFECTIVE DATE:

November 30, 2007 unless a later date is cited at the end of a section.

[12.15.15.5 NMAC - N, 11/30/07]

12.15.15.6 OBJECTIVE:

The objective of this rule is to provide rules implementing Section 6-10-24.2 NMSA 1978, including eligibility criteria, application procedures, and verification criteria.

[12.15.15.6 NMAC - N, 11/30/07]

12.15.15.7 DEFINITIONS:

A. "Depository institution" means any bank, [trust institution,] savings and loan association (thrift), or credit union whose deposits, including but not limited to deposits of public money, are insured by an agency of the United States.

B. "Linked deposit program" means a qualified depository institution's participation in the deposit program established pursuant to Section 6-10-24.2 NMSA 1978.

C. "Qualified depository institution" means a depository institution qualified pursuant to Section 6-10-15 NMSA 1978.

D. "Qualifying branch" means an office of a qualified depository institution that is regularly open five days a week (except for federal holidays), has a night deposit box, and provides banking services to residents of a financially at risk rural community.

E. "Financially at risk rural community" means a community in New Mexico with the following characteristics:

- (1) no more than one depository institution within the community;
- (2) a population not exceeding three thousand five hundred (3500); and either
- (3) a declining population, as evidenced by a decrease in population as shown by the two most recent federal decennial censuses; or
- (4) a median household income less than 80% of the state median household income.

F. "residents" of a financially at risk rural community include individuals living there.

G. "market rate" means the rate of return established by the state board of finance for deposits held by qualified depository institutions.

H. "state deposits" means public funds under the control of the state treasurer or the state treasurer's designee, and held by qualified depository institutions.

[12.15.15.7 NMAC - N, 11/30/07]

12.15.15.8 ELIGIBILITY CRITERIA:

To participate in the linked deposit program a qualified depository institution must have a qualifying branch located in a financially at risk rural community.

[12.15.15.8 NMAC - N, 11/30/07]

12.15.15.9 APPLICATION PROCEDURES:

Qualified depository institutions desiring to participate in the linked deposit program must submit the following information to the director of the financial institutions division of the regulation and licensing department (the "director"):

A. a letter from the depository institution requesting certification of eligibility to participate in the linked deposit program;

B. an affidavit from an officer of the depository institution verifying the following information:

(1) that the depository institution is a qualified depository institution pursuant to Section 6-10-15 NMSA 1978;

(2) that the depository institution has a qualifying branch (an office that is regularly open five days a week [except for federal holidays], has a night deposit box, and provides banking services to residents of a financially at risk rural community);

(3) that the qualifying branch is located in a financially at risk rural community (as that term is used in Section 6-10-24.2 NMSA 1978); and (4) that the depository institution and the qualifying branch are meeting the banking service needs of the rural community where the qualifying branch is located;

C. some sort of documentation reasonably acceptable to the director indicating:

(1) that the population of the financially at risk rural community does not exceed 3500 people,

(2) that the financially at risk rural community has either a declining population (as shown by the two most recent federal decennial censuses) or a median household income less than 80% of the state median household income;

(3) the address and phone number of the qualifying branch; and

(4) that the depository institution and the qualifying branch are meeting the banking service needs of the rural community where the qualifying branch is located; meeting the banking service needs of the financially at risk rural community may be shown by a summary statement listing the current number of deposit accounts at the depository institution held by residents of said rural community, the number of current loans to residents of said rural community, and a summary of other services provided to residents of the rural community by the depository institution.

[12.15.15.9 NMAC - N, 11/30/07]

12.15.15.10 VERIFICATION CRITERIA:

Upon receipt of an application from a qualified depository institution the director shall promptly review the application and the documentation submitted therewith. The director may request additional information or clarification from an applicant. The director may, but shall not be required to, investigate any fact alleged in an application and/or obtain additional information from any source.

[12.15.15.10 NMAC - N, 11/30/07]

12.15.15.11 CERTIFICATION TO STATE TREASURER:

Based upon the information provided by a qualified depository institution, and any additional information obtained by the director from any source, if the director reasonably believes that the qualified depository institution is eligible to participate in the linked deposit program the director shall promptly certify said eligibility to the state treasurer. Unless a qualified depository institution is decertified by the director, any such certification of eligibility shall remain effective without any need for recertification by the director.

[12.15.15.11 NMAC - N, 11/30/07]

12.15.15.12 ANNUAL REPORTING BY QUALIFIED DEPOSITORY INSTITUTIONS:

Each qualified depository institution certified by the director as eligible to participate in the linked deposit program shall on an annual basis after certification of eligibility provide the director with the following information.

A. An affidavit from an officer of the depository institution verifying the following information:

(1) that the depository institution is a qualified depository institution pursuant to Section 6-10-15 NMSA 1978;

(2) that the depository institution has a qualifying branch (an office that is regularly open five days a week [except for federal holidays], has a night deposit box, and provides banking services to residents of a financially at risk rural community);

(3) that the qualifying branch is located in a financially at risk rural community (as that term is used in Section 6-10-24.2 NMSA 1978); and

(4) that the depository institution and the qualifying branch are meeting the banking service needs of the rural community where the qualifying branch is located.

B. Documentation reasonably acceptable to the director indicating:

(1) that the population of the financially at risk rural community does not exceed 3500 people;

(2) that the financially at risk rural community has either a declining population (as shown by the two most recent federal decennial censuses) or a median household income less than 80% of the state median household income;

(3) the address and phone number of the qualifying branch; and

(4) that the depository institution and the qualifying branch are meeting the banking service needs of the rural community where the qualifying branch is located.

[12.15.15.12 NMAC - N, 11/30/07]

12.15.15.13 ANNUAL REVIEW BY DIRECTOR; AND DECERTIFICATION:

Upon receipt of annual reporting information from a qualified depository institution the director shall promptly review the information and the documentation submitted therewith. The director may request additional information or clarification. The director may, but shall not be required to, investigate any fact alleged and/or obtain additional information from any source. No further action is required if the director reasonably believes that the qualified depository institution is eligible to participate in the linked deposit program. However, if after written request by the director a qualified depository institution fails to provide the required annual reporting information, or if the director reasonably believes the depository institution is no longer eligible to participate in the linked deposit program, the director shall so notify the state treasurer and the depository institution of said decertification.

[12.15.15.13 NMAC - N, 11/30/07]

PART 16: CERTIFICATION OF QUALIFIED ENTITIES AS SOLAR ENERGY IMPROVEMENT FINANCING INSTITUTIONS [REPEALED]

[This part was repealed on August 15, 2023.]

CHAPTER 16: BANKING

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: PREPARING INCOME TAX RETURNS

12.16.2.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504

[2/8/85; 3/15/97; Recompiled 10/15/01]

12.16.2.2 SCOPE:

All banks chartered by the state of New Mexico.

[3/15/97; Recompiled 10/15/01]

12.16.2.3 STATUTORY AUTHORITY:

A. Section 58-1-51 NMSA 1978.

B. Section 58-1-54 NMSA 1978.

[2/8/85; 3/15/97; Recompiled 10/15/01]

12.16.2.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.2.5 EFFECTIVE DATE:

February 8, 1985, unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format effective March 15, 1997.

[2/8/85; 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.2.6 OBJECTIVE:

The object of this sub-part [now part] is to bring to state banks powers provided to national banks by interpretative ruling of the comptroller of the currency, as set forth in 12 C.F.R. 7.7430.

[2/8/85; 3/15/97; Recompiled 10/15/01]

12.16.2.7 DEFINITIONS:

[RESERVED]

[3/15/97; Recompiled 10/15/01]

12.16.2.8 PREPARING INCOME TAX RETURNS:

While a bank chartered under the laws of New Mexico may not serve as an expert tax consultant, it may assist its customers in preparing their tax returns, either gratuitously or for reasonable fees.

[2/8/85; Recompiled 10/15/01]

**PART 3: FORMULA FOR DETERMINING THE NET WORTH OF BANK
MAIN OFFICES AND BRANCHES**

12.16.3.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department. P.O. Box 25101, Santa Fe, New Mexico 87504.

[02-28-98; Recompiled 10/15/01]

12.16.3.2 SCOPE:

Depositors of public money subject to the referenced statutory authority.

[02-28-98; Recompiled 10/15/01]

12.16.3.3 STATUTORY AUTHORITY:

Sections 6-10-36C and 22-8-40D NMSA 1978.

[02-28-98; Recompiled 10/15/01]

12.16.3.4 DURATION:

Five years beginning on the effective date.

[02-28-98; Recompiled 10/15/01]

12.16.3.5 EFFECTIVE DATE:

February 28, 1998, unless a later date is cited at the end of a section or paragraph.

[02-28-98; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.3.6 OBJECTIVE:

The objective of this sub-part [now part] is to provide a formula for determining the net worth of bank main offices and branches for the purpose of the distribution of public money as required by the above referenced statutory authority. The formula is necessary, because bank main offices and branches do not have a "net worth" separate and apart from the net worth of the bank as a whole. The formula provides a means of allocating portions of the bank's net worth to its individual facilities.

[02-28-98; Recompiled 10/15/01]

12.16.3.7 DEFINITIONS:

A. "Deposits in a manned branch" means deposits accepted by that branch, exclusive of deposits accepted at other manned branches or the main office facility.

B. "Deposits in main office" means deposits accepted by the main office facility of the bank, exclusive of deposits accepted at manned branch facilities of the bank.

C. "Total equity capital" means that amount reported by the bank in schedule RC of the federal financial institutions examination council ("FFIEC") report of condition with the same date as the date of the deposit data.

D. "Total deposits" means that amount reported by the bank in schedule RC of the FFIEC report of condition with the same date as the date of the deposit data.

[02-28-98; Recompiled 10/15/01]

12.16.3.8 FORMULA FOR DETERMINING THE NET WORTH OF BANK MAIN OFFICES AND BRANCHES:

A. The net worth of a main office of a bank and/or its manned branches within the geographical boundaries of a governmental unit or local school district is the total equity capital of the bank multiplied by the percentage that deposits of the main office and/or its manned branches within the geographical boundaries of the governmental unit are of the total deposits of the bank.

B. The formula is as follows: Total equity capital times the sum of deposits in the main office and/or all manned branches of the same bank within the boundary divided by total deposits equals net worth of main office and/or manned branches within the boundary.

C. Branch deposit data used shall be the most current available. Bank deposits by county within the state and for each bank and banking office are surveyed by the federal deposit insurance corporation each year as of June 30 and published in book six of the data book. Additional geographic distributions are published in the national data book. The most current of these publications may be used. The required information is available on the internet at www.fdic.gov. The national data book may be obtained from: FDIC Public Information Center. 801 17th Street, NW, Room 100, Washington, DC 20434-0001.

[02-28-98; Recompiled 10/15/01]

PART 4: [RESERVED]

PART 5: LAND TITLE TRUST FUND ACT

12.16.5.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[6/30/98; Recompiled 10/15/01]

12.16.5.2 SCOPE:

All depository institutions chartered by the state of New Mexico.

[6/30/98; Recompiled 10/15/01]

12.16.5.3 STATUTORY AUTHORITY:

Sections 58-18B-5F and 58-28-4I NMSA 1978.

[6/30/98, 2/14/00; Recompiled 10/15/01]

12.16.5.4 DURATION:

Permanent.

[6/30/98; Recompiled 10/15/01]

12.16.5.5 EFFECTIVE DATE:

June 30, 1998, unless a later date is cited at the end of a section or paragraph.

[6/30/98, 2/14/00; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.5.6 OBJECTIVE:

The objective of this sub-part [now part] is to set procedures for state chartered depository institutions for establishing and operating pooled interest bearing escrow or transaction accounts.

[6/30/98, 2/14/00; Recompiled 10/15/01]

12.16.5.7 DEFINITIONS:

[RESERVED]

12.16.5.8 LAND TITLE TRUST FUND ACT AND LOW INCOME HOUSING TRUST ACT:

A. The following procedures and forms should be used in establishing and operating pooled interest-bearing escrow or transaction accounts.

(1) Form 5828-1, instructions for financial institutions regarding processing Land Title Trust Fund Act and Low Income Housing Trust Act accounts.

(2) Form 5828-2, account enrollment and agreement between company and financial institution.

(3) Form 5828-3, financial institution report of interest remittance.

B. Form 5828-1, instructions for financial institutions regarding processing Land Title Trust Fund and Low Income Housing Trust Act accounts.

(1) Pursuant to Section 58-28-4A NMSA 1978 every title company that maintains one or more trust accounts or escrow accounts into which customer funds are deposited for use in the purchase, sale or financing of real property located in New Mexico, may maintain one or more pooled interest-bearing transaction accounts and may deposit the customer funds specified in Section 58-28-4A NMSA 1978 into those accounts. Pursuant to Section 58-18B-5A NMSA 1978 every real estate broker who maintains a trust or escrow account as required pursuant to the provisions of Subsection H of Section 61-29-12 NMSA 1978 may maintain a pooled interest-bearing escrow account and may deposit the customer funds specified in Section 58-18B-5A NMSA 1978 into that account. Pursuant to Section 58-18B-5B NMSA 1978 every escrow closing agent that maintains a trust account or escrow account pursuant to the provisions of Section 58-22-20 NMSA 1978 shall maintain a pooled interest-bearing escrow account and shall deposit the customer funds specified in Section 58-18-5B NMSA 1978 into that account. The interest earned from these programs is forwarded to the land title trust fund (LTTF). The account agreement between the depositor and the financial institution shall expressly provide for the required remittance of interest.

(2) State-chartered depository institutions that maintain trust or escrow accounts for customers may establish and make available pooled interest-bearing transaction accounts.

(3) The interest earned from these programs is forwarded to the land title trust fund (LTTF). The New Mexico mortgage finance authority is trustee for the LTTF. When the account is opened, the name of the account should be listed on the financial institution's internal records as New Mexico mortgage finance authority, LTTF of (name of company) and the taxpayer ID number (TIN) should be that of the New Mexico mortgage finance authority. Since the internal revenue service matches the TIN with the payee, and they do this by checking to see if the first four letters of the payee's name matches the TIN, your records should reflect the New Mexico mortgage finance authority, LTTF as payee for reporting purposes. The account agreement between the depositor and the financial institution shall expressly provide for the required remittance of interest.

(4) Remittances. Interest accrued on LTTF accounts should be remitted monthly or quarterly from the financial institution in which the account is maintained to the New Mexico mortgage finance authority, trustee, LTTF, either directly or through the company. Any charges the financial institution assesses against the account shall be deducted from the accrued interest of the pooled interest-bearing transaction or escrow account. The principal contained in these accounts are client monies and cannot be used to pay financial institution charges. If the account does not earn enough interest to cover the service charges, it is at the discretion of the bank and company to determine how the fees should be handled. The net amount of the accrued interest should be mailed or wired to the New Mexico mortgage finance authority LTTF at: State Treasurer's Office, NEA Building, Attn: Local Government Investment Pool. P.O. Box 608, Account #7516 (LTTF Account), Santa Fe, NM 87504; or as otherwise directed by the state treasurer's office. Wire instructions: First Security Bank, ABA #107000275, Credit: NM State Treasurer LGIP Acct. # 601-59406-76, on behalf of: NMMFA LTTF STO #7516.

(5) Financial institutions are responsible for transmitting interest income information to the New Mexico mortgage finance authority and to the depositor. The financial institution should complete form 5828-3, financial institution report of interest remittance. The report includes the name of the depositor for whom the remittance is sent, the account number, the rate and amount of accrued interest, the amount deducted for any fees or service charge, the earning period and the ending account balance. Form 5828-3 should be sent to the New Mexico mortgage finance authority at: New Mexico Mortgage Finance Authority, Trustee, Land Title Trust Fund

344 Fourth Street SW, Albuquerque, NM 87102.

(6) IRS reports. The New Mexico mortgage finance authority LTTF is a backup withholding exempt recipient. The financial institution does not need to send out a request for TIN, IRS form W-9. However, if your data processing procedures require the receipt of a W-9 form, it should list the New Mexico mortgage finance authority LTTF TIN, and the New Mexico mortgage finance authority will sign it. Similarly, the New Mexico mortgage finance authority LTTF is a governmental organization exempt from withholding and reporting, so you do not need to issue form 1099 on New Mexico mortgage finance authority LTTF accounts. If you must prepare form 1099, please send the form 1099 to the New Mexico mortgage finance authority, LTTF, to avoid confusion for the title companies.

C. Form 5828-2, ACCOUNT ENROLLMENT AND AGREEMENT BETWEEN COMPANY AND FINANCIAL INSTITUTION

To: _____

Name of financial institution

Location of financial institution

I/We _____

Name of company

(hereinafter referred to as "depositor") are participating in the land title trust fund (LTTF) program pursuant to the Land Title Trust Fund Act [58-28-1 to 58-28-8 NMSA 1978] and Low Income Housing Trust Act [58-18B-1 to 58-18B-11 NMSA 1978]. Depositor hereby acknowledges that it retains sole responsibility for determining deposits qualifying for deposit to this account. Depositor hereby instructs you to establish a LTTF negotiable order of withdrawal (NOW) account, sweep account or other interest bearing account in its name as follows: New Mexico mortgage finance authority, LTTF of (company).

The depositor's New Mexico mortgage finance authority, LTTF account is to be established and governed by the financial institution's customary rules and procedures governing NOW accounts, sweep accounts or other interest bearing accounts.

The New Mexico mortgage finance authority, LTTF is a tax-exempt governmental unit. The tax identification number is 85-0252748. No withholding is required. No Form 1099 is required.

Any service charge should be debited to the account in accordance with your normal practice. However, the charges must be deducted from accrued interest only. If the account does not earn enough interest to cover the service charges, it is at the discretion of the bank and company to determine how the fees should be handled.

Please remit all accrued interest (net of service charges, if any) AT LEAST QUARTERLY, no later than the tenth day of the month, directly to the New Mexico mortgage finance authority LTTF account at the state treasurer's office.

Accrued interest can be remitted by check, draft or similar instrument via U.S. mail or by wire transfer to:

State Treasurer
Authority

New Mexico Mortgage Finance

NEA Building

Account #7516 (LTTF Account)

Attention: Local Government Investment Pool

P.O. Box 608

Santa Fe, NM 87504

or as directed by the state treasurer's office.

Wire instructions:

First Security Bank

ABA #107000275

Credit: NM State Treasurer LGIP

Acct. # 601-59406-76

On behalf of: NMMFA LTTF STO #7516.

Also submit the financial institution report of interest remittance directly to:

New Mexico Mortgage Finance Authority, Trustee

Land Title Trust Fund,

344 Fourth Street SW

Albuquerque, NM 87102.

Depositor/account name

Acknowledgment by

Financial Institution

Representative/Date

Depositor address

Telephone number

Depositor signature/date

Please send a copy of this completed form to the depositor and the New Mexico mortgage finance authority.

D. FORM 5828-3, FINANCIAL INSTITUTION REPORT OF INTEREST
REMITTANCE FOR LAND TITLE TRUST ACCOUNTS

To: Land title trust fund

From: _____

Name of financial institution and contact person

Address

Telephone number

Account holder	Account number	Interest rate Ending	Interest earned	Earning period
----------------	----------------	-------------------------	-----------------	----------------

Account

Balance

Total interest \$ _____

Less service charge \$ _____

Net remittance \$ _____

Name of person remitting _____

Send this report to:

Land Title Trust Fund

New Mexico Mortgage Finance Authority, trustee

344 Fourth Street SW

Albuquerque, NM 87102

Also send a copy of this report to the account depositor.

[6/30/98, 2/14/00; Recompiled 10/15/01]

PART 6-9: [RESERVED]

PART 10: TRUST AND TRUST COMPANIES [RESERVED]

PART 11-19: [RESERVED]

PART 20: CAPITAL [RESERVED]

PART 21: AUTHORITY OF STATE BANKS TO ISSUE PREFERRED STOCK

12.16.21.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[1-19-87; 3-15-97; Recompiled 10/15/01]

12.16.21.2 SCOPE:

All banks chartered by the state of New Mexico.

[3-15-97; Recompiled 10/15/01]

12.16.21.3 STATUTORY AUTHORITY:

Section 58-1-54 NMSA 1978.

[1-19-87; Recompiled 10/15/01]

12.16.21.4 DURATION:

Permanent.

[3-15-97; Recompiled 10/15/01]

12.16.21.5 EFFECTIVE DATE:

January 19, 1987, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective March 15, 1997.

[1-19-87; 3-15-97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.21.6 OBJECTIVE:

The objective of this sub-part [now part] is to allow state chartered banks to issue preferred stock. This sub-part [now part] parallels 12 U.S.C. 51a, 51b and 51b-1, and Section 325.2(p) of Subchapter B of the regulations of the federal deposit insurance corporation [12 C.F.R. Section 325.2].

[1-19-87; 3-15-97; Recompiled 10/15/01]

12.16.21.7 DEFINITIONS:

The term "perpetual preferred stock" means a preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue; provided, however, that banks may issue floating rate preferred stock issues where the rate is constant in relation to some base rate.

[1-19-87; Recompiled 10/15/01]

12.16.21.8 AUTHORITY OF STATE BANKS TO ISSUE PREFERRED STOCK:

A. Subject to the provisions of this regulation, any state chartered bank may issue perpetual preferred stock.

B. Any state chartered bank may, with the prior approval of the director of the financial institutions division (director) and by vote of shareholders owning two-thirds of the voting stock of such bank, upon not less than five days notice given by registered mail or by certified mail pursuant to action taken by its board of directors, issue preferred stock of one or more classes, in such amount and with such par value, or change the amount or par value of previously authorized preferred stock as approved by the director, and make such amendments to its articles of incorporation as may be necessary for this purpose; but, in the case of preferred stock as approved by the director, and make such amendments to its any newly organized bank which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in and notice thereof, duly acknowledged before a notary public by the president, vice president or cashier of the bank, has been transmitted to the director and his certificate obtained specifying the amount of such issue of preferred stock and his approval, and that the amount has been duly paid in as a part of the capital of such bank; which certificate shall be deemed to be conclusive evidence that such preferred stock has been duly and validly issued.

C. The director in his discretion may withhold or grant approval as required by this Sub-Part [now part] after considering the factors set forth in Section 58-1-62 NMSA 1978 and whether the issue would unduly enrich insiders, contain dividend rates or other terms which are inconsistent with safe and sound banking practices, and in general whether the bank's actions would be consistent with safe and sound banking practices.

D. The holders of such preferred stock shall be entitled to receive such cumulative dividends and shall have such voting and conversion rights and such control of

management, and such stock shall be subject to retirement in such manner and upon such conditions, as may be provided in the articles of incorporation with the approval of the director.

E. If any part of the capital of bank consists of preferred stock, the determination of whether or not the capital of such bank is impaired and the amount of such impairment shall be based upon the par value of its stock even though the amount which the holders of such preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the par value of such preferred stock. The holders of preferred stock shall be entitled to receive such cumulative dividends on the purchase price received by the bank for such stock and, in the event of the retirement price, not in excess of such purchase price plus all accumulated dividends, as may be provided in the articles of incorporation with the approval of the director. If the association is placed in voluntary liquidation, or if a conservator or a receiver is appointed therefor, no payment shall be made to the holders of common stock until the holders of preferred stock shall have been paid in full such amount as may be provided in the articles of incorporation with the approval of the director, not in excess of such purchase price of such preferred stock plus all accumulated dividends.

F. Perpetual preferred stock legally issued by any bank shall be treated as capital for the purpose of computing the loan limits prescribed in Section 58-1-24 NMSA 1978, for determining the amount of money a state bank may borrow for temporary purposes as provided in Section 58-1-28 NMSA 1978, and for computing the amount that may be invested in banking premises under the provisions of Section 58-1-26 NMSA 1978.

[1-19-87; Recompiled 10/15/01]

PART 22: CAPITAL AND SURPLUS

12.16.22.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504

[6/15/98; Recompiled 10/15/01]

12.16.22.2 SCOPE:

All New Mexico state chartered banks.

[6/15/98; Recompiled 10/15/01]

12.16.22.3 STATUTORY AUTHORITY:

Section 58-1-51 NMSA 1978.

[6/15/98; Recompiled 10/15/01]

12.16.22.4 DURATION:

Five years beginning on the effective date.

[6/15/98; Recompiled 10/15/01]

12.16.22.5 EFFECTIVE DATE:

June 15, 1998, unless a later date is cited at the end of a section or paragraph.

[6/15/98; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.22.6 OBJECTIVE:

The objective of this sub-part [now part] is to establish a uniform and appropriate method of determining statutory limits that are based on the amount of a bank's "capital and surplus".

[6/15/98; Recompiled 10/15/01]

12.16.22.7 DEFINITIONS:

[RESERVED]

12.16.22.8 CAPITAL AND SURPLUS:

A. For the purpose of determining statutory limits that are based upon the bank's "capital and surplus" or equivalent terms the calculations shall be done using the bank's tier 1 and tier 2 capital plus the balance of the bank's allowance for loan and lease losses not included in the bank's tier 2 capital, as these components are prescribed by federal regulations, plus subordinated debt.

B. Statutory limits shall be calculated as of the most recent of the following dates: (1) the date of the most recently required federal financial institution examination council report of condition and income; or (2) when there is a change in the bank's capital category for the purposes of federal prompt corrective action regulations. The bank may also choose to calculate a statutory limit concurrently with a transaction.

C. The provisions of this sub-part [now part] apply to transactions originating after the effective date. Transactions originating prior to the effective date, including renewals

of credit originated prior to the effective date, shall be governed by the applicable limit at the time of origination.

[6/15/98; Recompiled 10/15/01]

Pre-NMAC Regulatory Filing History. The material in this part amends that previously filed with the State Records Center and Archives under:

Regulation 93-1B, Capital and Surplus, filed November 8, 1993.

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

PART 23-29: [RESERVED]

PART 30: ASSETS [RESERVED]

PART 31: [RESERVED]

PART 32: [RESERVED]

PART 33: SALE OF FEDERAL FUNDS

12.16.33.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[9/20/73; 3/15/97; Recompiled 10/15/01]

12.16.33.2 SCOPE:

All banks chartered by the state of New Mexico.

[3/15/97; Recompiled 10/15/01]

12.16.33.3 STATUTORY AUTHORITY:

Section 58-1-54 NMSA 1978.

[7/1/73; 3/15/97; Recompiled 10/15/01]

12.16.33.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.33.5 EFFECTIVE DATE:

September 20, 1973, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective March 15, 1997.

[9/20/73; 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.33.6 OBJECTIVE:

The objective of this sub-part [now part] is to bring state banks powers provided to national banks by 12 C.F.R. Section 32.102.

[3/15/97; Recompiled 10/15/01]

12.16.33.7 DEFINITIONS:

[RESERVED]

[3/15/97; Recompiled 10/15/01]

12.16.33.8 SALE OF FEDERAL FUNDS:

A transaction involving the sale and transfer by a state bank to another bank of a state bank's excess reserve funds for one business day only at a specified rate of interest, commonly referred to as the "sale of federal funds", does not create on the part of the buyer an obligation subject to Section 58-1-24 NMSA 1978, but is to be considered as a purchase and sale of such funds.

[9/20/73; 3/15/97; Recompiled 10/15/01]

PART 34: LOAN IN RELIANCE UPON PRIVATE MORTGAGE INSURANCE OR GUARANTY

12.16.34.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[11/15/73; 3/15/97; Recompiled 10/15/01]

12.16.34.2 SCOPE:

All banks chartered by the state of New Mexico.

[3/15/97; Recompiled 10/15/01]

12.16.34.3 STATUTORY AUTHORITY:

Section 58-1-54 NMSA 1978.

[11/15/73; 3/15/97; Recompiled 10/15/01]

12.16.34.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.34.5 EFFECTIVE DATE:

November 15 1973, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective March 15, 1997.

[11/15/73; 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.34.6 OBJECTIVE:

The objective of this sub-part [now part] is to bring state banks powers provided to national banks by Section 12 C.F.R. 34.3(a)(2).

[3/15/97; Recompiled 10/15/01]

12.16.34.7 DEFINITIONS:

[RESERVED]

[3/15/97; Recompiled 10/15/01]

12.16.34.8 LOAN IN RELIANCE UPON PRIVATE MORTGAGE INSURANCE OR GUARANTY:

Where a state bank makes a loan in substantial reliance upon private company mortgage insurance or guaranty, the loan does not constitute a real estate loan within the meaning of Section 58-1-21 NMSA 1978, to the extent of the insurance or guaranty. Appropriate evidence to demonstrate justification for such reliance should be retained in bank's files.

[11/15/73; 3/15/97; Recompiled 10/15/01]

PART 35: LEASING ACTIVITIES

12.16.35.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[1/31/74, 11/15/96; Recompiled 10/15/01]

12.16.35.2 SCOPE:

All banks chartered by the state of New Mexico.

[1/31/74; Recompiled 10/15/01]

12.16.35.3 STATUTORY AUTHORITY:

Section 58-1-26B NMSA 1978 and Section 58-1-54 NMSA 1978.

[1/31/74; Recompiled 10/15/01]

12.16.35.4 DURATION:

Permanent.

[1/31/74; Recompiled 10/15/01]

12.16.35.5 EFFECTIVE DATE:

January 31, 1974, unless a later date is cited at the end of a section or paragraph.

[1/31/74, 11/15/96; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.35.6 OBJECTIVE:

This regulation is promulgated for the purpose of granting to state banks powers similar to those granted to national bank by 12 C.F.R. Section 7.3300 and Section 7.3400.

[1/31/74, 11/15/96; Recompiled 10/15/01]

12.16.35.7 DEFINITIONS:

A. A "net lease" is a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

- (1) the servicing, repair or maintenance of the leased property during the lease term;
- (2) the purchasing of parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full payment requirements of this ruling;
- (3) the loan of replacement or substitute property while the leased property is being serviced;
- (4) the purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;
- (5) the renewal of any license or registration for the property unless such action by the bank is clearly necessary to protect its interest as an owner or financier of the property.

B. A "full-payout" lease is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property plus the estimated cost of financing the property over the term of the lease from:

- (1) rentals;
- (2) estimated tax benefits; and
- (3) the estimated residual value of the property at the expiration of the initial term of the lease.

[11/15/96; Recompiled 10/15/01]

12.16.35.8 LEASING ACTIVITIES:

A. A state bank may purchase or construct a municipal building, such as a school building or other similar public facility, and, as holder of legal title, lease the same to a municipality or other public authority having resources sufficient to make payment of all rentals as they become due. The lease agreement shall provide that upon its expiration the lessee will become owner of the building or facility.

B. A state bank may:

- (1) become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property at the request of the lessee who wishes to lease it from the bank; or

(2) become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(3) incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property. If the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease.

C. Full-payment calculations on leases of personal property to domestic governmental entities may be based on reasonably anticipated future transactions or renewals.

D. If in good faith a state bank believes that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in paragraphs 8.2 and 8.3 of this regulation [now Subsections B and C of 12.16.35.8 NMAC] shall not prevent the bank:

(1) as owner and lessor under a net, full-payout, lease, from taking reasonable and appropriate action to salvage and protect the value of the property or its interests arising under the lease; or

(2) as the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

E. The limitations in paragraphs 8.2 and 8.3 of this regulation [now Subsections B and C of 12.16.35.8 NMAC] do not prohibit a state bank from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs 8.4A and B of this regulation [now Paragraphs (1) and (2) of Subsection D of 12.16.35.8 NMAC].

[1/31/74, 11/15/96; Recompiled 10/15/01]

PART 36: INDIVIDUAL RETIREMENT ACCOUNTS AND SELF-EMPLOYED RETIREMENT TRUSTS

12.16.36.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[7/10/75; 3/15/97; Recompiled 10/15/01]

12.16.36.2 SCOPE:

All banks chartered by the state of New Mexico.

[3/15/97; Recompiled 10/15/01]

12.16.36.3 STATUTORY AUTHORITY:

Sections 58-1-17 and 58-1-51 NMSA 1978.

[7/10/75, 3/15/97; Recompiled 10/15/01]

12.16.36.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.36.5 EFFECTIVE DATE:

July 10, 1975, unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format effective March 15, 1997.

[7/10/75; 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.36.6 OBJECTIVE:

The objective is to permit any state bank that satisfies the requirements of this regulation to act as fiduciary to accept individual retirement accounts and self-employed retirement trusts.

[3/15/97; Recompiled 10/15/01]

12.16.36.7 DEFINITIONS:

[RESERVED]

[3/15/97; Recompiled 10/15/01]

12.16.36.8 INDIVIDUAL RETIREMENT ACCOUNTS AND SELF-EMPLOYED RETIREMENT TRUSTS:

A. Any state bank, which does not have a permit from the director to act as a fiduciary, but satisfies the requirements of Subsections A and B of Section 58-1-17 NMSA 1978 may accept individual retirement accounts and self-employed retirement

trusts established under the Employee Retirement Income Security Act of 1974, Public Law 93-406, if, pursuant to the terms, the accounts may be funded only in savings accounts or time deposits at the bank. State banks not approved by the director to act as fiduciaries may not establish and operate collective investment funds for these accounts.

B. State banks having permits from this office to act as fiduciaries may administer individual retirement accounts and self-employed retirement trusts established in a department of the bank other than its trust department, if the governing instrument of such account or trust directs all contributions to be invested in savings accounts or time deposits of the bank.

[7/10/75; Recompiled 10/15/01]

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

FID 75-7, Order 75-3, Regulation 75-3, Relating to State Banks, filed 7/10/75.

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

PART 37: REPURCHASE AGREEMENTS

12.16.37.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[4/1/82; 3/15/97; Recompiled 10/15/01]

12.16.37.2 SCOPE:

All banks chartered by the state of New Mexico.

[3/15/97; Recompiled 10/15/01]

12.16.37.3 STATUTORY AUTHORITY:

Section 58-1-51 NMSA 1978.

[4/1/82; 3/15/97; Recompiled 10/15/01]

12.16.37.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.37.5 EFFECTIVE DATE:

April 1, 1982, unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format effective March 15, 1997.

[4/1/82; 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.37.6 OBJECTIVE:

The objective of this regulation is to clarify the accounting treatment of repurchase agreements.

[3/15/97; Recompiled 10/15/01]

12.16.37.7 DEFINITIONS:

[RESERVED]

[3/15/97; Recompiled 10/15/01]

12.16.37.8 REPURCHASE AGREEMENTS:

The sale of securities by a state chartered bank, under an agreement to repurchase at the end of a stated period, is not a borrowing subject to Section 58-1-28 NMSA 1978.

[4/1/82; Recompiled 10/15/01]

PART 38: REAL ESTATE LENDING

12.16.38.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[5/9/85; 3/15/97; Recompiled 10/15/01]

12.16.38.2 SCOPE:

All banks chartered by the state of New Mexico.

[3/15/97; Recompiled 10/15/01]

12.16.38.3 STATUTORY AUTHORITY:

Section 58-1-54 NMSA 1978.

[5/9/85; Recompiled 10/15/01]

12.16.38.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.38.5 EFFECTIVE DATE:

May 9, 1985, unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format effective March 15, 1997.

[5/9/85; 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.38.6 OBJECTIVE:

The objective of this regulation is to bring to state banks authority held by national banks, so state banks can compete with national banks in real estate lending.

[5/9/85; Recompiled 10/15/01]

12.16.38.7 DEFINITIONS:

[RESERVED]

[3/15/97; Recompiled 10/15/01]

12.16.38.8 REGULATION REQUIREMENTS:

For the purposes of Subsection C of Section 58-1-21 NMSA 1978, the requirement for amortization shall be the same as required for national banks.

[5/9/85; Recompiled 10/15/01]

PART 39: BANK STOCK TAKEN AS SECURITY FOR DEBT PREVIOUSLY CONTRACTED

12.16.39.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[11/6/86; 3/15/97; Recompiled 10/15/01]

12.16.39.2 SCOPE:

All banks chartered by the state of New Mexico.

[11/6/86; Recompiled 10/15/01]

12.16.39.3 STATUTORY AUTHORITY:

Section 58-1-54 NMSA 1973.

[11/6/86; Recompiled 10/15/01]

12.16.39.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.39.5 EFFECTIVE DATE:

November 6, 1986, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective March 15, 1997.

[11/6/86; 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.39.6 OBJECTIVE:

The objective of this sub-part [now part] is to authorize state banks to obtain an assignment of bank stock or proceeds of the stockholders beneficial interest within the provisions stated herein. This power is provided to national banks by 12 C.F.R. Section 7.6030.

[3/15/97; Recompiled 10/15/01]

12.16.39.7 DEFINITIONS:

[RESERVED]

[3/15/97; Recompiled 10/15/01]

12.16.39.8 BANK STOCK TAKEN AS SECURITY FOR DEBT PREVIOUSLY CONTRACTED:

Notwithstanding the provisions of Section 58-1-21B NMSA 1978, the bank may obtain an assignment of bank stock or the proceeds of the stockholder's beneficial interest upon a debt previously contracted in good faith when necessary to prevent loss.

[11/6/86; Recompiled 10/15/01]

PART 40: OTHER REAL ESTATE OWNED

12.16.40.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504.

[11/26/90, 11/15/96; Recompiled 10/15/01]

12.16.40.2 SCOPE:

All banks chartered by the state of New Mexico.

[11/26/90; Recompiled 10/15/01]

12.16.40.3 STATUTORY AUTHORITY:

Section 58-1-51 NMSA 1978.

[11/26/90; Recompiled 10/15/01]

12.16.40.4 DURATION:

Permanent.

[11/26/90; Recompiled 10/15/01]

12.16.40.5 EFFECTIVE DATE:

November 26, 1990, unless a later date is cited at the end of a section or paragraph.

[11/26/90, 11/15/96; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.40.6 OBJECTIVE:

The objective of this sub-part [now part] is to clarify the Section 58-1-25D NMSA 1978 requirement for appraisals, for property of relatively low value transferred to other real estate owned.

[7/12/90, 11/26/90, 11/15/96; Recompiled 10/15/01]

12.16.40.7 DEFINITIONS:

[RESERVED]

[11/15/96; Recompiled 10/15/01]

12.16.40.8 OTHER REAL ESTATE OWNED:

Supplementary to Section 58-1-25D NMSA 1978:

A. The requirements a) for an appraisal upon transfer to other real estate owned, and b) a subsequent annual anniversary appraisal or letter certification are waived, if the entire property is recorded at or below the lower of five percent (5%) of the bank's equity capital (exclusive of valuation reserves) or \$50,000.00. The director may require an appraisal on a given property of lesser value at his discretion.

B. For other real estate owned recorded at or below \$250,000.00, the appraisal requirements prescribed will be waived, at the option of bank management, if the original book value of the property is charged off at a rate of ten percent (10%) for the first year, fifteen percent (15%) for the second year, twenty percent (20%) for the third year, twenty-five percent (25%) for the fourth year and thirty percent (30%) for the fifth year. Once this option is elected, it must be completed.

[7/12/90, 11/26/90, 11/15/96; Recompiled 10/15/01]

PART 41: INVESTMENTS IN COMMUNITY DEVELOPMENT

12.16.41.1 ISSUING AGENCY:

[Regulation and Licensing Department, Financial Institutions Division, 725 St. Michael's Drive, Santa Fe, New Mexico 87504.]

[11/8/93; Recompiled 10/15/01]

12.16.41.2 SCOPE:

This regulation is not applicable to investments in community development corporations established under Chapter 53, Article 7 NMSA 1978. The regulation parallels the Code of Federal Regulations, Title 12, Section 7.7480.

[11/8/93; Recompiled 10/15/01]

12.16.41.3 STATUTORY AUTHORITY:

[Sections 58-1-54 NMSA 1978.]

[11/8/93; Recompiled 10/15/01]

12.16.41.4 DURATION:

Permanent.

[Recompiled 10/15/01]

12.16.41.5 EFFECTIVE DATE:

Pursuant to the authority provided by Section 58-1-54 NMSA 1978, this regulation is issued on this 8th day of November, 1993, to be effective upon filing pursuant to the State Rules Act, Section 14-4-1 et seq NMSA 1978.

[11/8/93; Recompiled 10/15/01]

12.16.41.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/15/01]

12.16.41.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/15/01]

12.16.41.8 INVESTMENTS IN COMMUNITY DEVELOPMENT:

A. Occasionally banks are asked to contribute to community development corporations, business ventures or community development projects wherein the bank will receive an equity interest in or evidence of debt which may have value in the future, but which is clearly not a bankable asset by ordinary standards. Such "investment" may be made and charged off as a contribution. If the bank wishes to carry the investment

as an asset, the examiners will treat it as permissible under this regulation; provided that the following conditions are met:

(1) the project must be of a predominantly civic, community or public nature and not merely private and entrepreneurial;

(2) the bank's investment in any one project does not exceed two percent of its capital and surplus, and its aggregate investment in all such projects does not exceed five percent of its capital and surplus;

(3) such investments are accounted for on the bank's books under "other assets";

(4) such investments are clearly identified as being made under this regulation.

B. A bank must obtain prior written approval of the director of the financial institutions division for investments made under this regulation. The director may use comptroller of the currency banking circular BC-185 as guidance for application procedures and evaluation of potential investments.

[11/8/93; Recompiled 10/15/01]

PART 42: ACQUISITION OF PROPERTY TO SATISFY OR PROTECT PREVIOUS LOAN

12.16.42.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504.

[11/8/93, Recompiled 10/15/01]

12.16.42.2 SCOPE:

All banks chartered by the state of New Mexico.

[3/15/97; Recompiled 10/15/01]

12.16.42.3 STATUTORY AUTHORITY:

A. Section 58-1-51 NMSA 1978.

B. Section 58-1-54 NMSA 1978.

[11/8/93; Recompiled 10/15/01]

12.16.42.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.42.5 EFFECTIVE DATE:

November 8, 1993, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective March 15, 1997.

[11/8/93, 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.42.6 OBJECTIVE:

This objective of this sub-part [now part] is to bring to state banks equivalent powers provided to national banks. This regulation parallels portions of the United States Code, Title 12, Section 29 and the Code of Federal Regulations, Title 12, Section 7.3025 (j).

[3/15/97, Recompiled 10/15/01]

12.16.42.7 DEFINITIONS:

[RESERVED]

[3/15/97; Recompiled 10/15/01]

12.16.42.8 ACQUISITION OF PROPERTY TO SATISFY OR PROTECT PREVIOUS LOAN:

Supplementary to Section 58-1-25B NMSA 1978: a bank may expend funds for the development and improvement of such real estate to facilitate its sale; subject to approval by the director of the financial institutions division, and conditions and limitations the director may prescribe. Expenditures for such real estate development and improvement may be capitalized in other real estate owned. However, such advances may not be capitalized unless the bank maintains on file evidence that the advances will result in a more saleable property and are recoverable. The book value of the property may not exceed the estimated market value after development and improvement, or the market value established by the next appraisal required by paragraph D of Section 58-1-25 NMSA 1978.

[11/8/93; Recompiled 10/15/01]

PART 43-49: [RESERVED]

PART 50: MANAGEMENT [RESERVED]

PART 51: CLASSIFICATION AND RETENTION SCHEDULE FOR RECORDS

12.16.51.1 ISSUING AGENCY:

Department of Banking [Regulation and Licensing Department of the Financial Institutions Division]

[6/20/75; Recompiled 10/15/01]

12.16.51.2 SCOPE:

[RESERVED]

[Recompiled 10/15/01]

12.16.51.3 STATUTORY AUTHORITY:

[Section 48-22-33.5 NMSA 1953]

[6/20/75; Recompiled 10/15/01]

12.16.51.4 DURATION:

Permanent.

[Recompiled 10/15/01]

12.16.51.5 EFFECTIVE DATE:

[June 20, 1975]

[6/20/75; Recompiled 10/15/01]

12.16.51.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/15/01]

12.16.51.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/15/01]

12.16.51.8 CLASSIFICATION AND RETENTION OF PERMANENT AND NONPERMANENT BANK RECORDS:

WHEREAS, by the provisions of Section 48-22-33.5 of the statutes of the state of New Mexico, the undersigned commissioner of banking of the state of New Mexico is required to issue regulations classifying all records kept by the state banks and prescribing the period for which records of each class shall be retained; NOW THEREFORE, pursuant to the authority so vested in me and in conformity with such directive, it is ordered that the Schedule of Periods for the Retention of Permanent and Non-Permanent Bank Records issued October 25, 1967 is hereby repealed and the records kept by New Mexico state banks shall be classified and retained as follows:

A. Permanent records: In accordance with the provisions of law (Section 48-22-33.5) the following are hereby classified as permanent records which shall be retained permanently by all such banks, viz.: the minute books of meetings of executive committee, stockholders and directors, capital stock ledger and capital stock certificate ledger or stubs, general ledger, daily statements of condition, general journal, investment ledger, copies of bank examination reports, FDIC certificates; and charter.

B. Non-permanent records: All records of all such banks not classified hereby as permanent records are hereby classified as non-permanent records; and such non-permanent records shall be retained for the periods specified in the table annexed hereto and may thereafter be destroyed.

C. Applicability to national banks: The provisions of this order of the regulations and classifications hereby adopted shall be applicable to and inure to the benefit of national banks doing business in the state of New Mexico to the full extent permitted by law.

[6/20/75; Recompiled 10/15/01]

12.16.51.9 ORDER NO. 75-1, ADOPTING REGULATION 75-1:

A. The foregoing regulation is issued pursuant to authority of Section 48-22-33.5 (new section enacted effective June 20, 1975) of the Banking Act of 1963 under date of the 20th day of June 1975, and shall be effective on June 20, 1975. Herbert H. Hughes, Commissioner of Banking.

B. Certificate as to permanent record of this order: I, Herbert H. Hughes, commissioner of banking for the state of New Mexico, hereby certify that the foregoing regulation and the order promulgating said regulation have been entered in the office of the commissioner of banking in a book which is a public record. Herbert H. Hughes, Commissioner of Banking.

C. Certificate as to filing: I, Herbert H. Hughes, commissioner of banking for the state of New Mexico, hereby certify that seven copies of the foregoing regulation and the order promulgating said regulation have been deposited with the records and archives commission of the state of New Mexico, in accordance with the provisions of Chapter 275, Laws of 1967 of the State Rules Act of 1967, on this 20th day of June, 1975. Herbert H. Hughes, Commissioner of Banking.

[6/20/75; Recompiled 10/15/01]

PART 52-59: [RESERVED]

PART 60: OPERATING SUBSIDIARIES

12.16.60.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504.

[11/15/96; Recompiled 10/15/01]

12.16.60.2 SCOPE:

All banks chartered by the state of New Mexico.

[11/15/96; Recompiled 10/15/01]

12.16.60.3 STATUTORY AUTHORITY:

Sections 58-1-51 and 58-1-54 NMSA 1978.

[11/15/96; Recompiled 10/15/01]

12.16.60.4 DURATION:

Permanent.

[11/15/96; Recompiled 10/15/01]

12.16.60.5 EFFECTIVE DATE:

October 31, 1996, unless a later date is cited at the end of a section or paragraph.

[11/15/96; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.60.6 OBJECTIVE:

The objective of this regulation is to provide New Mexico state banks with authority to establish operating subsidiary corporations to conduct only business the bank could conduct directly. This authority is provided to national banks by 12 C.F.R. Section 5.34, Operating Subsidiaries.

[11/15/96; Recompiled 10/15/01]

12.16.60.7 DEFINITIONS:

A. "Activities that are part of the business of banking" means activities authorized by the New Mexico Banking Act.

B. "Activities that are incidental to the business of banking" means activities permissible under paragraphs 1863 and 1864(f) of the Bank Service Corporation Act (12 U.S.C. Sections 1861-1867), except as otherwise restricted by applicable state law; and other activities approved by the director of the financial institutions division.

[11/15/96; Recompiled 10/15/01]

12.16.60.8 OPERATING SUBSIDIARIES:

A. New Mexico state banks may engage in activities which are part of or incidental to the business of banking by means of an operating subsidiary corporation. In order to qualify as an operating subsidiary, the parent bank must own at least eighty percent of the voting stock of the corporation.

B. A state bank which intends to acquire, establish or perform new activities in an operating subsidiary shall apply for the prior approval of the director of the financial institutions division. The application shall include a strategic business plan for the proposed organization or activity, with form and content acceptable to the director. If the application is approved the director may impose one or more legal or supervisory conditions in connection with the approval.

C. All provisions of banking laws and regulations applicable to the operations of the parent bank shall be equally applicable to the operations of its operating subsidiaries.

D. Pertinent book figures of the parent bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations.

E. Each operating subsidiary shall be subject to examination and supervision by the director of the financial institutions division in the same manner and to the same extent as the parent bank, and shall be assessed a fee determined by the director to cover the cost of examination. If, upon examination, the director finds that the subsidiary is created or operated in violation of law or regulation or that the manner of operation is

unsafe or unsound, the bank will be directed to take appropriate remedial action, which may include disposing of all or part of the subsidiary.

[11/15/96; Recompiled 10/15/01]

PART 61: INVESTMENTS IN ENTERPRISES CONDUCTING BUSINESS RELATED TO BANKING

12.16.61.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504.

[11/15/96; Recompiled 10/15/01]

12.16.61.2 SCOPE:

All banks chartered by the state of New Mexico.

[11/15/96; Recompiled 10/15/01]

12.16.61.3 STATUTORY AUTHORITY:

Sections 58-1-51 and 58-1-54 NMSA 1978.

[11/15/96; Recompiled 10/15/01]

12.16.61.4 DURATION:

Permanent.

[11/15/96; Recompiled 10/15/01]

12.16.61.5 EFFECTIVE DATE:

October 31, 1996, unless a later date is cited at the end of a section or paragraph.

[11/15/96; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.61.6 OBJECTIVE:

The objective of this regulation is to confirm the authority of New Mexico state banks to invest and participate in businesses with various business organizational forms, which only conduct business a state bank could legally conduct directly.

[11/15/96; Recompiled 10/15/01]

12.16.61.7 DEFINITIONS:

"Activities that are incidental to the business of banking" means activities permissible under paragraphs 1863 and 1864(f) of the Bank Service Corporation Act (12 U.S.C. Sections 1861-1867), except as otherwise restricted by applicable state law; and other activities approved by the director of the financial institutions division.

[11/15/96; Recompiled 10/15/01]

12.16.61.8 BUSINESSES RELATED TO BANKING:

A. A state bank may invest and participate in business enterprises with various forms of business organization including, but not limited to, corporations, limited liability companies, limited partnerships and joint ventures; provided the following conditions are met:

(1) the activities of the enterprise in which the investment is made must be limited to activities that are part of or are incidental to the business of banking, and are legal activities for a state bank to conduct directly;

(2) the bank must be able to prevent the enterprise from engaging in activities that do not meet this standard;

(3) the bank's loss exposure must be limited as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise;

(4) the investment must be convenient or useful in carrying out the bank's business, and not merely a passive or speculative investment unrelated to that bank's business;

(5) the investment in an enterprise must not be more than five percent of the bank's tier one capital.

B. The enterprise in which the investment is made may include investment and participation by non-bank businesses; provided participation by the non-bank businesses is required to facilitate activities conducted by the enterprise, and is not merely a passive or speculative investment by the non-bank businesses.

C. A state bank which wishes to invest and participate in or perform new activities in an entity organized under this regulation shall apply for the prior approval of the director

of the financial institutions division. The application shall include a strategic business plan for the proposed organization or activity, with form and content acceptable to the director. If the application is approved the director may impose one or more legal or supervisory conditions in connection with the approval.

D. All provisions of banking laws and regulations applicable to the operations of the bank shall be equally applicable to the operations of the enterprise in which the investment is made.

E. Pertinent book figures of the bank and the enterprise shall be consolidated for the purpose of applying applicable statutory limitations.

F. Each enterprise in which a New Mexico state bank is the principal bank investor shall be subject to examination and supervision by the director of the financial institutions division in the same manner and to the same extent as the investing bank, and shall be assessed a fee determined by the director to cover the cost of examination. If, upon examination, the director finds that the enterprise is created or operated in violation of law or regulation or that the manner of operation is unsafe or unsound, the bank will be directed to take appropriate remedial action, which may include divesting its interest in the enterprise.

[11/15/96; Recompiled 10/15/01]

PART 62: RESERVE REQUIREMENTS

12.16.62.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504.

[12/8/83; 3/15/97; Recompiled 10/15/01]

12.16.62.2 SCOPE:

All banks chartered by the state of New Mexico.

[3/15/97; Recompiled 10/15/01]

12.16.62.3 STATUTORY AUTHORITY:

Section 58-1-51 NMSA 1978.

[12/8/83; 3/15/97; Recompiled 10/15/01]

12.16.62.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.62.5 EFFECTIVE DATE:

December 8, 1983, unless a different date is cited at the end of a section or paragraph. Reformatted in NMAC format effective March 15, 1997.

[12/16/82, 12/8/83; 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.62.6 OBJECTIVE:

The objective of this regulation is to require that state-chartered banks comply with the Federal Reserve System Regulation D, "Reserve Requirements of Depository Institutions".

[3/15/97; Recompiled 10/15/01]

12.16.62.7 DEFINITIONS:

[RESERVED]

[3/15/97; Recompiled 10/15/01]

12.16.62.8 RESERVE REQUIREMENTS:

A. For state chartered banks which are not members of the federal reserve system, reserves against deposits required under Section 58-1-20 NMSA 1978 shall be those reserves required of state chartered banks by Regulation D of the board of governors of the federal reserve system.

B. Compliance with the requirements under Regulation D, as same may be amended from time to time, shall be considered as compliance with all state requirements for reserves against deposits.

[12/16/82, 12/8/83, 3/15/97; Recompiled 10/15/01]

PART 63: [RESERVED]

PART 64: INVESTMENT IN SMALL BUSINESS INVESTMENT COMPANIES

12.16.64.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504.

[10/14/86, 3/15/97; Recompiled 10/15/01]

12.16.64.2 SCOPE:

All banks chartered by the state of New Mexico.

[3/15/97; Recompiled 10/15/01]

12.16.64.3 STATUTORY AUTHORITY:

Section 58-1-54 NMSA 1978.

[10/14/86; Recompiled 10/15/01]

12.16.64.4 DURATION:

Permanent.

[3/15/97; Recompiled 10/15/01]

12.16.64.5 EFFECTIVE DATE:

October 14, 1986, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective March 15, 1997.

[10/14/86, 3/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.64.6 OBJECTIVE:

The objective of this regulation is to bring to state banks powers provided to national banks by 15 U.S.C. Section 682(b).

[10/14/86; Recompiled 10/15/01]

12.16.64.7 DEFINITIONS:

"SBIC" means small business investment company.

[10/14/86; Recompiled 10/15/01]

12.16.64.8 INVESTMENT IN SMALL BUSINESS INVESTMENT COMPANIES:

Shares of stock in SBICs shall be eligible for purchase by state-chartered banks; except that in no event may any such bank acquire shares in any SBIC if, upon the making of that acquisition, the aggregate amount of shares in SBICs then held by the bank would exceed five percent (5%) of its capital and surplus.

[10/14/86; 3/15/97; Recompiled 10/15/01]

PART 65: LENDERS EXCHANGE [REPEALED]

PART 66: INTERPRETIVE REGULATION - EXTENSION AGREEMENTS WITH RESPECT TO PRECOMPUTED LOAN TRANSACTIONS

12.16.66.1 ISSUING AGENCY:

Regulation and Licensing Department, Financial Institutions Division.

[3/16/87; Recompiled 10/15/01]

12.16.66.2 SCOPE:

The regulation is applicable to Section 58-7-3.2 NMSA 1978 and is proposed to read as follows:

[3/16/87; Recompiled 10/15/01]

12.16.66.3 STATUTORY AUTHORITY:

The director of the financial institutions division hereby issues an interpretive regulation pursuant to the authority granted by Section 58-7-9E NMSA 1978, after receiving and considering comments from interested parties to whom this regulation is being submitted.

[3/16/87; Recompiled 10/15/01]

12.16.66.4 DURATION:

Permanent.

[3/16/87; Recompiled 10/15/01]

12.16.66.5 EFFECTIVE DATE:

This regulation becomes effective March 16, 1987 [filed March 18, 1987].

[3/16/87; Recompiled 10/15/01]

12.16.66.6 OBJECTIVE:

[RESERVED]

[3/16/87; Recompiled 10/15/01]

12.16.66.7 DEFINITIONS:

[RESERVED]

[3/16/87; Recompiled 10/15/01]

12.16.66.8 INTERPRETIVE REGULATION:

A. All extension agreements with respect to precomputed loan transactions subject to the Bank Installment Loan Act shall be governed by this regulation.

B. In computing the charge for extending (deferring) monthly installments:

(1) a rebate shall be computed as if the entire loan were being prepaid pursuant to Section 58-7-5 NMSA 1978 and deducted from the existing loan balance;

(2) the remainder shall be multiplied by one-twelfth of not more than the original annual percentage rate of the loan;

(3) the product shall be multiplied by the number of months or portion thereof by which payments will not be made;

(4) the result of these calculations is the amount to be charged to the borrower as a deferral fee; then

(5) the amount of the rebate computed in (1) shall be added back to the loan.

James W. Stretz, Director.

[3/16/87; Recompiled 10/15/01]

PART 67-68: [RESERVED]

PART 69: BANK SERVICE CORPORATIONS

12.16.69.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504.

[11/15/96; Recompiled 10/15/01]

12.16.69.2 SCOPE:

All banks chartered by the state of New Mexico.

[11/15/96; Recompiled 10/15/01]

12.16.69.3 STATUTORY AUTHORITY:

Sections 58-1-51 and 58-1-54 NMSA 1978.

[11/15/96; Recompiled 10/15/01]

12.16.69.4 DURATION:

Permanent.

[11/15/96; Recompiled 10/15/01]

12.16.69.5 EFFECTIVE DATE:

October 31, 1996, unless a later date is cited at the end of a section or paragraph.

[11/15/96; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.16.69.6 OBJECTIVE:

The objective of this regulation is to provide administrative procedures for state banks to establish bank service corporations under the Bank Service Corporation Act (12 U.S.C. Sections 1861 through 1867).

[11/15/96; Recompiled 10/15/01]

12.16.69.7 DEFINITIONS:

Definitions are the same as in the Bank Service Corporation Act.

[11/15/96; Recompiled 10/15/01]

12.16.69.8 BANK SERVICE CORPORATIONS:

A. New Mexico state banks may invest and participate in bank service corporations under the Bank Service Corporation Act and subject to its provisions.

B. Requests for approval:

(1) No regulatory approval is required for a New Mexico state bank to invest in a bank service corporation that will perform only the services described in 12 U.S.C. Section 1863.

(2) New Mexico state banks shall apply for the approval of the director of the financial institutions division prior to investing in a bank service corporation that will perform services other than those described in 12 U.S.C. Section 1863. The application shall include a business plan for the proposed organization, with form and content acceptable to the director.

C. Each bank service corporation in which a New Mexico state bank is the principal bank investor shall be subject to examination and supervision by the director of the financial institutions division to the same extent as the investing bank, and shall be assessed a fee determined by the director to cover the costs of examination.

[11/15/96; Recompiled 10/15/01]

PART 70: EARNINGS [RESERVED]

PART 71: LIQUIDITY [RESERVED]

PART 72: CONSUMER CREDIT BANKS [RESERVED]

PART 73: REMOTE FINANCIAL SERVICE UNITS [RESERVED]

PART 74: INTERSTATE DEPOSITORY INSTITUTIONS [RESERVED]

PART 75: LOAN PRODUCTION OFFICES

12.16.75.1 ISSUING AGENCY:

Regulation and Licensing Department, Financial Institutions Division.

[Recompiled 10/15/01]

12.16.75.2 SCOPE:

[RESERVED]

[Recompiled 10/15/01]

12.16.75.3 STATUTORY AUTHORITY:

This section is issued pursuant to the authority provided by Section 58-1-51 NMSA 1978.

[8/5/85; Recompiled 10/15/01]

12.16.75.4 DURATION:

Permanent.

[Recompiled 10/15/01]

12.16.75.5 EFFECTIVE DATE:

The regulation shall become effective upon filing pursuant to the State Rules Act (Section 14-4-12 to 14-4-9 NMSA 1978). Issued this 5 day of August, 1985.

[8/5/85; Recompiled 10/15/01]

12.16.75.6 OBJECTIVE:

It is the purpose of this regulation to allow a bank which receives prior approval by the financial institutions division to operate loan production offices (LPO) in New Mexico. The establishment and operation of an LPO by a bank shall not violate state branch banking restrictions provided that the LPO is operated in accordance with the provisions of this regulation.

[8/5/85; Recompiled 10/15/01]

12.16.75.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/15/01]

12.16.75.8 REGULATION:

A. Any bank may, subject to the provisions of this regulation, establish one or more LPOs anywhere in the state of New Mexico.

B. Before a bank establishes and operates an LPO in New Mexico, that bank shall obtain the approval of the director of the financial institutions division. A request by a bank for such approval shall state:

- (1) the location of the LPO,
- (2) the number of officers and other personnel to be employed at each location; and
- (3) the name and address of the bank at which loans will be approved or denied and disbursements made.

C. The director of the financial institutions division shall approve any request to establish an LPO unless the director finds that the proposed operation of such LPO violates the provisions of this regulation. If the director disapproves a request to establish an LPO in New Mexico, the objections shall be stated in writing, and the bank shall be given an opportunity to obviate such objections.

D. An LPO is limited to the following activities:

- (1) soliciting loans on behalf of its bank, or a branch thereof by any means which discloses the nature and limitations of the LPO;
- (2) providing information on loan rates and terms;
- (3) interviewing and counseling loan applicants; and
- (4) aiding customers in the completion of loan applications.

E. An LPO is prohibited from conducting the following activities:

- (1) signing or accepting notes, security agreements or other instruments obligating the loan customer to the bank;
- (2) delivering loan proceeds to the customer;
- (3) providing forms which enable the customer to open checking or savings accounts by mail;
- (4) counseling customers regarding any bank services except loan origination services;
- (5) advertising, stating or implying that the LPO provides services other than loan origination services;
- (6) providing information to bank customers at the LPO concerning the status of their deposit accounts;

(7) charging, or providing for the charging of, interest on loans running from a date prior to the time at which the proceeds of the loan are actually disbursed to the customer by the LPO's bank or a branch thereof;

(8) accepting of loan payments; or

(9) operating an off-premises unmanned terminal.

[8/5/85; Recompiled 10/15/01]

PART 76: APPLICABILITY OF HOME LOAN PROTECTION ACT

12.16.76.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.16.76.1 NMAC - N, 01/01/2004]

12.16.76.2 SCOPE:

All state chartered banks otherwise subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003, as amended through 2004) ("Act").

[12.16.76.2 NMAC - N, 01/01/2004; A, 06/15/2004]

12.16.76.3 STATUTORY AUTHORITY:

Sections 58-1-54 and 58-1-34 NMSA 1978.

[12.16.76.3 NMAC - N, 01/01/2004]

12.16.76.4 DURATION:

Permanent.

[12.16.76.4 NMAC - N, 01/01/2004]

12.16.76.5 EFFECTIVE DATE:

January 1, 2004, unless a later date is cited at the end of a section.

[12.16.76.5 NMAC - N, 01/01/2004]

12.16.76.6 OBJECTIVE:

The objective of this part is to grant state chartered banks the same powers and authority to engage in banking activity that federally chartered and insured depository institutions subject to the jurisdiction of the federal government are authorized, empowered, permitted or otherwise allowed to exercise.

[12.16.76.6 NMAC - N, 01/01/2004; A, 06/15/2004]

12.16.76.7 DEFINITIONS:

[RESERVED]

[12.16.76.7 NMAC - N, 01/01/2004]

12.16.76.8 FINDINGS:

A. Within the meaning of Sections 58-1-54 and 58-1-34 NMSA 1978, national banks, federal savings associations and federal credit unions operating in New Mexico are federally chartered and insured depository institutions subject to the jurisdiction of the federal government.

B. The office of thrift supervision, department of the treasury, the "OTS," is authorized by federal legislation to regulate and supervise federal savings associations throughout the United States.

C. The office of the comptroller of the currency, department of the treasury, the "OCC," is authorized by federal legislation to regulate and supervise national banks throughout the United States.

D. The national credit union administration, the "NCUA," is authorized by federal legislation to regulate and supervise federal credit unions throughout the United States.

E. On September 2, 2003 the OTS issued a letter ruling (the "OTS preemption") clarifying the fact that the following sections and subsections of the act (the "preempted sections of the act") are pre-empted by federal law from applying to federal savings associations operating in New Mexico:

(1) Section 58-21A-4.A. and B. (prohibited practices and provisions regarding home loans);

(2) Section 58-21A-5.A., B., C., D., E., G., H., I., J., K., L., M., N., O., and P (limitations and prohibited practices for high-cost home loans);

(3) Section 58-21A-6.A., B., C., D., and E. (default; notice; right to cure);

(4) Section 58-21A-9.A., B., and C. (civil action);

- (5) Section 58-21A-11.B. and C. (actions based on home loans);
- (6) Section 58-21A-12. (application of Unfair Practices Act); and
- (7) Section 58-21A-13. (attorney general; enforcement of rules).

F. Based upon the OTS preemption, effective January 1, 2004, federal savings associations in New Mexico are authorized to engage in certain banking activities otherwise prohibited by the act.

G. Effective February 12, 2004, the OCC published a final rule that states, in pertinent part: "state laws that obstruct, impair, or condition a national bank's ability to fully exercise its federally authorized real estate lending powers do not apply to national banks" (the "OCC preemption").

H. Based on the OCC preemption, since January 1, 2004, national banks in New Mexico have been authorized to engage in certain banking activities otherwise prohibited by the act.

I. On February 10, 2004 the NCUA issued a letter opinion stating that because the act purports to limit or affect the rates, terms of repayment, and other conditions of loans and lines of credit that federal credit unions may offer to their members, the act is preempted by federal law from applying to federal credit unions in New Mexico (the "NCUA preemption").

J. Based upon the NCUA preemption, since January 1, 2004, federal credit unions in New Mexico have been authorized to engage in certain banking activities otherwise prohibited by the act.

K. New Mexico state chartered banks will be placed at a competitive economic disadvantage if authorization is not given for state chartered banks to engage in the same banking activity that national banks, federal credit unions and federally chartered and insured savings associations are authorized to engage in in New Mexico as a result of the OCC, NCUA and OTS preemptions.

[12.16.76.8 NMAC - N, 01/01/2004; A, 06/15/2004]

12.16.76.9 AUTHORITY:

State chartered banks are provided the same powers and authority granted to federal savings associations, national banks and federal credit unions as a result of the OTS, OCC and NCUA preemptions.

[12.16.76.9 NMAC - N, 01/01/2004; A, 06/15/2004]

CHAPTER 17: CREDIT UNIONS

PART 1: GENERAL PROVISIONS

12.17.1.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504

[10/31/97; Recompiled 10/15/01]

12.17.1.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[10/31/97; Recompiled 10/15/01]

12.17.1.3 STATUTORY AUTHORITY:

Section 58-11-3(C) NMSA 1978.

[10/31/97; Recompiled 10/15/01]

12.17.1.4 DURATION:

Five years beginning on the effective date.

[10/31/97; Recompiled 10/15/01]

12.17.1.5 EFFECTIVE DATE:

October 31, 1997, unless a later date is cited at the end of a section or paragraph.

[10/31/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.1.6 OBJECTIVE:

The objective of this part is to establish definitions of terms used in the Credit Union Act.

[10/31/97; Recompiled 10/15/01]

12.17.1.7 DEFINITIONS:

A. "Director" means the director of the financial institutions division of the regulation and licensing department.

B. "Risk assets" as used in the act means all assets except the following categories:

- (1) cash on hand (includes foreign currency converted into U.S. dollar equivalents);
- (2) collected deposits or shares in federally insured banks, savings and loan associations and natural person credit unions having a remaining maturity of five years or less and not to exceed \$100,000;
- (3) collected deposits or shares in a corporate credit union having a remaining maturity of five years or less, other than membership capital share deposit accounts as defined in NCUA Rules and Regulations Part 704;
- (4) assets are insured by, fully guaranteed as to principal and interest by or due from the United States or any agency thereof, this state or any political subdivision thereof, the federal national mortgage association or the government national mortgage association having a maturity of five years or less;
- (5) loans to students insured under the provisions of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. Section 1071 et seq.) or similar insurance programs of this state;
- (6) loans having a remaining maturity of three years or less and are fully or partially insured or guaranteed by the United States, this state or any agency of either;
- (7) common trust investments which deal in investments authorized by the Credit Union Act;
- (8) prepaid expenses;
- (9) accrued interest on non-risk investments;
- (10) fixed assets as defined in NCUA Rules and Regulations Section 701.36 (b);
- (11) loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;
- (12) loans purchased from liquidating credit unions and guaranteed by the national credit union administration;
- (13) national credit union share insurance fund guaranty accounts established with the authorization of the national credit union administration under the authority of Title II of the Federal Credit Union Act Section 208(a) (1); and

(14) investments in shares of the national credit union administration central liquidity facility.

[10/31/97; Recompiled 10/15/01]

PART 2: CREDIT UNION BRANCHES

12.17.2.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100

[11/14/90; 9/30/97; Recompiled 10/15/01]

12.17.2.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[11/14/90; 9/30/97; Recompiled 10/15/01]

12.17.2.3 STATUTORY AUTHORITY:

Section 58-11-14 NMSA 1978.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.17.2.4 DURATION:

Permanent.

[11/14/90; 9/30/97; Recompiled 10/15/01]

12.17.2.5 EFFECTIVE DATE:

November 14, 1990, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format September 30, 1997.

[11/14/90; 9/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.2.6 OBJECTIVE:

The objective of this part is to establish the procedure for establishing a credit union branch.

[11/14/90; 9/30/97; Recompiled 10/15/01]

12.17.2.7 DEFINITIONS:

"Branch" means any branch credit union, branch office, branch agency, additional office or any branch place of business located in this state or in any other of the United States where such location could be accomplished in compliance with applicable state law, at which deposits to members' accounts are accepted or money lent.

[11/14/90; 9/30/97; Recompiled 10/15/01]

12.17.2.8 CREDIT UNION BRANCHES:

A credit union desiring to establish a branch shall give the director notice thereof on a form prescribed by the director. The director shall advise the credit union within 30 days following receipt of said notice that he has no objection to the branch, unless he is of the opinion that: (a) the proposed branch would not be beneficial to and would not serve the needs of the credit union's members, or (b) the operation of the proposed branch would substantially adversely affect the earnings and reserves of the credit union. If the director fails to act on said notice within such 30 days, such inaction shall be deemed and considered as no objection by the director. In the event that the director is of the opinion that either of the two factors above set forth does exist, he shall by letter so advise the credit union and shall set a hearing on the establishment of the branch, which setting shall be within 30 days of the date of said letter. At the hearing the credit union shall be afforded the opportunity of refuting such evidence as the director may cause to be presented on the factors above set forth. Following such hearing the director shall enter an order setting forth his findings and conclusions.

[11/14/90; 9/30/97; Recompiled 10/15/01]

PART 3: MERGERS OF CREDIT UNIONS: RESULTING STATE CREDIT UNION

12.17.3.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.3.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.3.3 STATUTORY AUTHORITY:

Sections 58-11-3 and 58-11-59 NMSA 1978.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.17.3.4 DURATION:

Permanent.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.3.5 EFFECTIVE DATE:

October 19, 1990, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC effective 9/30/97.

[10/19/90; 9/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.3.6 OBJECTIVE:

The objective of this part is to regulate mergers of state credit unions.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.3.7 DEFINITIONS:

[RESERVED]

12.17.3.8 MERGERS OF CREDIT UNIONS: RESULTING STATE CREDIT UNION:

A. The board of directors of each merging credit union shall, by a majority of the entire board, approve a merger plan which shall include:

(1) a statement or recital that the agreement is subject to approval by the director of the financial institutions division and has been approved by a majority vote of the members of each merging credit union;

(2) the name of each merging credit union and location of each branch office;

(3) individual financial reports for each merging credit union;

(4) consolidated financial reports;

- (5) proposed share adjustments;
- (6) provisions with respect to notification and payment of creditors of each merging credit union;
- (7) explanation of any changes relating to insurance of members' shares and deposits resulting from the merger;
- (8) with respect to the resulting credit union:
 - (a) the name and location of the principal and other offices;
 - (b) the name and residence of each director to serve until the next annual meeting of the members; and
 - (c) the amendment to its charter and bylaws;
- (9) such other provisions as the director of financial institutions division may require to enable him to discharge his duties with respect to the merger.

B. After approval by the board of directors of each merging state credit union, the merger plan shall be submitted to the director of financial institutions division for approval. In addition, each merging credit union shall submit the time and place of meeting of the board of directors at which the plan was agreed upon; the vote of the majority of the board of directors in favor of the plan; a copy of the resolution or other action by which the plan was agreed upon; and, if applicable, documents required by Section 58-11-10 NMSA 1978 to form a new credit union.

C. After receipt of the documents specified in paragraphs 8.1 and 8.2 [now Subsections A and B of 12.17.3.8 NMAC], and if they contain the requisite information, the director of the financial institutions division shall preliminarily approve the merger plan.

D. After preliminary approval has been granted, each merging credit union shall conduct the membership vote on its participation in the plan required by Section 58-11-59(D) NMSA 1978, unless the director has waived such vote under Section 58-11-59(E) NMSA 1978.

E. The director shall grant final approval once he determines, based on the record submitted by each merging credit union pursuant to of Section 58-11-59(D) NMSA 1978, that the requirements for the membership vote have been met, and if he approves the formation of any new credit union resulting from the merger under Section 58-11-10 NMSA 1978.

F. If the director of the financial institutions division disapproves any plan, the objections shall be stated in writing and the merging credit unions shall be given an opportunity to amend the merger plan to address such objections.

G. Upon the completion of the merger, the board of directors of the surviving credit union shall submit:

- (1) certification of the completion of the merger to the director of the financial institutions division and the regional director of the national credit union administration;
- (2) financial reports of the surviving credit union;
- (3) the charters of the merging credit union; and
- (4) the insurance certificates for the merging credit unions.

H. If the director of the financial institutions division is satisfied that the merger has been accomplished in accordance with the merger plan, cancellation of the charters of the credit unions which have lost their identities in the merger shall be effected.

[10/19/90; 9/30/97; Recompiled 10/15/01]

PART 4: CREDIT UNION SERVICE ORGANIZATION

12.17.4.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.4.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.4.3 STATUTORY AUTHORITY:

Section 58-11-56(F) NMSA 1978.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.17.4.4 DURATION:

Permanent.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.4.5 EFFECTIVE DATE:

October 19, 1990, unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format 9/30/97.

[10/19/90; 9/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.4.6 OBJECTIVE:

The objective of this part is to provide for the formation of credit union service organizations by state credit unions.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.4.7 DEFINITIONS:

A. "Credit union service organization" is an entity defined in Sections 107(5) (D) and 107(7) (I) of the Federal Credit Union Act (12 U.S.C. Sections 1757(5) (D) and 1757(7) (I) and Part 701.27 of the NCUA Rules and Regulations [12 C.F.R. Section 701.27].

B. "Paid-in and unimpaired capital and surplus" means the balance of the paid-in share accounts and deposits, less any loss that may have been incurred for which there is no reserve or which has not been charged against undivided earnings, plus the credit balance (or less the debit balance) of the undivided earnings account, after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom. Reserves shall not be considered as part of surplus.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.4.8 CREDIT UNION SERVICE ORGANIZATIONS:

A. The purpose of a credit union service organization is to provide those goods and services and perform those functions that are associated with routine credit union operations. It may provide any or all of the following functions or services:

(1) credit card and debit card services, ATM services, accounting systems, data processing, management training and support, payment item processing, record retention and storage, locator services, research services, debt collection services, credit analysis and loan servicing and coin and currency services;

(2) family financial services including, but not limited to, financial planning and counseling, including retirement counseling, estate planning and income tax preparation, developing and administering IRA and Keogh plans and other personal benefit plans and provision of trust services including acting as trustee or in any other similar fiduciary capacity;

(3) personal property leasing and developing of leasing plans; and

(4) other services, as determined by the director, that are associated with the routine operation of credit unions.

B. A credit union may, either by itself or in agreement with other entities, form or invest in a credit union service organization.

C. A credit union investing in or lending to a credit union service organization must submit call reports or any other information upon request by the director. In addition, a credit union service organization shall be subject to examination by the financial institutions division.

D. A credit union may invest in and lend to a credit union service organization within the following limits:

(1) in shares, stocks or obligations of a credit union service organization, up to one percent of the total paid-in and unimpaired capital and surplus of the credit union, with the approval of the director;

(2) in loans to credit union service organizations, up to one percent of the total paid-in and unimpaired capital and surplus of the credit union, with the approval of the credit union's board of directors.

[10/19/90; 9/30/97; Recompiled 10/15/01]

PART 5: TRUSTEES AND CUSTODIANS OF PENSION PLANS

12.17.5.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.5.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.5.3 STATUTORY AUTHORITY:

Sections 58-11-20 and 58-11-54 NMSA 1978.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.17.5.4 DURATION:

Permanent.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.5.5 EFFECTIVE DATE:

October 19, 1990, unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format 9/30/97.

[10/19/90; 9/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.5.6 OBJECTIVE:

The objective of this part is to enable credit unions to act as trustees or custodians of retirement plans of their members.

[10/19/90; 9/30/97; Recompiled 10/15/01]

12.17.5.7 DEFINITIONS:

[RESERVED]

12.17.5.8 TRUSTEES AND CUSTODIANS OF PENSION PLANS:

A credit union may act as trustee or custodian of individual retirement plans of its members established pursuant to the Employee Retirement Income Security Act of 1974 or self-employed retirement plans established pursuant to the Self-employed Individuals Retirement Act of 1962, provided that the following conditions are met:

A. all contributions of the funds are initially made to a share, share certificate or deposit account in the credit union;

B. any subsequent transfer of funds to other assets is solely at the direction of the member, and the credit union exercises no investment discretion and provides no

investment advice with respect to the plan assets (i.e., the credit union performs only custodial duties);

C. the member is clearly notified of the fact that share and deposit insurance coverage by the national credit union administration is limited to funds held in share, share certificate or deposit accounts of the credit union; and

D. the credit union complies with all applicable provisions of the Federal Credit Union Act, the national credit union administration rules and regulations as applied by the director of the financial institutions division, and applicable laws and regulations as may be promulgated by the secretary of labor, the secretary of the treasury or any other authority exercising jurisdiction over such trust or custodial accounts.

[10/19/90; 9/30/97; Recompiled 10/15/01]

PART 6: INVESTMENTS

12.17.6.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[11/8/93; 9/30/97; Recompiled 10/15/01]

12.17.6.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[11/8/93; 9/30/97; Recompiled 10/15/01]

12.17.6.3 STATUTORY AUTHORITY:

Section 58-11-3(C) NMSA 1978.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.17.6.4 DURATION:

Permanent.

[11/8/93; 9/30/97; Recompiled 10/15/01]

12.17.6.5 EFFECTIVE DATE:

November 8, 1993 unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective 9/30/97.

[11/8/93; 9/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.6.6 OBJECTIVE:

The objective of this part is to provide for the investment of excess funds in other financial institutions by credit unions.

[11/8/93; 9/30/97; Recompiled 10/15/01]

12.17.6.7 DEFINITIONS:

[RESERVED]

12.17.6.8 INVESTMENTS:

A. Supplemental to Section 58-11-56(C) and (D) NMSA 1978, credit unions may invest funds not required to satisfy member loan demands in the following:

(1) financial institutions that are insured by an agency of the federal government; and

(2) credit unions, central credit unions or corporate credit unions that are insured by the national credit union administration.

B. In the event that any portion of a deposit or investment account held by a credit union pursuant to Section 58-11-56(C) and (D) NMSA 1978 is not federally insured, the credit union shall analyze the credit quality of the issuing financial institution prior to making the deposit and record the credit quality decision in the records of the credit union.

[11/8/93; 9/30/97; Recompiled 10/15/01]

PART 7: [RESERVED]

PART 8: RECORDS, ACCOUNTING SYSTEMS AND PROCEDURES

12.17.8.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.

[10/31/97; Recompiled 10/15/01]

12.17.8.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[10/31/97; Recompiled 10/15/01]

12.17.8.3 STATUTORY AUTHORITY:

Section 58-11-3(C) NMSA 1978.

[10/31/97; Recompiled 10/15/01]

12.17.8.4 DURATION:

Permanent beginning on the effective date.

[10/31/97; Recompiled 10/15/01]

12.17.8.5 EFFECTIVE DATE:

October 31, 1997, unless a later date is cited at the end of a section or paragraph.

[10/31/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.8.6 OBJECTIVE:

The objective of this part is to establish a definition of records maintenance and accounting systems and procedures pursuant to Section 58-11-6(A) NMSA 1978.

[10/31/97; Recompiled 10/15/01]

12.17.8.7 DEFINITIONS:

A. "Full and fair disclosure" means the level of disclosure which a prudent person would provide to a member of a credit union, the financial institutions division, the national credit union administration or, at the discretion of the board of directors, a creditor in order to fairly inform any or all of them of the financial condition and the results of operations of the credit union at any given time.

B. "Record maintenance and accounting systems and procedures" means the use of an accounting method provided for in the accounting manual for federal credit unions, which shall be either the modified cash basis or the accrual basis of accounting and the

use of appropriate financial statements described in the accounting manual referenced above.

[10/31/97; Recompiled 10/15/01]

12.17.8.8 ISSUING AUTHORITY:

The issuing agency is responsible for ensuring that the requirements set forth in this part have been complied with.

[10/31/97; Recompiled 10/15/01]

12.17.8.9 DISCLOSURE AND ACCOUNTING:

Full and fair disclosure is the level of disclosure a prudent person would provide to a member of a credit union, NCUA, this division or a creditor in order to fairly inform them of the financial condition and the results of operations. While it is one consideration when deciding on the amount to set aside in a reserve, fair representation is also a component when making appropriate board policies and procedures, implementing relevant corrective action requests and/or securing adequate credit commitments for the credit union.

[10/31/97; Recompiled 10/15/01]

PART 9: RECORD RETENTION

12.17.9.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504.

[10-31-97; Recompiled 10/15/01]

12.17.9.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[10-31-97; Recompiled 10/15/01]

12.17.9.3 STATUTORY AUTHORITY:

Section 58-11-3(C) NMSA 1978.

[10-31-97; Recompiled 10/15/01]

12.17.9.4 DURATION:

Permanent beginning on the effective date.

[10-31-97; Recompiled 10/15/01]

12.17.9.5 EFFECTIVE DATE:

October 31, 1997, unless a later date is cited at the end of a section or paragraph.

[10-31-97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.9.6 OBJECTIVE:

The objective of this part is to establish a definition of record retention pursuant to Subsection B of Section 58-11-6 NMSA 1978.

[10-31-97; Recompiled 10/15/01]

12.17.9.7 DEFINITIONS:

"Record retention" means the off-site preservation of vital records.

[10-31-97; Recompiled 10/15/01]

12.17.9.8 ISSUING AUTHORITY:

The issuing agency is responsible for ensuring that the requirements set forth in this part have been complied with.

[10-31-97; Recompiled 10/15/01]

12.17.9.9 REQUIREMENTS FOR NCUA INSURANCE:

State chartered credit unions, insured pursuant to Title II of the Federal Credit Union Act and Part 741.215 of NCUA Rules and Regulations, must maintain a records preservation program as prescribed by NCUA Rules and Regulations Part 749.

[10-31-97; Recompiled 10/15/01]

PART 10: REPORTS AND FORMS

12.17.10.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department. Post Office Box 25101, Santa Fe, New Mexico 87504.

[10-31-97; Recompiled 10/15/01]

12.17.10.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[10-31-97; Recompiled 10/15/01]

12.17.10.3 STATUTORY AUTHORITY:

Section 58-11-3(C) NMSA 1978.

[10-31-97; Recompiled 10/15/01]

12.17.10.4 DURATION:

Permanent beginning on the effective date.

[10-31-97; Recompiled 10/15/01]

12.17.10.5 EFFECTIVE DATE:

October 31, 1997, unless a later date is cited at the end of a section or paragraph.

[10-31-97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.10.6 OBJECTIVE:

The objective of this part is to establish a definition of semi-annual reports and forms pursuant to Section 58-11-7(A) NMSA 1978.

[10-31-97; Recompiled 10/15/01]

12.17.10.7 DEFINITIONS:

[RESERVED]

12.17.10.8 ISSUING AUTHORITY:

The issuing agency is responsible for ensuring that the requirements set forth in this part have been complied with.

[10-31-97; Recompiled 10/15/01]

12.17.10.9 REQUIREMENTS FOR NCUA INSURANCE:

State chartered credit unions who are insured pursuant to Title II of the Federal Credit Union Act [29 U.S.C. Section 1781 et seq.], shall file semi-annual and/or [sic] quarterly financial and statistical reports on NCUA 5300 forms pursuant to NCUA Rules and Regulations Part 741.6 [12 C.F.R. Section 7416].

[10-31-97; Recompiled 10/15/01]

PART 11: MINIMUM FIDELITY BOND REQUIREMENTS

12.17.11.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department. Post Office Box 25101, Santa Fe, New Mexico 87504.

[10/31/97; Recompiled 10/15/01]

12.17.11.2 SCOPE:

All credit unions chartered by the state of New Mexico.

[10/31/97; Recompiled 10/15/01]

12.17.11.3 STATUTORY AUTHORITY:

Section 58-11-3(C) NMSA 1978.

[10/31/97; Recompiled 10/15/01]

12.17.11.4 DURATION:

Permanent beginning on the effective date.

[10/31/97; Recompiled 10/15/01]

12.17.11.5 EFFECTIVE DATE:

October 31, 1997, unless a later date is cited at the end of a section or paragraph.

[10/31/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.17.11.6 OBJECTIVE:

The objective of this part is to establish a definition of the minimum fidelity bond requirements pursuant to Section 58-11-36(A)(2) NMSA 1978.

[10/31/97; Recompiled 10/15/01]

12.17.11.7 DEFINITIONS:

[RESERVED]

12.17.11.8 ISSUING AUTHORITY:

The issuing agency is responsible for ensuring that the requirements set forth in this part have been complied with.

[10/31/97; Recompiled 10/15/01]

12.17.11.9 REQUIREMENTS FOR NCUA INSURANCE:

State chartered credit unions who [sic] are insured pursuant to Title II of the Federal Credit Union Act must possess the minimum fidelity bond coverage stated in Part 701.20 of the NCUA Rules and Regulations pursuant to Part 741.201(a).

[10/31/97; Recompiled 10/15/01]

PART 12: QUALIFIED EXTERNAL AUDITORS

12.17.12.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, P. O. Box 25101, Santa Fe, New Mexico 87504.

[12.17.12.1 NMAC – N, 8/14/2000]

12.17.12.2 SCOPE:

All credit unions chartered by the State Of New Mexico.

[12.17.12.2 NMAC – N, 8/14/2000]

12.17.12.3 STATUTORY AUTHORITY:

Sections 58-11-3 & 58-11-38 NMSA 1978.

[12.17.12.3 NMAC – N, 8/14/2000]

12.17.12.4 DURATION:

Permanent

[12.17.12.4 NMAC – N, 8/14/2000]

12.17.12.5 EFFECTIVE DATE:

August 14, 2000 unless a later date is cited in the history note at the end of a section.

[12.17.12.5 NMAC – N, 8/14/2000]

12.17.12.6 OBJECTIVE:

The objective is to establish requirements for qualifying a person or firm to perform a comprehensive annual audit of the books and affairs of any credit union where an audit by a certified public accountant would cost 5% or more of the credit union's previous year's net income.

[12.17.12.6 NMAC – N, 8/14/2000]

12.17.12.7 DEFINITIONS:

[RESERVED]

[12.17.12.7 NMAC – N, 8/14/2000]

12.17.12.8 QUALIFIED EXTERNAL AUDITORS:

A. The supervisory committee of a qualified credit union [with concurrence by the board of directors] may show proof of exceeding the 5% standard and develop an alternate audit plan to utilize a person or firm that is not a certified public accountant or experienced in credit union audits to lessen the financial impact of the audit on the credit union. This plan must be acceptable to and approved by the Financial Institutions Division.

B. The plan must be submitted to the Financial Institutions Division for approval at least 30 days prior to implementation. The request should include the following qualification information regarding the person or firm included in the plan:

- (1) Resume [of principals involved in the audit]

- (2) Background in accounting internal routines and controls
- (3) Knowledge of account and cash reconciliation
- (4) Knowledge of journal entry and adjusting
- (5) Knowledge of financial institution regulatory laws [i.e. Bank Secrecy Act, etc.]

[12.17.12.8 NMAC – N, 8/14/2000]

PART 13: APPLICABILITY OF HOME LOAN PROTECTION ACT

12.17.13.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.17.13.1 NMAC - N, 3/31/2004]

12.17.13.2 SCOPE:

All state chartered credit unions otherwise subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2004) ("Act").

[12.17.13.2 NMAC - N, 3/31/2004]

12.17.13.3 STATUTORY AUTHORITY:

Section 58-11-20 NMSA 1978.

[12.17.13.3 NMAC - N, 3/31/2004]

12.17.13.4 DURATION:

Permanent.

[12.17.13.4 NMAC - N, 3/31/2004]

12.17.13.5 EFFECTIVE DATE:

March 31, 2004, unless a later date is cited at the end of a section.

[12.17.13.5 NMAC - N, 3/31/2004]

12.17.13.6 OBJECTIVE:

The objective of this part is to grant state chartered credit unions the same powers and authority that federally chartered credit unions are authorized, empowered, permitted or otherwise allowed to exercise.

[12.17.13.6 NMAC - N, 3/31/2004]

12.17.13.7 DEFINITIONS:

A. "Director" means the director of the financial institutions division of the regulation and licensing department.

B. "Division" means the financial institutions division of the regulation and licensing department.

[12.17.13.7 NMAC - N, 3/31/2004]

12.17.13.8 FINDINGS:

A. Section 58-11-20 NMSA 1978, authorizes the director to grant by regulation the powers and authority that federal credit unions are authorized, empowered, permitted or otherwise allowed to exercise under federal statutes, rules or regulations.

B. The national credit union administration ("NCUA") is authorized by federal legislation to regulate and supervise federally chartered credit unions throughout the United States.

C. By regulation, the NCUA has determined that federal law preempts any state law that regulates the rates, terms of repayment and other conditions of federally chartered credit union loans and lines of credit to members. (Code of Federal Regulations Section 701.21(b)).

D. On February 10, 2004, the NCUA issued a letter ruling regarding "preemption of the New Mexico Home Loan Protection Act" ("NCUA Preemption") clarifying the fact that the New Mexico Home Loan Protection Act is preempted by federal law from applying to federally chartered credit unions operating in New Mexico.

[12.17.13.8 NMAC - N, 3/31/2004]

12.17.13.9 AUTHORITY:

State chartered credit unions are provided the same powers and authority granted to federally chartered credit unions as a result of the NCUA Preemption.

[12.17.13.9 NMAC - N, 3/31/2004]

CHAPTER 18: LOAN COMPANIES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: LENDERS' EXCHANGES [REPEALED]

[This part was repealed on 9/15/2018]

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

FID 76-2, Order 64-102, Regulation 76-1, Establishment of Lenders Exchange, filed 4/14/76.

History of Repealed Material:

12.18.2 NMAC, Lenders' Exchanges, filed 5/1/1976 - Repealed effective 9/15/2018.

PART 3: MANDATORY BROCHURE FOR SMALL LOAN BUSINESS

12.18.3.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.18.3.1 NMAC - N, 10/1/2001; A, 08/13/2004]

12.18.3.2 SCOPE:

Loan companies conducting Small Loan Business in the State of New Mexico.

[12.18.3.2 NMAC - N, 10/1/2001]

12.18.3.3 STATUTORY AUTHORITY:

Section 58-15-11 NMSA 1978.

[12.18.3.3 NMAC - N, 10/1/2001]

12.18.3.4 DURATION:

Permanent.

[12.18.3.4 NMAC - N, 10/1/2001]

12.18.3.5 EFFECTIVE DATE:

October 1, 2001 unless a later date is cited at the end of a section.

[12.18.3.5 NMAC - N, 10/1/2001]

12.18.3.6 OBJECTIVE:

The objective of this part is to require a mandatory informational brochure to be readily available for all small loan consumers.

[12.18.3.6 NMAC - N, 10/1/2001]

12.18.3.7 DEFINITIONS:

[RESERVED]

[12.18.3.7 NMAC - N, 10/1/2001]

12.18.3.8 MANDATORY BROCHURE FOR SMALL LOAN BUSINESS:

A. All small loan companies licensed by the state of New Mexico must have an informational brochure readily available to all small loan consumers.

B. The brochure rack containing the brochure must be placed by the main door entrance. The brochure rack must always be stocked with the brochure.

C. Using lettering no smaller than 24-point font, the front of the brochure shall have in bold capital letters, the words, "IMPORTANT CONSUMER INFORMATION" followed by the words in bold 14-point font, "This brochure contains some common terms and definitions, which are intended to help you better understand your credit transaction. Credit costs money, so it is important that you fully understand the terms of your credit transaction. If you come across terms you do not understand, look up the terms, or ask our personnel to explain the terms to you. Ask questions. Make certain the questions that you ask are answered. Make certain you understand the terms and costs of your loan."

D. Using lettering no smaller than 12-point font, the brochure shall state:

(1) Common Terms and Definitions

(2) Equal Credit Opportunity Act (ECOA). A federal regulation which requires lenders to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to whether all or part of the applicant's income derives from a public assistance program; or to whether the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors.

(3) Contract. A written binding document, describing terms of an agreement between two or more persons. (Keep all paperwork. Later, if there are any questions, you will have your agreement in writing.)

(4) Annual percentage rate (APR). The cost of your credit as a yearly rate. APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes both fees and interest as finance charges. The calculation of APR is mandated pursuant to Federal Law (12 CFR Part 1026 – Truth in Lending Act ("TIL-APR")). It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another. Under New Mexico law, an additional type of annual percentage rate ("NM-APR") must be disclosed, which may include additional charges that are not included in the TIL-APR. The NM-APR for a loan in an amount of more than \$500 and up to \$10,000 made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed thirty-six percent. The NM-APR for a loan in an amount of \$500 or less made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed thirty-six percent plus a fee that shall not exceed five percent of the total principal of the loan and shall not be imposed on any borrower more than once per 12-month period.

(5) Finance charge. The dollar amount the credit will cost you. Finance charges include interest, and may also include transaction fees and service fees.

(6) Principal. The amount of money owed on a debt, on which interest is calculated.

(7) Interest. The cost of borrowing money, generally a percentage of the amount owed.

(8) Balance. The total amount of money owed to a lender.

(9) Default. Failure to pay a debt as agreed to on a contract. When a loan is in default, the lender may demand full payment of the remaining debt.

(10) Collateral. Security pledged by a borrower to protect the interests of the lender; in case of default, the lender may take ownership of the security, if any, pledged by the borrower.

(11) Credit bureau. A private company that keeps a record of your credit history for distribution upon request by authorized parties. When you apply for credit, a lender may request a credit report to review when considering your application.

(12) Credit history. A record containing information about you, including your payment history on previous debts.

(13) Credit report. A report of the credit history and other information about you that is kept by credit bureaus, which may include: your name, address, social security number, payment history (good and bad), current and previous debts, employers, income, etc. Accurate information on a credit report may not be legally removed. Incorrect information may be removed by disputing the information to the credit bureau involved.

E. The brochure shall have the following words, using lettering no smaller than 12-point font: "New Mexico Only: This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: www.rld.nm.gov/financial-institutions/."

[12.18.3.8 NMAC - N, 10/1/2001; A, 08/13/2004; A, 09/15/2018; A, 03/29/2023]

PART 4: MANDATORY SIGNAGE FOR SMALL LOAN BUSINESSES

12.18.4.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.18.4.1 NMAC - N, 10/1/2001; A, 08/13/2004]

12.18.4.2 SCOPE:

Loan companies conducting business in New Mexico.

[12.18.4.2 NMAC - N, 10/1/2001; A, 09/15/2018]

12.18.4.3 STATUTORY AUTHORITY:

Section 58-15-11 NMSA 1978.

[12.18.4.3 NMAC - N, 10/1/2001]

12.18.4.4 DURATION:

Permanent.

[12.18.4.4 NMAC - N, 10/1/2001]

12.18.4.5 EFFECTIVE DATE:

October 1, 2001 unless a later date is cited at the end of a section.

[12.18.4.5 NMAC - N, 10/1/2001]

12.18.4.6 OBJECTIVE:

The objective of this part is to require prominent signage disclosing the loan rates and fees to obtain a loan and to assist consumers in the loan decision process.

[12.18.4.6 NMAC - N, 10/1/2001; A, 09/15/2018]

12.18.4.7 DEFINITIONS:

"**Annual Percentage Rate**" or "**APR**" means the measure of the cost of credit, expressed as a yearly rate.

[12.18.4.7 NMAC - N, 10/1/2001; A, 09/15/2018]

12.18.4.8 MANDATORY SIGNAGE FOR SMALL LOAN BUSINESSES:

A. All small loan companies must display in each licensed place of business a prominent sign, readily visible to borrowers, disclosing the annual percentage rate and fees. The prominent sign in a reduced form, with font, no smaller than 10-point, must be displayed at every workstation where loans are originated. On all company websites, social media pages, and mobile applications where content regarding loans offered or made to borrowers in New Mexico may be accessed by consumers, the prominent sign, in a reduced form, shall be easily accessible to consumers to review via an interactive link to a New Mexico specific web page maintained by the company containing all information required to be on the sign mandated by this section.

B. The lettering on the prominent sign must be no smaller than 24-point font, unless specified otherwise.

C. The sign must state in bold capital letters, the words, "LOAN RATES AND FEES."

D. Below the words "loan rates and fees," in bold capital letters, the sign shall state, "BELOW IS GENERAL INFORMATION REGARDING ALL RATES AND FEES THAT WILL ASSIST YOU IN MAKING YOUR LOAN DECISION. IF YOU HAVE ANY QUESTIONS, OR WOULD LIKE MORE INFORMATION, PLEASE ASK. MAKE CERTAIN THE QUESTIONS THAT YOU ASK ARE ANSWERED. MAKE CERTAIN YOU UNDERSTAND THE TERMS AND COSTS OF YOUR LOAN."

E. The disclosure shall consist of two distinctive sections. Each section heading must be printed from left to right. The borders for the two section headings must be more prominent than the others.

(1) The first heading shall have in bold capital letters the words, "ANNUAL PERCENTAGE RATE (APR)" followed by the words in bold font, "The cost of your credit as a yearly rate. APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes both fees and interest as finance charges."

(a) Below the preceding sentences in bold type the following words shall appear: "Your actual terms and the Annual percentage rate (APR) will be determined at the time your application is submitted and will be based upon your application and credit information. Not all applicants will qualify for the lowest rate."

(b) Below the preceding sentences in bold type the following words shall appear: "The calculation of APR is mandated pursuant to Federal Law (12 CFR Part 1026 – Truth in Lending Act ("TIL-APR")). It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another. Under New Mexico law, an additional type of annual percentage rate ("NM-APR") must be disclosed, which may include additional charges that are not included in the TIL-APR. The NM-APR for a loan in an amount of more than \$500 and up to \$10,000 made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed thirty-six percent. The NM-APR for a loan in an amount of \$500 or less made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed thirty-six percent plus a fee that shall not exceed five percent of the total principal of the loan and shall not be imposed on any borrower more than once per 12-month period."

(2) The second heading shall have in bold capital letters the words, "FEES" followed by the words: "A list of all fees that you may be charged." The heading shall be followed with a table containing a list of all fees that a borrower may be charged.

F. Below the second heading in bold capital letters the following words shall appear: "TO REPORT A PROBLEM OR COMPLAINT WITH THIS LENDER, YOU MAY WRITE OR CALL "_____." The blank shall be filled in with a position title, address, phone number, and email address of the company's problem resolution person.

G. The bottom of the sign shall have the following words, "New Mexico Only: This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone number (505) 476-4885 or visit the website: www.rld.nm.gov/financial-institutions/."

[12.18.4.8 NMAC - N, 10/1/2001; A, 08/13/2004; A, 09/15/2018; A, 03/29/2023]

PART 5: ANNUAL DATA REPORT FOR PAYDAY LOAN LENDERS [REPEALED]

[This part was repealed on September 15, 2018]

PART 6: ANNUAL DATA REPORT FOR TITLE LOAN COMPANIES [REPEALED]

[This part was repealed on September 15, 2018]

PART 7: HEARING PROCEDURE FOR SMALL LOAN COMPANIES

12.18.7.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.18.7.1 NMAC - Rp, 12.18.7.1 NMAC, 09/15/2018]

12.18.7.2 SCOPE:

Small loan licensees conducting business in New Mexico.

[12.18.7.2 NMAC - Rp, 12.18.7.2 NMAC, 09/15/2018]

12.18.7.3 STATUTORY AUTHORITY:

Section 58-15-11 NMSA 1978.

[12.18.7.3 NMAC - Rp, 12.18.7.3 NMAC, 09/15/2018]

12.18.7.4 DURATION:

Permanent.

[12.18.7.4 NMAC - Rp, 12.18.7.4 NMAC, 09/15/2018]

12.18.7.5 EFFECTIVE DATE:

September 15, 2018, unless a later date is cited at the end of a section.

[12.18.7.5 NMAC - Rp, 12.18.7.5 NMAC, 09/15/2018]

12.18.7.6 OBJECTIVE:

The objective of this part is to establish regulations governing the conduct of small loan licensees.

[12.18.7.6 NMAC - Rp, 12.18.7.6 NMAC, 09/15/2018]

12.18.7.7 DEFINITIONS:

[RESERVED]

[12.18.7.7 NMAC - Rp, 12.18.7.7 NMAC, 09/15/2018]

12.18.7.8 HEARING PROCEDURES:

A. Venue for all hearings held pursuant to the New Mexico Small Loan Act of 1955 shall be in Santa Fe, New Mexico unless the director, upon motion by a party, finds that it would be appropriate to hold the hearing elsewhere in New Mexico.

B. Service of subpoenas, summary orders, findings, and final orders shall be made either:

- (1)** personally;
- (2)** by certified mail, return receipt requested, sent to the last known address of the person; or
- (3)** by such other means as are reasonably calculated to give actual notice.

C. Upon written request to another party, any party is entitled to:

- (1)** obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
- (2)** inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

D. Default orders: A respondent that has received actual or constructive notice of a hearing having been set and fails to appear, either in person or through counsel, at the time and place set for such hearing shall be deemed to have admitted the allegations set forth in the summary order or notice of intent that was entered in the matter before the hearing officer and shall be deemed to have consented to entry of a final order.

[12.18.7.8 NMAC - Rp, 12.18.7.9 NMAC, 09/15/2018]

12.18.7.9-12.18.7.16 [RESERVED]

[12.18.7.9 NMAC - 12.18.7.16 NMAC - Repealed 09/15/2018]

PART 8: LICENSING OF NONRESIDENT LENDERS

12.18.8.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.18.8.1 NMAC - Rp, 12.18.8.1 NMAC, 09/15/2018]

12.18.8.2 SCOPE:

Loan companies conducting business in New Mexico.

[12.18.8.2 NMAC - Rp, 12.18.8.2 NMAC, 09/15/2018]

12.18.8.3 STATUTORY AUTHORITY:

Section 58-15-11 NMSA 1978.

[12.18.8.3 NMAC - Rp, 12.18.8.3 NMAC, 09/15/2018]

12.18.8.4 DURATION:

Permanent.

[12.18.8.4 NMAC - Rp, 12.18.8.4 NMAC, 09/15/2018]

12.18.8.5 EFFECTIVE DATE:

September 15, 2018, unless a later date is cited at the end of a section.

[12.18.8.5 NMAC - Rp, 12.18.8.5 NMAC, 09/15/2018]

12.18.8.6 OBJECTIVE:

The objective of this part is to define the requirements for licensure for persons conducting a business of making small loans to residents of New Mexico solely from locations outside of New Mexico.

[12.18.8.6 NMAC - Rp, 12.18.8.6 NMAC, 09/15/2018]

12.18.8.7 DEFINITIONS:

[RESERVED]

[12.18.8.7 NMAC - Rp, 12.18.8.7 NMAC, 09/15/2018]

12.18.8.8 LICENSING OF NONRESIDENT LENDERS:

A. When the proceeds of a small loan in the amount or of the value of \$10,000 or less have been delivered to a New Mexico resident borrower by mail within New Mexico

or have been otherwise made available to a New Mexico resident borrower within New Mexico, by a lender who solicited such small loan by mail or otherwise and the solicitation is received by a New Mexico resident in New Mexico, the loan is considered to have been made in New Mexico for the purposes of the New Mexico Small Loan Act of 1955, and both the lender and the loan are thereby subject to the provisions contained in said act. Any person making small loans under such circumstances is deemed to be engaging in the business of lending, as that term is used in Section 58-15-3 NMSA 1978, and the person must first have obtained a license from the director under the provisions of the New Mexico Small Loan Act of 1955 and this regulation if the person contracts for, exacts or receives, directly or indirectly on or in connection with the loan, charges, whether for interest, compensation, consideration or expense, which in the aggregate are greater than the maximum as provided by the applicable laws of New Mexico.

B. Such loans and licensees must comply with all the requirements and provisions contained in the New Mexico Small Loan Act of 1955, including the limitations on the maximum allowable charges contained in Section 58-15-14.1 NMSA 1978.

C. Such a loan made by a licensee under such conditions is not considered to have been made outside of New Mexico so as to be unenforceable under Section 58-15-24 NMSA 1978, even though the lender's place of business is located outside of New Mexico.

D. If a person applies for a small loan license in order to engage in the business of making small loans to resident borrowers solely from locations outside of New Mexico, the "community" in which the business of the applicant is to be conducted, as that term is used in Section 58-15-5 NMSA 1978, shall mean the geographic area, which may be statewide, in which the applicant proposes to solicit such small loans.

E. Upon the granting of a small loan license to a lender who indicates an intention to conduct a small loan business solely from locations outside of New Mexico, that lender shall establish and maintain a toll-free telephone service available in New Mexico to resident borrowers, or shall agree to accept collect calls at the lender's principal place of business from resident borrowers so that borrowers may contact the lender or his representatives concerning details of their loan transactions. Upon the delivery of the proceeds of such a small loan to a resident of New Mexico, the licensee shall immediately notify the borrower in writing of the existence of such toll-free telephone service, or of the agreement to accept collect calls.

F. If a licensee engages in the business of making small loans to New Mexico residents solely from locations outside of New Mexico, the director will conduct, in his discretion, the examinations authorized by Section 58-15-9 NMSA 1978, in either of two ways:

(1) the licensee may be required to make available to the director for examination at the offices of the director such of the loans, transactions, books, papers

and records of the licensee, insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955, as the director may deem necessary; or

(2) the examinations of the loans, transactions, books, papers and records of the licensee, insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955, may be conducted by the director or the director's authorized representative at the licensee's principal place of business outside of New Mexico, and the licensee shall be required to pay to the director the actual and reasonable travel and living expenses incurred during such examinations for one examiner per examination. Said payments for expenses shall be in addition to such other fees and expenses as may be authorized under the New Mexico Small Loan Act of 1955. The director may require the licensee to pay such expenses prior to the examination.

[12.18.8.8 NMAC - Rp, 12.18.8.8 NMAC, 09/15/2018; A, 03/29/2023]

PART 9: REFUND ANTICIPATION LOANS

12.18.9.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.18.9.1 NMAC - N, 09/15/2018]

12.18.9.2 SCOPE:

Loan companies conducting refund anticipation loans in the state of New Mexico.

[12.18.9.2 NMAC - N, 09/15/2018]

12.18.9.3 STATUTORY AUTHORITY:

Section 58-15-11 NMSA 1978.

[12.18.9.3 NMAC - N, 09/15/2018]

12.18.9.4 DURATION:

Permanent.

[12.18.9.4 NMAC - N, 09/15/2018]

12.18.9.5 EFFECTIVE DATE:

September 15, 2018, unless a later date is cited at the end of a section.

[12.18.9.5 NMAC - N, 09/15/2018]

12.18.9.6 OBJECTIVE:

The objective of this part is to require a small loan licensee engaged in the business of making refund anticipation loans to provide the consumer with a disclosure of the loan information on a form as prescribed by the director.

[12.18.9.6 NMAC - N, 09/15/2018]

12.18.9.7 DEFINITIONS:

[RESERVED]

[12.18.9.7 NMAC - N, 09/15/2018]

12.18.9.8 MANDATORY DISCLOSURE OF LOAN INFORMATION:

All small loan companies engaged in the business of making refund anticipation loans must provide a form to consumers that includes the following:

A. a statement that "refund anticipation loan" means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee;

B. a list of the annual percentage rate and all fees that the borrower may be charged upon entering the refund anticipation loan agreement;

C. the estimated time to which the consumer may receive the proceeds from their anticipated tax refund or tax credit; and

D. the following statement in at least 12-point bold type:

(1) This agreement is considered to be a loan and not your actual tax refund or tax credit. You are borrowing money against your anticipated tax return.

(2) Neither the internal revenue service (IRS) nor the New Mexico taxation and revenue department guarantees that you be paid the full anticipated amount of a tax refund or tax credit, nor do they guarantee that a tax refund or tax credit will be deposited into your bank account or mailed on a specific date.

(3) You are responsible for the full repayment of this refund anticipation loan and for the payment of the total interest, fees, and charges incurred.

(4) Prior to executing a refund anticipation loan agreement, a small loan licensee shall require the borrower to provide a hand written or electronic signature

acknowledging that the borrower understands the all required disclosures and has received a copy of the required disclosure. A copy of the acknowledgment form must be permanently kept with the loan records.

(5) This business is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: www.rld.nm.gov/financial-institutions/.

[12.18.9.8 NMAC - N, 09/15/2018; A, 03/29/2023]

12.18.9.9 PROHIBITED ACTS:

All small loan licensees engaged in the business of making refund anticipation loans shall not:

- A.** directly or indirectly represent a refund anticipation loan as a refund or tax credit;
- B.** require a borrower to enter into a loan agreement in order to complete a tax return;
- C.** engage in a transaction, practice, or course of business that operates a fraud upon a borrower in connection with a refund anticipation loan, including making oral statements contradicting any of the information required to be disclosed pursuant to 12.18.9.7 NMAC - Mandatory Disclosure of Loan Information;
- D.** take or arrange for a creditor to take possession of or a security interest in any property of the consumer other than the proceeds of the consumer's tax refund or tax credit to secure payment of a refund anticipation loan; and
- E.** withhold from a consumer, or from a dependent of a consumer, original personal identification documents.

[12.18.9.9 NMAC - N, 09/15/2018]

PART 10: ELECTRONIC MEDIA REQUIREMENTS

12.18.10.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.18.10.1 NMAC - N, 09/15/2018]

12.18.10.2 SCOPE:

All licensees conducting business in the state of New Mexico.

[12.18.10.2 NMAC - N, 09/15/2018]

12.18.10.3 STATUTORY AUTHORITY:

Section 58-15-11 NMSA 1978.

[12.18.10.3 NMAC - N, 09/15/2018]

12.18.10.4 DURATION:

Permanent

[12.18.10.4 NMAC - N, 09/15/2018]

12.18.10.5 EFFECTIVE DATE:

September 15, 2018, unless a later date is cited at the end of a section.

[12.18.10.5 NMAC - N, 09/15/2018]

12.18.10.6 OBJECTIVE:

The objective of this part is to establish required content to be included on electronic marketing and business sites utilized by small loan lenders.

[12.18.10.6 NMAC - N, 09/15/2019]

12.18.10.7 DEFINITIONS:

A. "Business of lending" means any person or business entity engaged in the origination of any extension of credit in the amount e amount of \$10,000 or less, or the acceptance of a credit application containing a consumer's personal information beyond the below listed items:

- (1) consumer's name;
- (2) consumer's home address;
- (3) consumer's phone number or electronic mail address;
- (4) purpose of the potential loan; and
- (5) loan amount requested.

B. "Marketing site" means any website, social media page, or mobile application utilized only for marketing, advertising, or referring a consumer to complete a credit application and which is not utilized by a small loan business for the business of lending.

C. "Business site" means any website, social media page, or mobile application which a small loan business utilizes to engage in the business of lending through such site.

[12.18.10.7 NMAC - N, 09/15/2018; A, 03/29/2023]

12.18.10.8 MARKETING SITE REQUIREMENTS:

A. Small loan businesses operating one or more marketing site(s) shall be responsible for providing all mandatory disclosures and consumer information as required by Subsection C of 12.18.3.8 NMAC and Subsection A of 12.18.4.8 NMAC to consumers. The required disclosures and consumer information shall be easily accessible to consumers to review on a New Mexico specific web page maintained by the small loan company. The small loan company must ensure active links to the New Mexico specific web page are included on all company marketing sites utilized for loans made to borrowers in New Mexico.

B. All small loan businesses operating one or more marketing site(s) shall provide a disclosure in a location or locations on the marketing site that will be easily accessible and visible to consumers accessing such marketing site with the following words "TO REPORT A PROBLEM OR COMPLAINT WITH THIS LENDER, YOU MAY WRITE OR CALL _____." The blank shall be filled in with a position title, address, phone number, and email address of the company's problem resolution person.

C. The above shall also contain a separate disclosure stating the following words, "New Mexico Only: This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: www.rld.nm.gov/financial-institutions/."

[12.18.10.8 NMAC - N, 09/15/2018; A, 03/29/2023]

12.18.10.9 BUSINESS SITE REQUIREMENTS:

A. Small loan businesses operating one or more business site(s) shall obtain a separate license for each site pursuant to Subsection A of Section 58-15-3 NMSA 1978.

B. Small loan businesses shall make the most current small loan license certificate easily accessible and available for review within the business site.

C. Small loan businesses operating one or more business site(s) shall be responsible for all disclosures to be posted on such site(s). This shall include making the mandatory consumer information brochure pursuant to Subsection C of 12.18.3.8 NMAC and the mandatory signage for all small loan companies pursuant to Subsection A of 12.18.4.8 NMAC.

D. All small loan businesses operating one or more business site(s) shall provide a disclosure in an easily accessible and visible location the following words "TO REPORT A PROBLEM OR COMPLAINT WITH THIS LENDER, YOU MAY WRITE OR CALL _____." The blank shall be filled in with a position title, address, phone number, and email address of the company's problem resolution person.

E. The above shall also contain a separate disclosure stating the following words: "New Mexico Only: This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the Division by telephone at (505) 476-4885 or visit the website: www.rld.nm.gov/financial-institutions/."

[12.18.10.9 NMAC - N, 09/15/2018; A, 03/29/2023]

PART 11 NEW MEXICO ANNUAL PERCENTAGE RATE CALCULATION

12.18.11.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.18.11.1 NMAC – N, 03/29/2023]

12.18.11.2 SCOPE:

Small loan licensees conducting business in New Mexico.

[12.18.11.2 NMAC – N, 03/29/2023]

12.18.11.3 STATUTORY AUTHORITY:

Section 58-15-11 NMSA 1978.

[12.18.11.3 NMAC – N, 03/29/2023]

12.18.11.4 DURATION:

Permanent.

[12.18.11.4 NMAC – N, 03/29/2023]

12.18.11.5 EFFECTIVE DATE:

March 29, 2023, unless a later date is cited at the end of a section.

[12.18.11.5 NMAC – N, 03/29/2023]

12.18.11.6 OBJECTIVE:

The objective of this part is to establish regulations governing the conduct of small loan licensees.

[12.18.11.6 NMAC – N, 03/29/2023]

12.18.11.7 DEFINITIONS:

A. **"Truth in Lending Annual Percentage Rate" ("TIL-APR")** means the calculation of an Annual Percentage Rate mandated pursuant to Federal Law (12 CFR Part 1026 – Truth in Lending Act). It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another.

B. **"New Mexico Annual Percentage Rate" ("NM-APR")** means the calculation of an Annual Percentage Rate pursuant to New Mexico law (Section 58-7-7 NMSA 1978 and Section 58-15-17 NMSA 1978), which may include charges that are either excluded or may be excluded under certain conditions in the TIL-APR calculation.

[12.18.11.7 NMAC – N, 03/29/2023]

12.18.11.8 NEW MEXICO ANNUAL PERCENTAGE RATE EXCLUSIONS:

A. The following charges, based solely on a borrower's individual behavior after the extension of credit, cannot reasonably be predicted and are therefore excluded from the calculation of the NM-APR:

(1) Actual expenditures, including reasonable attorney fees, for legal process or proceedings to collect on a loan pursuant to statutory limitation;

(2) Ancillary products, such as insurance, sold after the extension of credit that are not required as a condition for extension of credit, are properly disclosed, which the customer authorizes a minimum of seven calendar days after the extension of the credit;

(3) Delinquency fee charges pursuant to statutory limitations and as properly disclosed in loan agreements;

(4) Force placed or similar collateral insurance in the event that a borrower fails to maintain in effect any collateral insurance required in connection with a loan transaction, pursuant to statutory conditions;

(5) Charges imposed by third parties in connection with credit or debit card transactions, Automated Clearing House (ACH) payments, or similar, provided that a specific method of payment by the borrower is not required as a condition of the extension of credit;

(6) Non-sufficient funds (NSF) charges for debits not honored by the drawee's financial institutions and are subsequently reversed from the lender's account, subject to statutory limitations;

(7) Parking or similar fees if they are charged to all individuals who utilize the parking area for which the fees are associated;

(8) Reimbursement for Global Positioning Systems (GPS) or similar devices installed on vehicles or other movable collateral when required as a condition of the extension of credit, when those devices are removed or destroyed by the borrower without the lender's authorization and subsequently not returned in working order to the lender within 15 days of such removal;

(9) Any other charges arising solely from the borrower's behavior that are not required by the lender as a condition for the extension of credit and are not either prohibited or prohibited from exclusion by law.

B. Any amount paid to a public official in relation to the extension of credit, including fees to record or release liens.

C. For loans of five hundred dollars (\$500) or less, a fee not exceeding five percent of the total principal of the loan, provided that such fee is not imposed on any borrower more than one time per 12-month period, may be excluded from the calculation of the NM-APR.

[12.18.11.8 NMAC – N, 03/29/2023]

CHAPTER 19: MORTGAGE LENDING

PART 1: GENERAL PROVISIONS

12.19.1.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.1 & A, 12/15/08]

12.19.1.2 SCOPE:

All mortgage loan companies and mortgage loan originators licensed by the state of New Mexico.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.2, 12/15/08; A, 08/31/09]

12.19.1.3 STATUTORY AUTHORITY:

Mortgage Loan Company Act, Section 58-21-9 NMSA 1978 and New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B-19 NMSA 1978.

[9/30/97 - Rn, 12 NMAC 19.1.3, 12/15/08; A, 08/31/09; A, 06/01/10]

12.19.1.4 DURATION:

Permanent.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.4, 12/15/08]

12.19.1.5 EFFECTIVE DATE:

May 5, 1986, unless a later date is cited at the end of a section.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.5 & A, 12/15/08]

12.19.1.6 OBJECTIVE:

The objective of this part is to effectuate the purposes of the Mortgage Loan Company Act, Section 58-21-1 NMSA 1978 et seq., and the New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B -1 NMSA 1978 et seq., and to clarify their meaning.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.6 & A, 12/15/08; A, 08/31/09; A, 06/01/10]

12.19.1.7 DEFINITIONS:

A. "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person.

B. "Branch office" means any location, including a divisional office, separate from the principal place of business of the mortgage loan company that is identified by any means to the public or customers as a location at which the licensee holds itself out as a mortgage loan company.

C. "Clerical or support duties" may include, subsequent to the receipt of an application:

(1) the receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(2) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

D. "Closing agent" means a person, including a title insurance agent or title insurance company, that acts in the normal course of business in a fiduciary capacity as a disinterested third party for the seller and buyer of real property for the purpose of consummating a sale of real property, including the performance of the following functions:

(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, commissions of real estate licensees, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

E. "Depository institution" has the same meaning as the definition of depository institution in Section 3 of the Federal Deposit Insurance Act and includes any credit union.

F. "Division" means the financial institutions division of the regulation and licensing department.

G. "Director" means the director of the financial institutions division of the regulation and licensing department.

H. "Dwelling" means a residential structure that contains one to four units whether or not that structure is attached to real property. "**Dwelling**" includes an individual condominium unit, an individual cooperative unit, a mobile home and a trailer if used as a residence.

I. "Federal banking agencies" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration and the federal deposit insurance corporation.

J. "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild, and **"immediate family member"** includes a stepparent, a stepchild, a stepsibling and an adoptive relationship.

K. "Individual" means a natural person.

L. "Lender" means a person or government agency making a mortgage loan.

M. "License" means a license issued pursuant to Section 6 of the New Mexico Mortgage Loan Originator Licensing Act.

N. "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, pursuant to the Mortgage Loan Company Act.

O. "Mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling as so defined.

P. "Mortgage loan company" means any person who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

(1) accepts an application for a mortgage loan; negotiates terms for a mortgage loan; or solicits, processes, originates, brokers or makes mortgage loans for others;

(2) offers to:

(a) accept an application for a mortgage loan;

(b) negotiate terms for a mortgage loan; or

(c) solicit, process, originate, broker or make mortgage loans for others; or

(3) closes mortgage loans that may be in the mortgage loan company's own name with funds provided by others and that are assigned to the mortgage lenders providing the funding of such loans;

Q. "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

(1) an individual engaged solely as a loan processor or underwriter except as otherwise provided in Subsection I of this section;

(2) a person that only performs real estate brokerage activities and is licensed or registered in accordance with New Mexico law, unless the person is compensated by a lender, a mortgage loan company or other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator; and

(3) a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.

R. "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.

S. "Net loan funds" means the mortgage loan amounts specified in the note and mortgage less lender-retained fees, as specified in the lender's instruction to the closing agent.

T. "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage.

U. "Person" means a natural person, corporation, company, limited liability company, partnership or association.

V. "Qualified manager" means an individual, designated by a mortgage loan company, responsible for the activities of the licensed mortgage loan company's office, divisional office or branch office in conducting the business of that mortgage loan company's office, divisional office or branch office and who meets requirements as specified by the director.

W. "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(1) acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(2) bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, other than in connection with providing financing with respect to any such transaction;

(4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker pursuant to any applicable law; and

(5) offering to engage in any activity or to act in any capacity described in Paragraphs (1) through (4) of this subsection.

X. "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator, is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry and is an employee of:

(1) a depository institution;

(2) a subsidiary that is:

(a) owned and controlled by a depository institution; and

(b) regulated by a federal banking agency; or

(3) an institution regulated by the farm credit administration.

Y. "Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or on residential real estate upon which is constructed or is intended to be constructed a dwelling as so defined.

Z. "Residential real estate" means any real property located in New Mexico upon which is constructed or intended to be constructed a dwelling.

AA. "Servicer" means a person that collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing residential mortgage loan.

BB. "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

CC. The phrase "**any action or proceeding, civil or criminal, judicial or administrative, completed or in progress**", as used in Section 58-21-4(G) NMSA 1978, shall be exclusive of divorce proceedings and misdemeanor traffic citations.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.7 & A, 12/15/08; A, 08/31/09]

PART 2: MORTGAGE LOAN ORIGINATOR REQUIREMENTS

12.19.2.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.19.2.1 NMAC - N, 08/31/09]

12.19.2.2 SCOPE:

All mortgage loan originators licensed by the state of New Mexico.

[12.19.2.2 NMAC - N, 08/31/09]

12.19.2.3 STATUTORY AUTHORITY:

New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B-19 NMSA 1978.

[12.19.2.3 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.4 DURATION:

Permanent.

[12.19.2.4 NMAC - N, 08/31/09]

12.19.2.5 EFFECTIVE DATE:

August 31, 2009, unless a later date is cited in the history note at the end of a section.

[12.19.2.5 NMAC - N, 08/31/09]

12.19.2.6 OBJECTIVE:

The objective of this part is to effectuate the purposes of the New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B-1 NMSA 1978 et. seq., and to clarify its meaning.

[12.19.2.6 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.7 DEFINITIONS:

A. "Days" means a period of time expressed in calendar days, except when disclosures are required to be given to borrowers, then "days" shall exclude Saturdays, Sundays and legal holidays.

B. "Independent contractor" means any person who processes or underwrites residential mortgage loans and is not a W-2 employee of a licensed mortgage loan company.

C. "Scheduled long-term monthly debt payments" means the monthly payments of all installment debts, revolving charge accounts, open accounts and lines of credit that would be used to determine a borrower's ability to repay per the current underwriting guidelines of the federal housing administration (FHA), the federal national mortgage association (FNMA), the federal home loan mortgage corporation (FHLMC) or the department of veteran's affairs (VA).

D. "Takes a residential mortgage loan application", with respect to Section 58-21B-3(K) NMSA 1978, means:

(1) any communication, regardless of form, from a mortgage loan originator to a borrower soliciting a loan application or requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or

(2) any communication, regardless of form, from a borrower to a mortgage loan originator, for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

[12.19.2.7 NMAC - N, 08/31/09; A, 06/01/10; A, 12/31/10]

12.19.2.8 FEES:

A mortgage loan originator shall pay the following fees. These fees are non-refundable and are in addition to any fees established and charged by the nationwide mortgage licensing system and registry, any approved educational course provider, any approved educational testing provider, any law enforcement agency for finger prints and background checks or by any credit reporting agency used by the nationwide mortgage licensing system and registry:

A. Mortgage loan originator fees:

- (1) application fee: \$200.00;
- (2) license fee: \$200.00;
- (3) annual renewal license fee: \$200.00;
- (4) reinstatement fee: \$100.00.

B. Investigation fee: \$75.00 per hour, or any fraction of an hour, per examiner or investigator.

[12.19.2.8 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.9 SURETY BOND:

Every surety bond shall provide that no suit or claim shall be maintained to enforce any liability on the bond unless brought within six years after the act upon which the suit or claim is based.

[12.19.2.9 NMAC - N, 08/31/09]

12.19.2.10 HEARING PROCEDURES AND CHALLENGE PROCESS:

A. In reference to Section 58-21B-14 NMSA 1978, hearings requested shall be conducted under the following procedures.

(1) The mortgage loan originator shall request a hearing in writing by certified return receipt letter

addressed to the director. The director shall, within 30 days of receipt of the request, notify the mortgage loan

originator of the date, time and place of the hearing.

(2) Hearings shall be conducted pursuant to the Administrative Procedures Act, Sections 12-8-10 and 12-8-11 NMSA 1978.

(3) Hearings shall be conducted in Santa Fe county or another county if agreed to by the director and the mortgage loan originator.

(4) All hearings shall be conducted by the director or by a hearing officer designated by the director. A hearing officer shall, within 30 days following the hearing, submit to the director a report setting forth the hearing officer's findings of fact and conclusions of law.

(5) All hearings shall be open to the public. In cases in which the reputation of an applicant or

licensee may be damaged or, for good cause shown, the director or hearing officer may hold a closed hearing and

must state the reasons for this decision in the record.

(6) A complete record shall be made of all evidence and testimony received during the course of any hearing.

(7) Within sixty (60) days after the hearing, the director shall serve upon the applicant or licensee a copy of the final written order.

B. In reference to Section 58-21B-12 NMSA 1978, the challenge process shall be conducted under the following procedures.

(1) Any person aggrieved by a final order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

(2) The commencement of the proceedings under Paragraph (1) of Subsection B of this section does not, unless specifically ordered by the court, operate as a stay of the director's order.

[12.19.2.10 NMAC - N, 08/31/09; A, 12/31/10]

12.19.2.11 SUCCESSIVE YEARS FOR CONTINUING EDUCATION COURSES:

The New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B-10(E)(2) NMSA 1978, prohibits a licensed mortgage loan originator from taking the same approved continuing education course in the same or successive years to meet the annual continuing education requirements. For purposes of this limitation, the term "successive years" means the two years following the year in which a mortgage loan originator takes an approved course.

[12.19.2.11 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.12 REINSTATEMENT OF LICENSE:

The license of a mortgage loan originator that expires for failure to satisfy the minimum standards for renewal may be reinstated if the licensee meets the following requirements:

A. The license must be reinstated between January 1 and February 28 of the year immediately following the year the license expired.

B. All continuing education courses and any other minimum requirements for license renewal for the year in which the license expired must be completed by February 28 of the year immediately following the year the license expired.

C. The licensee must pay the applicable licensing, reinstatement and late fees. If a mortgage loan originator whose license has expired fails to meet the requirements for reinstatement specified in this section, the mortgage loan originator must apply for a license and meet the requirements for licensure in effect at that time.

[12.19.2.12 NMAC - N, 08/31/09]

12.19.2.13 DISCLOSURES:

At least two (2) days prior to closing, a mortgage loan originator shall provide to the borrower(s) the following federal disclosures specific to the mortgage loan the borrower(s) is receiving: (1) a good faith estimate and (2) a truth in lending statement. These documents shall be used to comply with Section 58-21B-20(B) NMSA 1978. For the purposes of the act, the yield spread premium or discount points received by the mortgage loan company shall be disclosed as a credit or charge in a dollar amount on all good faith estimates.

[12.19.2.13 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.14 REASONABLE ABILITY TO REPAY:

The documentation of "reasonable ability to repay", in Section 58-21B-13(C)(24) NMSA 1978, will depend upon the totality of facts and circumstances relating to a specific residential mortgage loan transaction and the borrower's financial condition and circumstances. While the documentation of certain residential mortgage loan transactions may clearly demonstrate the borrower's reasonable ability to repay, others may require closer scrutiny to determine whether the documentation for a particular residential mortgage loan transaction sufficiently demonstrates ability to repay. The "reasonable ability to repay" standard shall be demonstrated through reasonably reliable documentation. Reasonably reliable documentation means any documentation that is required by a mortgage loan company to satisfy the requirements of a loan product that meets the borrower's requested terms and qualifications, documents the source of repayment and includes verifiable written documentation obtained from the borrower or a third party. Reasonably reliable documentation may include but may not be limited to verbal verifications.

[12.19.2.14 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.15 AMENDING OR SURRENDERING A LICENSE:

A. A licensed mortgage loan originator shall amend information entered in the nationwide mortgage licensing system and registry for licensure within five days following the change in that information. The information that shall be required to be amended shall include, but not be limited to the following:

- (1) name of mortgage loan originator;
- (2) contact information;
- (3) employment;

(4) surety bond.

B. A licensed mortgage loan originator shall notify the director of the financial institutions division in writing and amend his or her license information on the nationwide mortgage licensing system and registry within five days following knowledge of any change in his or her credit that involves bankruptcy, foreclosure, judgments, collections, tax liens and other government liens.

C. A licensed mortgage loan originator who has been charged with, convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court shall notify the director of the financial institutions division in writing and amend his or her license information on the nationwide mortgage licensing system and registry within five days of the occurrence.

D. A licensed mortgage loan originator is the only individual that can surrender his or her license. The removal of sponsorship by a mortgage loan company will place the mortgage loan originator license into an "approved - inactive" status.

E. A licensed mortgage loan originator shall immediately surrender his or her license if required to do so by court order, final order, default order, consent order or if the mortgage loan originator no longer meets the minimum requirements for licensure in 58-21B-6 NMSA 1978.

[12.19.2.15 NMAC - N, 06/01/10]

12.19.2.16 CHANGE IN EMPLOYMENT:

A licensed mortgage loan originator whose employment with a mortgage loan company is terminated shall not originate new mortgage loans for that mortgage loan company but may receive compensation for those mortgage loans originated by him or her while employed by that mortgage loan company.

[12.19.2.16 NMAC - N, 06/01/10; A, 12/31/10]

12.19.2.17 INDIVIDUALS EXEMPT FROM LICENSING:

The exemption in Section 58-21B-4(B)(2) includes an individual who offers or negotiates terms of a residential mortgage loan financed in whole or in part by the individual and secured by the individual's residence.

[12.19.2.17 NMAC - N, 06/01/10]

12.19.2.18 NINETY (90) DAY TEMPORARY LICENSE:

In reference to 58-21B-4(D), a mortgage loan originator may obtain a ninety day temporary license to originate residential mortgage loans in New Mexico while they

complete the licensing requirements for a New Mexico mortgage loan originator license. A temporary license shall be issued if the mortgage loan originator meets the following requirements:

A. contact the division in writing via mail or email requesting a 90 day temporary license;

B. a license status of "Approved" in another state or jurisdiction; if the mortgage loan originator's license status changes during the ninety (90) day period to anything other than "Approved", their temporary license may be rescinded;

C. apply and pay for the New Mexico mortgage loan originator license, and

D. be sponsored by a mortgage loan company licensed in New Mexico.

[12.19.2.18 NMAC - N, 12/31/10]

PART 3-7: [RESERVED]

PART 8: MORTGAGE LOAN COMPANY REQUIREMENTS

12.19.8.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.19.8.1 NMAC - Rp, 12 NMAC 19.2.8.1, 12/15/08]

12.19.8.2 SCOPE:

All mortgage loan companies licensed by the state of New Mexico.

[12.19.8.2 NMAC - Rp, 12 NMAC 19.2.8.2, 12/15/08; A, 08/31/09]

12.19.8.3 STATUTORY AUTHORITY:

Mortgage Loan Company Act, Section 58-21-9 NMSA 1978.

[12.19.8.3 NMAC - Rp, 12 NMAC 19.2.8.3, 12/15/08; A, 08/31/09]

12.19.8.4 DURATION:

Permanent.

[12.19.8.4 NMAC - Rp, 12 NMAC 19.2.8.4, 12/15/08]

12.19.8.5 EFFECTIVE DATE:

December 15, 2008, unless a later date is cited in the history note at the end of a section.

[12.19.8.5 NMAC - Rp, 12 NMAC 19.2.8.5, 12/15/08]

12.19.8.6 OBJECTIVE:

The objective of this part is to effectuate the purposes of the Mortgage Loan Company Act.

[12.19.8.6 NMAC - Rp, 12 NMAC 19.2.8.6, 12/15/08; A, 08/31/09]

12.19.8.7 DEFINITIONS:

A. "Applicant" means a person who has applied for a license pursuant to the provisions of the Mortgage Loan Company Act, and includes all directors, officers, employees, trustees and owners of such person.

B. "Days" means a period of time expressed in calendar days, except when disclosures are required to be given to borrowers, then "days" shall exclude Saturdays, Sundays and legal holidays.

C. "Independent contractor" means any person who originates, processes or underwrites mortgage loans and is not a W-2 employee of a licensed mortgage loan company.

D. "Licensee" means a person who is licensed pursuant to the provisions of the act, and includes all directors, officers, employees, trustees and owners of such person.

E. "Person who controls or is controlled", with respect to Section 58-21-2(A) NMSA 1978, means a person who is a director or executive officer of a business or organization, who directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls or holds power to vote, or holds proxies representing ten percent (10%) or more of the voting shares or rights of any entity, or the spouse of such person.

F. "Reasonably reliable documentation" means any documentation that is required by a mortgage loan company to satisfy the requirements of a loan product that meets the borrower's requested terms and qualifications, documents the source of repayment and includes verifiable written documentation obtained from the borrower or a third party. Reasonably reliable documentation may include but may not be limited to verbal verifications.

G. "Scheduled long-term monthly debt payments" means the monthly payments of all installment debts, revolving charge accounts, open accounts and lines of credit that would be used to determine a borrower's ability to repay per the current

underwriting guidelines of the federal housing administration (FHA), the federal national mortgage association (FNMA), the federal home loan mortgage corporation (FHLMC) or the department of veteran's affairs (VA).

[12.19.8.7 NMAC - Rp, 12 NMAC 19.2.8.7, 12/15/08; A, 08/31/09; A, 06/01/10; A, 12/31/10]

12.19.8.8 APPLICANT AND LICENSEE REQUIREMENTS:

A. Application for licensure: In addition to the information required by Section 58-21-4 NMSA 1978 of the act, each applicant for issuance or renewal of a license shall be subject to the following requirements:

(1) applications for license or renewal of a license shall be made using the nationwide mortgage licensing system and registry;

(2) a mortgage loan company shall obtain and maintain a unique identifier number issued by the nationwide mortgage licensing system and registry for each principal office, divisional office or branch office;

(3) an independent contractor who intends to originate mortgage loans and is not sponsored by a licensed New Mexico mortgage loan company shall, prior to originating mortgage loans, obtain a license under the Mortgage Loan Company Act, Section 58-21-1 NMSA 1978 et.seq.

B. The unique identifier number of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan applications, solicitations, advertisements, including business cards and web sites.

C. Licensees shall keep the following records and make them available upon examination or investigation:

(1) documents related to the withdrawal, denial or settlement of a residential mortgage loan which includes, but are not limited to:

(a) mortgage loan transaction documents: all loan applications, written or electronic, mortgage loan settlement statement, loan transmittal summary, credit report, appraisal, all verifications (mortgage, rent, deposits, employment, income), lender loan approval, clear to close and interest rate lock-in confirmation, title commitment, survey and sales contract (if loan is a purchase);

(b) rate sheet(s) used in the determination of the information used on the initial good faith estimate and loan application and any subsequent good faith estimate and loan application done prior to interest rate lock-in;

(c) rate sheet(s) used for the determination of the interest rate that was locked-in with the lender for the purpose of settlement and funding the loan;

(d) all disclosures required by the Real Estate Settlement Procedures Act, Truth in Lending Act (Regulation Z), the Equal Credit Opportunity Act, the Patriot Act and the Mortgage Loan Company Act;

(e) disclosures that include: borrower's signature, certification and authorization, fair credit reporting, affidavit of occupancy, insurance anti-coercion statement, mortgage loan agreement, privacy policy, loan comparison for adjustable rate mortgages, credit score information;

(f) title documents: note, mortgage or deed of trust (including all riders for the note and mortgage or deed of trust), final signed truth-in-lending disclosure, lender's closing instructions to the title company, closing disbursement sheet and copies of issued checks or direct deposits, initial escrow account statement and right of rescission;

(2) all evidence of payment of commissions, brokers' fees or other forms of compensation for services rendered in connection with a mortgage loan transaction;

(3) all books, records, canceled checks pertaining to, but are not limited to, the mortgage loan transactions and payment of fees; books and records shall include cash receipts and disbursements journals, to be posted daily, and a general ledger, to be posted monthly;

(4) the books of account shall include a funded residential mortgage loan journal showing an entry for each mortgage loan transaction completed;

(5) records covered by 12.19.8 NMAC include electronic records.

D. Licensees' accounts.

(1) Trust accounts: All funds belonging to third party settlement service providers (e.g., appraisal services, credit reporting agencies), borrowers or sellers, shall, upon receipt thereof, be deposited into the licensee's trust account that is set up exclusively for the deposit and disbursement of third party settlement service fees and the borrowers or sellers funds. The trust account shall be established with a depository institution the accounts of which are insured by the federal deposit insurance corporation or the national credit union administration. Deposited funds shall remain in the trust account until disbursed to the third party settlement service providers, used at settlement for the borrowers benefit or returned to the rightful borrowers or sellers. If the trust account is interest-bearing, all interest shall be distributed to the appropriate parties, on a pro rata basis, at the time trust funds are disbursed or returned. All funds received by the licensee must be disbursed within 30 days of the settlement of the residential mortgage loan.

(2) If a licensee requires a deposit in connection with an application for a mortgage loan, there must be an agreement in writing between consumer and licensee, setting forth the disposition of the deposit, whether the loan is finally consummated or not.

(3) Deposit accounts: All deposit accounts maintained by a licensee shall be reconciled within ten (10) business days after receipt of statements; "deposit accounts" includes all accounts maintained with depository institutions.

[12.19.8.8 NMAC - Rp, 12 NMAC 19.2.8.8.1, 5 & 6, 12/15/08; A, 08/31/09; A, 06/01/10; A, 12/31/10]

12.19.8.9 GOOD BUSINESS REPUTATION:

Pursuant to Section 58-21-8(A) NMSA 1978 of the act, a licensee or applicant may be deemed to lack a good business reputation if the director finds that the licensee or applicant has done or is doing any of the following, which includes, but is not limited to:

- A.** repeatedly issues worthless checks;
- B.** has outstanding unsatisfied judgments;
- C.** repeatedly fails to meet obligations when due;

D. fails to pay the examination fee or investigation fee provided by Section 58-21-5 or Section 58-21-12 NMSA 1978;

E. allows unlicensed independent contractors or mortgage loan originators to originate mortgage loans.

[12.19.8.9 NMAC - Rp, 12 NMAC 19.2.8.8.7, 12/15/08; A, 08/31/09; A,06/01/10]

12.19.8.10 HEARING PROCEDURES:

Hearings requested, pursuant to Section 58-21-14 of the act, by applicants or licensees shall be conducted under the following procedures.

A. Hearings shall be conducted pursuant to Section 12-8-10 NMSA 1978 and Section 12-8-11 NMSA 1978 of the Administrative Procedures Act (12-8-1) NMSA 1978 and any future amendments to this section.

B. Hearings shall be conducted in Santa Fe county, or upon agreement by the director and an applicant or licensee, a hearing may be conducted in a county other than Santa Fe county or the county in which the apparent violation or violations occurred.

C. All hearings shall be conducted by the director or by a hearing officer designated by the director. A hearing officer shall, within 30 days following the hearing, submit to the director a report setting forth his findings of fact and conclusions of law.

D. All hearings shall be open to the public. In cases in which the reputation of an applicant or licensee may be damaged or, for good cause shown, the director or hearing officer may hold a closed hearing and must state the reasons for this decision in the record.

E. A complete record shall be made of all evidence and testimony received during the course of any hearing.

F. Within sixty (60) days after the hearing, the director shall serve upon the applicant or licensee a copy of the final written order.

[12.19.8.10 NMAC - Rp, 12 NMAC 19.2.8.8.8, 12/15/08; A, 08/31/09]

12.19.8.11 FEES:

A mortgage loan company shall pay the following fees. These fees are non-refundable and are in addition to any fees established and charged by the nationwide mortgage licensing system and registry.

A. Main office:

- (1) application fee: \$500.00;
- (2) license fee: \$500.00;
- (3) supervisory fee: \$500.00;
- (4) annual license renewal fee: \$500.00;
- (5) annual supervisory renewal fee: \$500.00;
- (6) reinstatement fee: \$250.00;
- (7) amendment fee: \$50.00.

B. Branch office:

- (1) annual branch office fee: \$500.00;
- (2) reinstatement fee: \$250.00;
- (3) branch amendment fees: \$50.00.

C. Investigation fee: \$75.00 per hour, or any fraction of an hour, per examiner or investigator.

[12.19.8.11 NMAC - N, 08/31/09; A, 06/01/10]

12.19.8.12 DISCLOSURES:

A. Mortgage loan companies shall provide rate lock disclosures to and enter into signed lock-in agreements with a borrower(s). The mortgage loan company shall use a rate lock disclosure form of their choosing. The rate lock disclosure shall include the following information: (1) a rate float option, (2) the lock-in loan interest rate, (3) loan pricing for the lock-in interest rate, (4) loan terms, (5) loan lock-in period and (6) any fees required for an extension of the lock-in period. For the purposes of act, the term "pricing" means the yield spread premium or discounts points disclosed as a credit or charge in dollars to the borrower(s) for the loan interest rate.

B. At least two (2) days prior to closing, a mortgage loan company shall provide to the borrower(s) the following federal disclosures specific to the mortgage loan the borrower(s) is receiving: (1) a good faith estimate and (2) a truth in lending statement. These documents shall be used to comply with Section 58-21-31 (D) and (E) NMSA 1978. For the purposes of the act, the yield spread premium or discount points received by the mortgage loan company shall be disclosed as a credit or charge in a dollar amount on all good faith estimates.

[12.19.8.12 NMAC - N, 08/31/09; A, 06/01/10]

12.19.8.13 QUALIFIED MANAGER:

A. A qualified manager shall provide the director with the following documentation of his or her lending experience for verification purposes:

- (1) income tax returns;
- (2) W-2 and/or 1099 forms.

B. Documentation may also include previous business licenses and other state mortgage licenses.

[12.19.8.13 NMAC - N, 08/31/09]

12.19.8.14 SURETY BOND:

Every surety bond shall provide that no suit or claim shall be maintained to enforce any liability on the bond unless brought within six years after the act upon which the suit or claim is based.

[12.19.8.14 NMAC - N, 08/31/09]

12.19.8.15 REASONABLE ABILITY TO REPAY:

The documentation of "reasonable ability to repay" in Section 58-21-8 (N) NMSA 1978, will depend upon the totality of facts and circumstances relating to a specific residential mortgage loan transaction and the borrower's financial condition and circumstances. While the documentation of certain residential mortgage loan transactions may clearly demonstrate the borrower's reasonable ability to repay, others may require closer scrutiny to determine whether the documentation for a particular residential mortgage loan transaction sufficiently demonstrates ability to repay. The "reasonable ability to repay" standard shall be demonstrated through reasonably reliable documentation.

[12.19.8.15 NMAC - N, 08/31/09; A, 06/01/10]

12.19.8.16 AMENDING OR SURRENDERING A LICENSE:

A. A licensed mortgage loan company shall amend information entered in the nationwide mortgage licensing system and registry for licensure within five days following the change in that information. The information that shall be required to be amended shall include, but not be limited to the following:

- (1) company name;
- (2) company address;
- (3) company legal status;
- (4) ownership;
- (5) control persons;
- (6) qualified manager;
- (7) surety bond;
- (8) branch name or location;
- (9) branch manager.

B. A licensed mortgage loan company that has any owner, control person or qualified manager who has been charged with, convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court shall notify the director of the financial institutions division in writing and amend the company's license information on the nationwide mortgage licensing system and registry within five days of the occurrence.

C. A licensed mortgage loan company shall immediately surrender the company's license if required to do so by court order, final order, default order, consent order or if the mortgage loan company no longer meets the minimum requirements for licensure in 58-21-3 and 58-21-4 NMSA 1978.

D. A licensed mortgage loan originator is the only individual that can surrender his or her license. The removal of sponsorship by a mortgage loan company will place the mortgage loan originator license into an "approved - inactive" status.

[12.19.8.16 NMAC - N, 06/01/10]

12.19.8.17 MORTGAGE LOAN ORIGINATOR SPONSORSHIP:

A licensed mortgage loan originator whose employment with a mortgage loan company is terminated shall not originate new mortgage loans for that mortgage loan company but may receive compensation for those mortgage loans originated by him or her while employed by that mortgage loan company.

[12.19.8.17 NMAC - N, 06/01/10]

CHAPTER 20: SAVINGS AND LOAN ASSOCIATIONS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-10: [RESERVED]

PART 11: BOARD OF DIRECTORS

12.20.11.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[2/24/83; 8/30/97; Recompiled 10/15/01]

12.20.11.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[8/30/97; Recompiled 10/15/01]

12.20.11.3 STATUTORY AUTHORITY:

Sections 58-10-19 and 58-10-50 NMSA 1978.

[2/24/83; 8/30/97; Recompiled 10/15/01]

12.20.11.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.20.11.5 EFFECTIVE DATE:

February 24, 1983, unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format effective 8/30/97.

[2/24/83; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.11.6 OBJECTIVE:

The objective of this sub-part [now part] is to provide for staggered terms of office for members of the board of directors.

[8/30/97; Recompiled 10/15/01]

12.20.11.7 DEFINITIONS:

[RESERVED]

[8/30/97; Recompiled 10/15/01]

12.20.11.8 BOARD OF DIRECTORS' TERM OF OFFICE:

Notwithstanding the provisions of Section 58-10-19 NMSA 1978, the bylaws of an association may provide that the board of directors shall be divided into three classes as nearly equal as possible, and that the members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

[2/24/83; 8/30/97; Recompiled 10/15/01]

PART 12-19: [RESERVED]

PART 20: CAPITAL [RESERVED]

PART 21-29: [RESERVED]

PART 30: ASSETS [RESERVED]

PART 31: [RESERVED]

PART 32: LENDING AREA - PARTICIPATIONS

12.20.32.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[3/31/78; 8/30/97; Recompiled 10/15/01]

12.20.32.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[8/30/97; Recompiled 10/15/01]

12.20.32.3 STATUTORY AUTHORITY:

Section 58-10-38 NMSA 1978.

[3/31/78; 8/30/97; Recompiled 10/15/01]

12.20.32.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.20.32.5 EFFECTIVE DATE:

March 31, 1978, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective August 30, 1997.

[3/31/78; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.32.6 OBJECTIVE:

The objective of this sub-part [now part] is to bring to state savings and loan associations the definition of the term "regular lending area".

[8/30/97; Recompiled 10/15/01]

12.20.32.7 DEFINITIONS:

"Regular lending area" means the area within one hundred miles of an established office of an association.

[3/31/78; 8/30/97; Recompiled 10/15/01]

PART 33: SAFEKEEPING RECEIPT

12.20.33.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[8/31/78; 8/30/97; Recompiled 10/15/01]

12.20.33.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[8/30/97; Recompiled 10/15/01]

12.20.33.3 STATUTORY AUTHORITY:

Sections 58-10-72 and 58-10-83 NMSA 1978.

[8/31/78; 8/30/97; Recompiled 10/15/01]

12.20.33.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.20.33.5 EFFECTIVE DATE:

August 31, 1978, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective August 30, 1997.

[8/31/78; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.33.6 OBJECTIVE:

The objective of this sub-part [now part] is to establish safekeeping requirements for any security of which a state-chartered savings and loan association has ownership but not physical possession.

[8/30/97; Recompiled 10/15/01]

12.20.33.7 DEFINITIONS:

[RESERVED]

[8/30/97; Recompiled 10/15/01]

12.20.33.8 SAFEKEEPING RECEIPTS:

A. In the interest of promoting and maintaining a sound savings and loan association system, the security of the savings account holders and other customers, the preservation of the liquid position of associations and in the interest of preventing injurious credit expansions and contractions, this regulation is hereby promulgated and is effective immediately.

B. Every association and its affiliated corporations which invest in, or obligate themselves to purchase any security of which they do not have physical possession, must have in their possession a safekeeping receipt evidencing ownership of that security. Such safekeeping receipt must be non-negotiable and be issued by a commercial bank, the deposits of which are insured by the federal deposit insurance corporation or by a state or federal officer acting in his official capacity.

C. The supervisor finds that an emergency exists, in that some associations and their affiliates have purchased or obligated themselves to purchase securities and are unable to establish ownership of the securities or that the securities even exist; therefore this regulation is issued pursuant to Sections 58-10-72 and 58-10-83 NMSA 1978.

[8/31/78; 8/30/97; Recompiled 10/15/01]

PART 34: CONSUMER LOANS, CORPORATE INVESTMENTS, AND NOW ACCOUNTS

12.20.34.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[12/31/80; 9/15/97; Recompiled 10/15/01]

12.20.34.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[9/15/97; Recompiled 10/15/01]

12.20.34.3 STATUTORY AUTHORITY:

Sections 58-10-72 and 58-10-83 NMSA 1978.

[9/15/97; Recompiled 10/15/01]

12.20.34.4 DURATION:

Permanent.

[9/15/97; Recompiled 10/15/01]

12.20.34.5 EFFECTIVE DATE:

December 31, 1980, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 15, 1997.

[12/31/80; 9/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.34.6 OBJECTIVE:

The objective of this sub-part [now part] is to define and set limits and requirements for selected assets for state-chartered savings and loans associations.

[9/15/97; Recompiled 10/15/01]

12.20.34.7 DEFINITIONS:

A. "Consumer loan": A secured or unsecured loan to a natural person for personal, family or household purposes; including loans secured by liens on real estate and by chattel liens on personal property; provided the association relies substantially upon other factors such as the general credit standing of the borrower. Included within this definition are educational loans; loans in the nature of overdraft protection; and credit extended in connection with credit cards.

B. "Loans": Obligations and extensions or advances of credit, including an interest in such a loan.

C. "Commercial paper": Any note, draft or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

D. "Corporate debt security": A marketable obligation, evidencing the indebtedness of any corporation in the form of a bond, and/or debenture which is commonly regarded as a debt security and is not speculative in nature. A security is marketable if it may be sold with reasonable promptness at a price which corresponds reasonably to its value as shown on the books of the association.

[12/31/80; 9/15/97; Recompiled 10/15/01]

12.20.34.8 OPERATIONS:

A. Consumer loans:

(1) General: An association may make direct or indirect consumer loans; provided that (1) at any one time the total investment made under this sub-part [now part] and Subsection 8.2 [now Subsection B of 12.20.34.8 NMAC] of this regulation, in the aggregate, shall not exceed 20 percent of the association's assets; and (2) that before indirect loans are made through a dealer, the dealer is approved by the association's board of directors. The authority to make a consumer loan includes the authority to originate, purchase, sell, service and participate in such loans; provided, that such loans conform to the provisions of this regulation and the association's written underwriting standards.

[Compiler's note: Section 2.1 (a) of Regulation 80-5 S&LB, now Paragraph (1) of Subsection A of 12.20.34.8 NMAC was rescinded by Subsection 8.4 of 12 NMAC 20.4.9, now Subsection D of 12.20.49.8 NMAC.]

(2) Relationship to other provisions: If a loan that may be made under this regulation is also authorized to be made under another regulation or statutory provision, which may have different percentage-of-assets and other limitations or requirements, an association shall have the option of choosing under which applicable provision the loan shall be made.

(3) Limitation of unsecured loans to one borrower: The total balances of all outstanding unsecured loans to one borrower, or on which any one person may become obligated directly or indirectly, is limited to the lesser of .25 percent of an association's assets, or 5 percent of its net worth.

(4) Treatment of delinquent items: Consumer credit extended under this regulation which becomes "delinquent" as that term is used in OTS Regulations,

Section 561.13 shall be accorded the same accounting treatment, including charge-off, as prescribed by said OTS Regulations.

B. Commercial paper and corporate debt securities:

(1) General: An association may invest in, sell or hold commercial paper and corporate debt securities, including corporate debt securities convertible into stock, subject to the limitations set forth in paragraph 8.1.2 of this sub-part [now Paragraph (2) of Subsection A of 12.20.34.8 NMAC]; provided that at any one time the total investment under this section and Subsection 8.1 [now Subsection A of 12.20.34.8 NMAC], in the aggregate, shall not exceed 20 percent of the association's assets. An investment under this section includes the investing in, redeeming or holding of shares in any open-end management investment company which is registered with the securities and exchange commission under the Investment Company Act of 1940, and with the New Mexico securities division of the regulation and licensing department, and whose portfolio is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to the investments that an association is authorized to invest in under this regulation and other regulations or law.

(2) Limitations:

(a) As of the date of purchase, as shown by the most recently published rating made of such investments by at least one nationally recognized investment rating service, the commercial paper must be rated in either one of the two highest grades and the corporate debt securities must be rated in one of the four highest grades.

(b) The commercial paper or corporate debt securities shall be denominated in dollars and the issuer shall be domiciled in the United States.

(c) At any one time, an association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, shall not exceed one percent of the association's assets, provided that this provision shall not apply to investments in the shares of an open-end management investment company. In such cases, an association's total investment in the shares of any one such company shall not exceed five percent of the association's assets.

(d) Investments in corporate debt securities convertible into stock are subject to the following additional limitations:

(i) purchase of securities convertible into stock at the option of the issuer is prohibited;

(ii) at the time of purchase, the cost of such securities must be written down to an amount which represents the investment value of the securities considered independently of the conversion feature;

(iii) such securities must be traded on a national securities exchange;
and

(iv) associations are prohibited from exercising the conversion feature.

(e) At any one time, the average maturity of an association's portfolio of corporate debt securities may not exceed six years.

(f) An association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this regulation.

[12/31/80; 9/15/97; Recompiled 10/15/01]

PART 35: REAL ESTATE AND OTHER LOANS

12.20.35.1 ISSUING AGENCY:

State of New Mexico Commerce and Industry Department, Financial Institutions Division, Savings and Loan Bureau, Lew Wallace Building, Santa Fe, New Mexico 87503.

[Recompiled 10/31/03]

12.20.35.2 SCOPE:

[RESERVED]

[Recompiled 10/31/03]

12.20.35.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/03]

12.20.35.4 DURATION:

Permanent.

[Recompiled 10/31/03]

12.20.35.5 EFFECTIVE DATE:

Filed December 16, 1982.

[Recompiled 10/31/03]

12.20.35.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/31/03]

12.20.35.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/03]

12.20.35.8 REAL ESTATE LOANS:

A. General: A real estate loan is any loan secured by real estate where the association relies substantially upon that real estate as the primary security for the loan. An association may invest in, sell, purchase, participate or otherwise deal in real estate loans or interests therein, as provided in this regulation, notwithstanding provisions to the contrary contained in the Savings and Loan Act.

B. Determination of loan-to-value ratios:

(1) In determining compliance with maximum loan-to-value limitations in this regulation, at the time of making a loan an association shall add together the unpaid amount of, all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would take precedence over the association's loan, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed applicable maximum loan-to-value limitations prescribed in this regulation, as indicated by documentation retained in the loan file.

(2) In valuing the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed. "Value" for a real estate loan means market value.

C. Purchase of loans from the federal savings and loan insurance corporation. An association may purchase from the federal savings and loan insurance corporation any real-estate-related loan guaranteed by the corporation under a guarantee contract made by the corporation with the purchasing association

[Recompiled 10/31/03]

12.20.35.9 INSURED AND GUARANTEED RESIDENTIAL REAL ESTATE LOANS:

A. Loans that are insured or guaranteed by a public mortgage insurer may be made in amounts and with terms and conditions of repayment acceptable to the insuring or guaranteeing agency.

B. A loan is insured or guaranteed by a public mortgage insurer if:

(1) it comes within the definitions of Sections 541.10 or 541.13 of the regulations for the federal savings and loan system, or within the provisions of Title X of the National Housing Act; or

(2) it is insured or guaranteed by an agency or instrumentality of a state (a) whose full faith and credit is pledged to support the insurance or guarantee, or (b) whose insurance or guarantee program is approved by the federal home loan mortgage corporation or the federal national mortgage association.

[Recompiled 10/31/03]

12.20.35.10 OTHER RESIDENTIAL REAL ESTATE LOANS:

A. Home loans:

(1) Authorization: An association may make, sell, purchase, participate, or otherwise deal in loans on the security of homes or combinations of homes and business property and on farm residences and combinations of farm residences and commercial farm real estate, including nonamortized, partially-amortized, and line-of-credit loans, on which the interest rate, the payment, the loan balance or the term to maturity may vary as provided in this paragraph (a) [now Subsection A of 12.20.35.10 NMAC]. Such loans shall be repayable in at least semiannual installments over a term not exceeding 40 years, with interest payable at least semiannually except as expressly authorized in this paragraph (a) [now Subsection A of 12.20.35.10 NMAC]. An association making a home loan shall possess only such rights and powers as are expressly set forth, by incorporation or otherwise, in the loan documents and as are provided by operation of law.

(2) Adjustments to rate, payment, balance or term; refinancing: Subject to such limitations on adjustment as are set forth in the loan contract:

(a) Adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or of an index that measures the rate of inflation or the rate of change in consumer disposable income, which index is readily available to and verifiable by the borrower and is beyond the control of the association: *provided*, that an association may decrease the interest rate at any time.

(b) Adjustments to the payment and the loan balance that do not reflect an interest-rate adjustment may be made if (i) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in

consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the control of the association, or (ii) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment and set forth in the contract.

(c) Any combination of indices or a moving average of index values may be used as an index, and an association may use more than one index during the term of a loan.

(d) A loan contract may provide for the deferral and capitalization of a portion of interest, and may provide that a portion of the consideration to be received by the association in return for making the loan shall be interest in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value.

(e) At least 30 but not more than 120 days prior to an adjustment and at least 90 but not more than 120 days prior to the expected maturity of a non-or partially-amortized loan (including a -loan with a "call" provision pursuant to subparagraph (2) (vi) of this paragraph (a)) [now Subparagraph (f) of Paragraph (2) of Subsection A of 12.20.35.10 NMAC], an association shall provide the borrower with notice of the adjustment or of maturity. However, where the loan contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the association need not notify the borrower of changes in the rate, nor of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given. (For purposes of notification, a payment adjustment is considered to occur as of the date of the interest-rate change immediately preceding the due date of the adjusted payment). In addition, where the loan contract sets out a schedule of payment adjustments, notice need not be given of payment changes made pursuant to that schedule.

(f) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance.. A loan contract may provide an association with the right to call the loan due and payable either after a specified number of years has elapsed following closing or upon the occurrence of a specified event external to the loan; and

(g) If at maturity of a loan that provides for adjustments pursuant to this subparagraph (a)(2) [now Paragraph (2) of Subsection A of 12.20.35.10 NMAC] the ratio of the loan balance to the current market value of the security property exceeds 95 percent, the association may offer to refinance the loan, subject to the requirements of subparagraphs (3)(i) and (3)(iii) of this paragraph (a) [now Subparagraphs (a) and (c) of Paragraph (3) of Subsection A of 12.20.35.10 NMAC] and other applicable provisions of this regulation.

(3) Loan-to-value ratio: A home loan shall not at the time of origination exceed 90 percent of the value of the security property, except as provided in subparagraph (2)(vii) of this paragraph (a) [now Subparagraph (g) of Paragraph (2) of Subsection A of 12.20.35.10 NMAC] and below. During the term of the loan, the loan-to-value ratio may increase above 90 percent if the increase results from a change authorized by subparagraph (2) of this paragraph (a) [now Paragraph (2) of Subsection A of 12.20.35.10 NMAC]. The supervisor will assume continued compliance with the loan-to-value ratio limitations where the original ratio met the requirements of this subparagraph (3) [now Paragraph (3) of Subsection A of 12.20.35.10 NMAC], but in no event may the loan balance exceed 125 percent of the original appraised value of the property during the term of the loan unless pursuant to subparagraph (2)(ii)(a) of this paragraph (a) [now Subparagraph (a) of Paragraph (2) of Subsection A of 12.20.35.10 NMAC] or unless the loan contract provides that the payment shall be adjusted at least once each five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan. The 125-percent limitation shall not apply to that portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property pursuant to subparagraph (2)(iv) of this paragraph (a) [now Subparagraph (d) of Paragraph (2) of Subsection A of 12.20.35.10 NMAC]. Notwithstanding the foregoing, the loan-to-value ratio at the time of origination may be up to 95 percent if:

(a) the loan contract requires that, in addition to full or partial amortization of the loan, the pro rata portion, based on the number of installments due annually, of estimated annual taxes and assessments on the security property be paid in advance to the association with each installment payment;

(b) the borrower, including a purchaser who assumes the loan, has executed a certificate stating that the borrower ' , occupies, or in good faith intends to occupy the property (or one dwelling on the property) as the borrower's principal residence; and

(c) during the time that the unpaid balance of the loan exceeds 90 percent of the value of the security property, determined at the time of origination, the part of such balance exceeding 80 percent of value is guaranteed or insured by a mortgage insurance company which the federal home loan mortgage corporation has determined to be a "qualified private insurer"; *provided*, however, that any unpaid loan balance secured by a pledged savings account shall not be required to be guaranteed or insured under this provision.

(4) Loan to facilitate trade-in or exchange: Loans made to facilitate the trade-in or exchange of security property shall not exceed 90 percent of value and shall be repayable within 18 months.

(5) Pledged-account loans: Loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios specified in this paragraph (a) [now Subsection A of 12.20.35.10 NMAC], with

such excess secured by savings accounts: *provided*, that loans that exceed 90 percent of the value of the combined security are subject to the following restrictions:

(a) the loan shall not exceed the appraised value of the real estate;

(b) the savings account shall consist only of funds belonging to the borrower, members of his family, or his employer; and

(c) the association shall fully disclose to the prospective borrower the differences (including interest, private-mortgage insurance costs, and equity interest) between a loan secured by real estate and savings and a loan secured by real estate alone.

(6) Loans on cooperatives: Such loans may be made under this paragraph (a) [now Subsection A of 12.20.35.10 NMAC], subject to the following requirements:

(a) Loans on the security of cooperative housing developments ("blanket" loans): The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the federal housing administration.

(b) Loans on individual cooperative units: Such loans may be made on the security of (i) a security interest in stock membership certificate, or other evidence of ownership issued to a stockholder or member by a cooperative housing organization and (ii) an assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

B. Multifamily dwelling loans: Loans on the security of other dwelling units, combinations of dwelling units, including homes, and business property involving only minor or incidental business use, shall not exceed 90 percent of the value of the security property and shall be repayable within 30 years, with interest payable at least semiannually; *provided*, that loans which are not fully amortized shall be repayable with principal and interest payments sufficient to meet a 30-year amortization schedule, and nonamortized loans shall be repayable within five years.

C. Loan on unimproved real estate ("acquisition" loans): Loans on the security of unimproved real estate as defined in Section 541.29 of the regulations for the federal savings and loan system shall not exceed 66 2/3 percent of the value of the security property, and shall be repayable in 3 years with interest payable at least semiannually.

D. Development loans:

(1) Loans to finance development of land shall not exceed 75 percent of the value of the security property and shall be repayable within 5 years, with interest payable at least semiannually. The loan documentation shall contain a preliminary development plan that is satisfactory to the association.

(2) Upon release of any portion of the security property from the lien securing the loan, the principal balance of the loan shall be reduced by an amount at least equal to that portion of the outstanding loan balance attributable to the value of the property to be released. "Value" for the purposes of the preceding sentence is the value fixed at the time the loan was made.

(3) An association may extend the time for payment for an additional period not in excess of 3 years, but no extension may be made unless (i) interest on the loan is current, (ii) the association's board has before it a current appraisal of the security property, and (iii) the outstanding principal balance of the loan is or has been reduced to an amount not over 75 percent of the current value of the security property.

(4) The limitation on loans to one borrower as defined in Section 563.9-3 of the Regulations for Insurance of Accounts shall be 2 percent of an association's assets with regard to loans on any one development project made under this paragraph (d) [now Subsection D of 12.20.35.10 NMAC]. A development project includes all primarily residential, recreational, or other facilities in an integrated development plan.

E. Loan on building lots and sites: Loans on the security of building lots and sites shall comply with the following requirements:

(1) Single-family- dwelling loans for a borrower's principal residence (as evidenced by a borrower's certification of intention that the property will be so used) shall not exceed 75 percent of the value of the security property and shall be repayable within 15 years, with interest payable at least semiannually. The loan contract shall provide for payments sufficient to amortize at least 30 percent of the original principal amount before the end of the loan term.

(2) Loans other than for a borrower's principal residence shall not exceed 75 percent of the value of the security property and shall be repayable within 3 years, with semiannual interest payments beginning not more than 1 year after the initial disbursement.

(3) The provisions of paragraphs (d) (2) and (3) [now Paragraphs (2) and (3) of Subsection D of 12.20.35.10 NMAC] shall apply to this paragraph (e) [now Subsection E of 12.20.35.10 NMAC].

F. Construction loans:

(1) Construction loans on other improved real estate (as defined in Section 541.17(b)) shall not exceed 75 percent of the value of the security property and shall be repayable in 3 years, with interest payable at least semiannually, except that for construction of single family dwellings, loans on individual structures shall be repayable within 18 months of initial disbursement of applicable loan funds.

(2) Associations shall reserve the right to impose limits on the number of structures under construction at a given time.

(3) The provisions of paragraphs (d) (2) and (3) [now Paragraphs (2) and (3) of Subsection D of 12.20.35.10 NMAC] shall apply to this paragraph (f) [now Subsection F of 12.20.35.10 NMAC], except that loan extensions for construction of individual single- family-dwelling structures are limited to 6 months.

G. Rehabilitation loans: Loans to finance substantial alteration, repair or improvement of primarily residential property may be made within the maximum loan-to-value ratios permitted for loans under paragraphs (a) and (b) of this section [now Subsections A and B of 12.20.35.10 NMAC] and shall be repayable within 3 years (18 months for a single family dwelling), with interest payable at least semiannually.

H. Combination loans:

(1) Any loans authorized by this regulation may be combined, with the term of each loan beginning at the end of the term of the preceding loan and interest and principal, payment requirements as specified in the applicable paragraphs of this regulation.

(2) Loans made on unimproved real estate (as defined in Section 541.29 of the regulations for the federal savings and loan system), development loans, and loans on other improved real estate (as defined in Section 541.17 (b)) which are combined with permanent financing loans, or are made to borrowers who have secured permanent financing from other lenders, may be made within the maximum loan-to-value ratios permitted for loans under paragraphs (a) and (b) [now Subsections A and B of 12.20.35.10 NMAC] of this regulation; *provided*, that disbursement of loan proceeds in excess of 80 percent of the value of the security property shall not be made until substantial completion of construction.

(3) With respect to a combination of loans to finance development and loans on building lots and sites and/or construction loans, whether or not development has been completed, (a) beginning not more than 3 years after the initial disbursement of loan proceeds for construction purposes, the principal shall be amortized monthly at a rate of at least 1 1/2 percent of that portion of the loan balance applicable to any home, including the building site, and (b) beginning not more than 4 years after such disbursement, principal shall be amortized monthly at a rate of at least 1 1/2 percent of that portion of the loan balance not applicable to the construction of any home and its building site.

(4) Notwithstanding any other provisions of this regulation, a combination loan for construction inclusive of acquisition and/or development shall be repayable within 8 years, but such loan may be extended for an additional period not exceeding 3 years.

[Recompiled 10/31/03]

12.20.35.11 HOME IMPROVEMENT LOANS:

An association may invest in loans, with or without security, for residential real property alteration, repair or improvement, or for equipping or furnishing residential real property, with installments payable at least quarterly, the first installment due no later than 120 days from the date the loan is made and the final installment due no later than 20 years and 32 days from such date. Installments shall be substantially equal except to the extent that the loan complies with mortgage provisions authorized under paragraph III (a) [now Subsection A of 12.20.35.10 NMAC] of this regulation.

[Recompiled 10/31/03]

12.20.35.12 LEEWAY AUTHORITY FOR LOANS RELATING TO RESIDENTIAL REAL ESTATE AND FARMS:

A. Loans without requirement of security for construction purposes: In addition to loans in which it may invest under other provisions of this regulation, an association may invest an amount not exceeding the greater of its surplus, undivided profits, and reserves or 5 percent of its assets in loans the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate where the association relies substantially for repayment on:

(1) the borrower's general credit standing and forecast of income with or without other security, or

(2) other assurances of repayment, including but not limited to a third-party guaranty or similar obligation.

B. Nonconforming secured loans: In addition to loans in which it may invest under other provisions of this regulation, an association may invest an amount not exceeding five percent of its assets in loans, advances of credit, and interests therein, secured by real estate for primarily residential use or real estate used or to be used for commercial farming that are not otherwise authorized: *provided*, that home loans made under this authority must conform to the notice and disclosure requirements of paragraph III (a) (2) of this regulation [now Paragraph (2) of Subsection A of 12.20.35.10 NMAC].

[Recompiled 10/31/03]

12.20.35.13 COMMERCIAL REAL ESTATE LOANS:

A. Loans (including construction loans) secured by first liens on other improved real estate, as defined in Section 541.17 (a) and (c) of the regulation for the federal savings and loan system, shall not exceed 90 percent of the value of the security property and shall be repayable within 30 years, except that construction loans and nonamortized loans shall be repayable within five years.* Interest shall be payable at least semiannually except to the extent that the loan contract provides for deferral and

capitalization of interest: *provided*, that the ratio of the loan balance to the current appraised value of the security property may not at any time during the loan term exceed 90 percent as a result of deferral and capitalization of interest.

B. An association's aggregate investment under this section shall not exceed 20 percent of assets.

C. A loan is considered to be secured by a first lien if it is (a) secured by an interest in real estate in fee or in a leasehold or subleasehold extending or renewable automatically or at the option of the holder or the association for 5 years after maturity of the loan, if, in the event of default, the real estate could be used to satisfy the obligation with the same priority as a first mortgage or first deed of trust in the jurisdiction where the real estate is located; or (b) secured by an assignment of such loan(s).

[Recompiled 10/31/03]

12.20.35.14 LOANS ON LOW-RENT HOUSING:

Limitations in this regulation or the Savings and Loan Act relating to maximum loan terms and loan-to-value ratios shall not apply to any loan secured by a first lien on real estate which is, or is being constructed, remodeled, rehabilitated, or renovated to be, the subject of (1) an annual contributions contract for low-rent housing under former Sections 23 or 5 of the United States Housing Act of 1937, as amended, or (2) a housing assistance payment (HAP) contract for low-income housing under Section 8 of the United States Housing Act of 1937, as amended, which the mortgagor has agreed in writing to enter into for the maximum term available for the particular project type and financing: *provided*, no such loan by an association shall exceed 90 percent of the appraised value of the security property or, in lieu of such appraisal, 90 percent of the purchase price if the security property is to be purchased by a local public housing authority, and in no event shall loan proceeds in excess of 80 percent of such appraised value be disbursed to the borrower until the department of housing and urban development has issued its final approval of the project under the subsidy program. Loans insured under the National Housing Act may be made on terms and conditions permitted by the insuring agency.

[Recompiled 10/31/03]

12.20.35.15 FARMERS HOME ADMINISTRATION RURAL HOUSING PROGRAM GUARANTEED LOANS:

A. General: An association may invest in loans on residential real estate guaranteed under the farmers home administration (FmHA) rural housing program, without regard to other provisions in this regulation or the Savings and Loan Act.

B. Limitations:

(1) FmM shall guarantee at least 80 percent of the principal amount and accrued interest of each loan made under the program.

(2) The loan terms must be acceptable to FmHA.

(3) An association may invest up to the greater of 2.5 percent of its assets or one-half of its net worth in the aggregate outstanding balance of the non-guaranteed portions of all loans made under the program and held by the association.

C. Record keeping: An association shall maintain records to verify compliance with the requirements for each investment made under this section including the loan note guarantee, lender's agreement, and documentation that the investment limitation has not been exceeded.

[Recompiled 10/31/03]

12.20.35.16 LOANS GUARANTEED UNDER COMMERCIAL AND INDUSTRIAL DEVELOPMENT PROGRAMS:

Without regard to other limitations, an association may invest in loans on the security of first liens on other improved real estate, provided the loans are guaranteed by one of the following agencies under authority specified herein, and the loan terms are acceptable to the guaranteeing agency:

A. Economic development administration (under the Public Works and Economic Development Act of 1965, as amended, or the successor to that Act; or the Trade Act of 1974, as amended);

B. Farmers home administration (under the Consolidated Farm and Rural Development Act of 1974, as amended);

C. Small business administration (under the Small Business Investment Act of 1958, as amended; or the Small Business Act of 1953, as amended).

[Recompiled 10/31/03]

12.20.35.17 MANUFACTURED HOME FINANCING:

A. Definitions used in this section:

(1) "Manufactured home" shall have the same definition as that contained the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6).

(2) "Manufactured home chattel paper" - a document evidencing an installment sales contract or a loan or interest in a loan secured by a lien on one or more manufactured homes and equipment installed or to be installed therein.

(3) "Manufacturer's invoice price" - a manufacturer's itemized charges, shown on its invoice, for a specifically identified mobile home, furnishings, equipment, and accessories installed by the manufacturer, and freight.

B. General investment authority: An association may invest in manufactured home chattel paper and interests therein without limitation as to percentage of assets.

C. Sound investment practices: Appraisals or other generally accepted systems of valuation of used manufactured homes shall substantiate the term to maturity of loans made. Chattel paper shall have provisions to protect the association, specifically regarding insurance, taxes, other governmental levies, and maintenance and repairs, and may include any other protection provision which is lawful and appropriate. The association may pay taxes or other governmental levies, and insurance premiums or other similar charges to protect its security interest, and may when lawful, add such payments to the debt evidenced by the chattel paper. The association shall seasonably perfect its security interest. The association is responsible for current knowledge of regulations and requirements pertaining to federal insurance and guarantee programs for manufactured home loans in which it invests, including portfolio limitations on coverage, and is expected to make underwriting decisions as carefully for such loans as for conventional loans.

D. Inventory financing: An association may invest in manufactured home chattel paper which finances a manufacturer's acquisition of inventory if:

(1) the inventory is held for sale by the dealer in its ordinary course of business;

(2) the loan evidenced by the chattel paper is the dealer's obligation; and

(3) the loan amount does not exceed the following:

(a) for new manufactured homes, 100 percent of manufacturer's invoice price for each manufactured home and equipment to be installed by the dealer;

(b) for used manufactured homes, 75 percent of appraised market value or other generally accepted valuation of each manufactured home, including installed equipment.

E. Retail financing:

(1) Insured and guaranteed loans: An association may invest in retail manufactured home chattel paper that is insured or guaranteed, as defined in Section

541.10 or 541.13 of the regulations for the federal savings and loan system, or that has a commitment for such insurance or guarantee.

(2) Conventional loans: An association may invest in conventional retail manufactured home chattel paper if:

(a) the manufactured home is to be maintained as a residence of the owner (or beneficial owner), or an owner's relative;

(b) the manufactured home is or will be located at a manufactured home park or other permanent or semi-permanent site;

(c) the manufactured home chattel paper is payable within 20 years, in monthly payments which are substantially equal except to the extent that the financing complies with mortgage provisions authorized under Section III.(a) [now Subsection A of 12.20.35.10 NMAC] of this regulation, and

(d) The financed amount (excluding time-price differential or interest, however computed) does not exceed (i) 90 percent of buyer's total costs, including freight, itemized set-up charges, sales or other taxes, filing and recording fees imposed by law and premiums for related insurance, or (ii) 90 percent of the appraised market value or other generally accepted valuation of the manufactured home in the case of a used manufactured home plus sales and other taxes, filing and recording fees imposed by law, premiums for related insurance and freight and itemized set-up charges, if any.

(3) Combination loans: An association may invest in manufactured home chattel paper secured by combinations of manufactured homes and lots on the following terms:

(a) Affixed manufactured homes: If the wheels and axles have been removed and the manufactured home is permanently affixed to a foundation, a loan secured by a combination of manufactured home and lot on which it sits may be treated as a residential real estate loan under Section III [now 12.20.35.10 NMAC] of this regulation.

(b) Unaffixed manufactured homes: If the manufactured home is not affixed in the manner described in subparagraph (e)(3)(i) of this section [now subparagraph (a) of Paragraph (3) of Subsection E of 12.20.35.17 NMAC], an association may make a loan secured by a combination of manufactured home and lot on which it is or is to be located if the financing complies with the requirements of subparagraphs (e) (2) (i), (ii) and (iii) [now subparagraphs (a), (b) and (c) of Paragraph (2) of Subsection E of 12.20.35.17 NMAC] and the loan-to-value ratio does not exceed 75% of the appraised value of the lot and lot improvements and 90% of the buyer's total costs of the manufactured home (or valuation of used manufactured home) as defined in subparagraph (e)(2)(iv) [now Subparagraph (d) of Paragraph (2) of Subsection E of 12.20.35.17 NMAC].

(c) Insured and guaranteed loans: Notwithstanding the other provisions of this subparagraph, an association may invest in a combination manufactured home and lot chattel paper that is insured or guaranteed as defined in Sections 541.10 and 541.13 of the regulations for the federal savings an loan system, or that has a commitment for such insurance or guarantee.

(4) Purchase of retail paper. With regard to purchase of an interest in retail manufactured home chattel paper where the security property is or will be located outside the association's normal lending territory (as defined in Section 561.22) of the insurance regulations, the seller of the interest (unless the seller is the association's service corporation) shall retain at least a 25 percent interest in each document evidencing a loan secured by the chattel paper.

F. Sale of paper:

(1) All manufactured home chattel paper sold by an association shall be sold without recourse, as defined in Section 561.8 of the insurance regulations.

(2) No association may sell manufactured home chattel paper, if at the close of its most recent semiannual period, it has manufactured-home-chattel-paper scheduled item (other than assets acquired in a supervisory merger) in excess of 5 percent of its total portfolio in such paper; *provided*, that application may be made to the supervisor for a waiver of this restriction.

[Recompiled 10/31/03]

12.20.35.18 DONE THIS 14TH DAY OF DECEMBER, 1982:

Snider Campbell, Savings and Loan Supervisor.

[Recompiled 10/31/03]

PART 36: REAL ESTATE LOANS

12.20.36.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[9/15/97; Recompiled 10/15/01]

12.20.36.3 STATUTORY AUTHORITY:

Section 58-10-33 through 58-10-49 NMSA 1978.

[9/15/97; Recompiled 10/15/01]

12.20.36.4 DURATION:

Permanent.

[9/15/97; Recompiled 10/15/01]

12.20.36.5 EFFECTIVE DATE:

September 27, 1983, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 15, 1997.

[9/27/83; 9/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.36.6 OBJECTIVE:

The objective of this sub-part [now part] is to bring to state savings and loan associations the authority to originate, invest in, sell, purchase, service, participate or otherwise deal in (including brokerage or warehousing) loans made on the security of residential or nonresidential real estate, or interests in such loans, subject to the limitations of this sub-part [now part].

[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.7 DEFINITIONS:

"Value" for a real estate loan means the market value of the real estate.

[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.8 GENERAL:

A. An association may make a real estate loan only after a qualified person designated by its board has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the association by the insuring or guaranteeing agency. The association shall pay the cost of any appraisal of the security property obtained by the association after loan closing but prior to maturity of a loan, unless the

borrower specifically requests the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan.

B. Except as expressly authorized by this sub-part [now part], repayments on real estate loans shall begin not later than 60 days after the loan is disbursed, provided that if such loans are for construction, substantial alteration, repair or improvement, repayments may begin not later than 36 months (24 months for loans secured by real estate consisting solely of a home or combination of home and business property) after the date of the first disbursement, and interest shall be payable at least semiannually until regular periodic payments begin.

C. Subject to the limitations of OTS Regulations Section 545.33(c), an association may adjust the interest rate, payment, balance or term to maturity on any real estate loan as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value.

[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.9 SECURITY PROPERTY:

A loan is made on the security of real estate if:

A. the security property is real estate pursuant to the law of the state in which the property is located;

B. the security interest of the association may be enforced as a real estate mortgage or its equivalent pursuant to the law of the state in which the property is located;

C. the security property is capable of separate appraisal;

D. the association relies substantially upon the real estate as the primary security for the loan.

E. with regard to a security property that is a leasehold or other interest for a period of years, the term of the interest extends or is subject to extension or renewal at the option of the association for a term of at least five years following maturity of the loan.

[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.10 LOAN-TO-VALUE RATIOS:

A. At the time of origination, a real estate loan may not exceed one hundred percent of the market value of the security property. An association shall, by a vote of its board

of directors, establish maximum loan-to-value ratios for loans made on the security of real estate, and the resolution adopting such ratios shall be included in the minutes of the directors' meeting. Home loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios adopted pursuant to this Section 10 [now 12.20.36.10 NMAC] with such excess secured by the savings account, if the account consists only of funds belonging to the borrower, members of his family or his employer.

B. With respect to home loans originated or refinanced in excess of 90 percent of the appraised value of the security property, that part of the unpaid balance that exceeds 80 percent of the property's value shall be insured or guaranteed by a mortgage insurance company that the federal home loan mortgage corporation has determined to be a "qualified private insurer".

C. With respect to all other loans on the security of real estate originated in excess of 90 percent of the appraised value of the security property, an association's board of directors shall approve each such loan prior to its origination, and such approval shall be recorded in the minutes of its meeting.

D. In determining compliance with maximum loan-to-value ratio limitations for real estate loans, at the time of making a loan an association shall add together the unpaid amount, or in the case of a line-of-credit loan the approved credit limit, of all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would have priority over the association's lien, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed the applicable maximum loan-to-value ratio limitations prescribed in this Section 10 [now 12.20.36.10 NMAC]. In valuing the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed.

[9/27/83; 9/15/97; Recompiled 10/15/01]

PART 37: LOANS TO ACQUIRE OR IMPROVE REAL ESTATE

12.20.37.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.37.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico

[9/15/97; Recompiled 10/15/01]

12.20.37.3 STATUTORY AUTHORITY:

Section 50-10-44 NMSA 1983.

[9/15/97; Recompiled 10/15/01]

12.20.37.4 DURATION:

Permanent.

[9/15/97; Recompiled 10/15/01]

12.20.37.5 EFFECTIVE DATE:

September 27, 1983, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 15, 1997.

[9/27/83; 9/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.37.6 OBJECTIVE:

The objective of this sub-part [now part] is to place on state savings and loan associations limitations pertaining to loans made for the purpose of acquiring or improving real estate within the provisions of this regulation.

[9/15/97; Recompiled 10/15/01]

12.20.37.7 DEFINITIONS:

[RESERVED]

[9/15/97; Recompiled 10/15/01]

12.20.37.8 LOANS TO ACQUIRE OR TO IMPROVE REAL ESTATE:

In addition to any other limitations pertaining to real estate loans, loans for the purpose of acquiring unimproved real estate, for financing the development of real estate on the security of building lots and sites (including a lot on which a manufactured home will be located), for construction of structures on real estate or for the rehabilitation of real estate shall be subject to the provisions of this regulation.

A. Such loans shall not exceed the loan-to-value ratios adopted under Section 10 of 12 NMAC 20.3.6 [now 12.20.36.10 NMAC].

B. Such loans shall be repayable within the following terms:

(1) two years: loans for the construction or rehabilitation of an individual single-family dwelling;

(2) three years: loans for the acquisition of land;

(3) six years: loans for the construction or rehabilitation of multi-family dwellings, of nonresidential real estate or of more than one single-family dwelling, and loans on the security of building lots and sites (other than for a borrower's principal residence);

(4) eight years: loans to finance the development of real estate;

(5) 15 years: loans on the security of building lots and sites for single-family dwelling to be used as the borrower's principal place of residence (as evidenced by a borrower's certification of intention that the property will be so used).

C. For loans made to finance the development of real estate, loans on the security of building lots and sites, and construction loans, upon release of any portion of the security property from the lien securing the loans, the principal balance of the loan shall be reduced by an amount at least equal to that portion of the property to be released. "Value" for the purposes of the preceding sentence is the appraised value fixed at the time the loan was made.

D. Loan documentation for development loans shall contain a preliminary development plan that is satisfactory to the association. In addition, loans to one borrower (as defined in OTS Regulations Section 563.93) made under this sub-part [now part] for any one development project shall not exceed two percent of an association's assets. A development project may include all facilities that compose an integrated development plan. With respect to construction loans, associations shall reserve the right to impose limits on the number of structures under construction at a given time.

[9/27/83; 9/15/97; Recompiled 10/15/01]

PART 38: TIME-SHARE LOANS

12.20.38.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[10/13/83; 8/30/97; Recompiled 10/15/01]

12.20.38.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[8/30/97; Recompiled 10/15/01]

12.20.38.3 STATUTORY AUTHORITY:

Sections 58-10-72, 58-10-73, 58-10-83 NMSA 1978.

[5/16/83; 8/30/97; Recompiled 10/15/01]

12.20.38.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.20.38.5 EFFECTIVE DATE:

October 13, 1983, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective August 30, 1997.

[10/13/83; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.38.6 OBJECTIVE:

The objective of this sub-part [now part] is to bring to state savings and loan associations the authority to originate, purchase, sell, service and participate in time-share loans that conform to the provisions of this part and the association's written underwriting standards.

[8/30/97; Recompiled 10/15/01]

12.20.38.7 DEFINITIONS:

A. "Consumer loan" means a consumer loan as defined in 12 NMAC 20.3.8 [now 12.20.38 NMAC].

B. "Dealer" means any person or group of persons acting in concert who is in the business of selling active time-share notes or contracts.

C. "Developer" means any person or group of persons acting in concert who:

(1) as part of a common promotional plan, offers to dispose of its interest in a unit not previously disposed of; or

(2) reserves or succeeds to any special developer rights in a time-share project.

D. "Independent appraisal" means an appraisal performed by an appraiser other than a dealer or developer and other than an appraiser chosen by or affiliated with a dealer or developer.

E. "Person" means any individual, firm, partnership, corporation, association or any other group or combination acting as a unit.

F. "Purchaser" means any person other than a developer who, by means of a voluntary transfer, acquires a legal or equitable interest in a time-share other than as security for an obligation or a leasehold interest.

G. "Time-share estate" means a right to occupy a time-share unit or units during specified periods of time coupled with the conveyance to each time-share purchaser of a percentage undivided interest in fee simple in such unit or units.

H. "Time-share loan" means a loan secured by a time-share estate.

I. "Time-share property" means one or more time-share units subject to the same time-share instrument, together with any other real estate or rights therein appurtenant to those units.

J. "Time-share project" means real property containing one or more units which is subject to a project instrument consisting of one or more recordable documents applying to the whole of a project and containing restrictions or covenants regulating the use, occupancy or disposition of units in a project, including any amendment to the document but excluding any law, ordinance or governmental regulation.

K. "Unit" means real property, or a portion thereof, designated for separate use.

[10/13/83; 8/30/97; Recompiled 10/15/01]

[Compiler's note: Subsection A of 12.20.38.7 refers to 12 NMAC 20.3.8 NMAC; the reference should be to 12 NMAC 20.3.4 [now 12.20.34 NMAC] as evidenced by the attachment to the filed rule.]

12.20.38.8 TIME-SHARE LOANS:

A. An association may make direct or indirect time-share loans provided that: (1) at any one time the total investment made under this sub-part [now part] and in any consumer loans in aggregate shall not exceed 30 percent of any association's assets; and (2) the requirements of this section are met. The authority to make a time-share loan includes the authority to originate, purchase, sell, service and participate in such loans provided that such loans conform to the provisions of this sub-part [now part] and the association's written underwriting standards.

B. If a loan that may be made under this sub-part [now part] is also authorized to be made under another regulation or statutory provision, which may have different percentage-of-assets and other limitations or requirements, an association shall have the option of choosing under which applicable provision the loan shall be made.

C. The total balances of all outstanding time-share loans to one borrower, or on which any other person may become obligated directly or indirectly, is limited to the lesser of ten percent of an association's savings accounts or 100 percent of its net worth, reduced by the amount of other loans to that same borrower.

D. In no event shall an association make, purchase, sell, service or enter into any participation transaction, directly or indirectly, in a time-share loan unless the association first obtains the following:

(1) an individual credit analysis of each time-share loan purchaser which establishes the purchaser's creditworthiness;

(2) an analysis of the time-share project which includes:

(a) the identity of the developer; a report on the principals comprising the developer, including resumes of the principals; previous time-share experience; and financial statements of the principals and any guarantors of the developer;

(b) sales history of the project which includes a description of the sales program; copies of advertising, mailers and brochures; sales projections for the next two years, and pricing structure for units;

(c) a report on any litigation pending against the project or developer;

(d) an independent appraisal of the value of any time-share unit which is the security for the note or contract being purchased;

(e) a title opinion from an attorney in the state where the project is located that the time-share estate being purchased by the purchaser meets the definition of "time-share estate" provided herein;

(f) legal documentation on the project which includes copies of the deed to the project and any other documents indicating ownership; articles of incorporation or

partnership agreement; any condominium or time-share filings, if required, with the state where the project is located; by-laws of the time-share owners' association; and the project's management agreement.

(3) the original purchaser documents for each loan including the purchase and sale agreement, note, deed of trust or mortgage, credit application, any additional disclaimers or disclosures given customers; or a non-negotiable trust receipt issued by a federally insured institution indicating that the association is the true owner of the note and the security instruments; or certified or conformed copies of documents where the originals are required to be maintained in a public registry;

(4) an insurance policy issued by an insurance company with at least an "A" rating as listed in a nationally recognized insurance rating guide such as Best's. The policy shall insure with no deductibles the unpaid balance of the notes or contracts against default by the purchaser and against fraud, forgery and the mysterious disappearance of said notes or contracts;

(5) proof from the developer or dealer that it has a fidelity bond in excess of the total amount of all notes or contracts transferred from said dealer or developer to the association;

(6) a current aging schedule on each note or contract reflecting collections experience by month for the past twelve months. No association shall purchase any notes or contracts which are less than 90 days old or are more than 30 days delinquent;

(7) a copy or copies of any collection and servicing agreements and contracts for any notes or contracts which the association intends to purchase from, or take as security for any loan to, a developer or dealer. Any servicing or collection agency utilized by the association shall be independent from the developer or dealer.

E. In no event shall an association make, purchase, sell, service or enter into any participation transaction, directly or indirectly, in a time-share loan unless the time-share estate being purchased by the purchaser meets the definition of "time-share estate" as provided herein.

F. Prior to making, purchasing, participating in or accepting as security any time-share notes or contracts, the association shall have established by resolution of its board of directors underwriting standards which include, at a minimum, the requirements of Subsection 8.4 of this Sub-part [now Subsection D of 12.20.38.8 NMAC].

G. An association shall not purchase or accept as security any time-share notes or contracts unless a minimum of five percent down payment has been made by the original purchaser.

H. In making, purchasing, selling, participating in or obtaining as security any time-share notes or contracts, an association shall comply with all applicable regulations of the supervisor, the federal home loan bank board and the federal savings and loan insurance corporation.

[10/13/83; 8/30/97; Recompiled 10/15/01]

PART 39: LOANS TO ONE BORROWER

12.20.39.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[3/31/78; 6/28/91; 9/15/97; Recompiled 10/15/01]

12.20.39.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[9/15/97; Recompiled 10/15/01]

12.20.39.3 STATUTORY AUTHORITY:

Sections 58-10-50, 58-10-72 and 58-10-73 NMSA 1978.

[3/31/78; 6/28/91; 9/15/97; Recompiled 10/15/01]

12.20.39.4 DURATION:

Permanent.

[9/15/97; Recompiled 10/15/01]

12.20.39.5 EFFECTIVE DATE:

June 28, 1991, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective June 14, 1997.

[3/31/78; 6/28/91; 9/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.39.6 OBJECTIVE:

The objective of this sub-part [now part] is to place on state savings and loan associations limitations on loans to one borrower within the provisions of this regulation.

[9/15/97; Recompiled 10/15/01]

12.20.39.7 DEFINITIONS:

[RESERVED]

[9/15/97; Recompiled 10/15/01]

12.20.39.8 LOANS TO ONE BORROWER:

A. The limitations on loans to one borrower that apply to federal and federally insured state savings associations under OTS Regulations Section 563.93 shall apply in the same manner and to the same extent to all state-chartered savings and loan associations. Compliance with the federal requirements, as amended from time to time, shall constitute compliance with all state requirements for limits on loans to one borrower by state-chartered savings and loan associations.

B. This regulation supersedes and repeals existing Regulation 78-3S&LB and any other previous regulations governing lending limits to one borrower by state-chartered savings and loan associations.

[3/31/78; 6/28/91; 9/15/97; Recompiled 10/15/01]

PART 40: MANAGEMENT [RESERVED]

PART 41: SIGNATURE GUARANTEEING

12.20.41.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[11/25/81; 8/30/97; Recompiled 10/15/01]

12.20.41.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[8/30/97; Recompiled 10/15/01]

12.20.41.3 STATUTORY AUTHORITY:

Sections 58-10-72 and 58-10-83 NMSA 1978.

[11/25/81; 8/30/97; Recompiled 10/15/01]

12.20.41.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.20.41.5 EFFECTIVE DATE:

November 25, 1981, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective August 30, 1997.

[11/25/81; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.41.6 OBJECTIVE:

The objective of this sub-part [now part] is to notify associations licensed under the statute that they have the authority to guarantee customer signatures.

[8/30/97; Recompiled 10/15/01]

12.20.41.7 DEFINITIONS:

[RESERVED]

[8/30/97; Recompiled 10/15/01]

12.20.41.8 SIGNATURE GUARANTEEING:

A. The supervisor finds that associations licensed under the provisions of the state statutes have the authority to guarantee customer signatures for documentary transactions in which an association has an interest as part of its deposit taking, lending or (in the case of an association which is also a trust company) trust business, as well as guarantees executed as a separate customer service with respect to stock transfers and similar transactions in which the association has no direct interest.

B. Nothing in this sub-part [now part] is to be construed as an intent to limit any powers possessed by an association under other statutory or regulatory provisions.

[11/25/81; 8/30/97; Recompiled 10/15/01]

PART 42: NAME CHANGE

12.20.42.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[1/18/83; 8/30/97; Recompiled 10/15/01]

12.20.42.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[8/30/97; Recompiled 10/15/01]

12.20.42.3 STATUTORY AUTHORITY:

Section 58-10-50 NMSA 1978 in accordance with Sections 58-10-72 and 58-10-73 NMSA 1978.

[1/18/83; 8/30/97; Recompiled 10/15/01]

12.20.42.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.20.42.5 EFFECTIVE DATE:

January 18, 1983, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective August 30, 1997.

[1/18/83; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.42.6 OBJECTIVE:

The objective of this sub-part [now part] is to afford a state chartered association parity with federal associations by permitting it to change its name to indicate it is a savings bank.

[8/30/97; Recompiled 10/15/01]

12.20.42.7 DEFINITIONS:

[RESERVED]

[8/30/97; Recompiled 10/15/01]]

12.20.42.8 NAME CHANGE:

An association chartered under the provisions of the Savings and Loan Act, being Section 58-10-1 NMSA 1978 et seq., may, by an amendment to its articles of incorporation, change its name to indicate that it is a savings bank.

[1/18/83; 8/30/97; Recompiled 10/15/01]

PART 43: [RESERVED]

PART 44: ACCOUNTING PROCEDURES

12.20.44.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[3/31/78; 8/30/97; Recompiled 10/15/01]

12.20.44.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico that are not members of the federal home loan bank system.

[8/30/97; Recompiled 10/15/01]

12.20.44.3 STATUTORY AUTHORITY:

Sections 58-10-50, 58-10-72 and 58-10-73 NMSA 1978.

[3/31/78; 8/30/97; Recompiled 10/15/01]

12.20.44.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.20.44.5 EFFECTIVE DATE:

March 31, 1978, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective August 30, 1997.

[3/31/78; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.44.6 OBJECTIVE:

The objective of this sub-part [now part] is to bring to state savings and loan associations the accounting procedures that conform to the provisions of this sub-part [now part].

[8/30/97; Recompiled 10/15/01]

12.20.44.7 DEFINITIONS:

A. "Acquisition charges" includes finder's fee, buying commission, attorney's fee and brokerage fee paid by an association in connection with the making or acquisition of a mortgage loan or commitment, but does not include a premium paid by such association in connection with the purchase of a mortgage loan.

B. "Acquisition credits" means that portion of any consideration other than the average interest provided by the loan contract, charged or received by an institution for or in connection with the making or acquisition of a mortgage loan or commitment that is made or acquired, that is in excess of the greater of a) \$50.00 or b) two percent of the amount of the loan if the loan is for the purpose of construction, or one percent of the amount of the loan if the loan is for any other purpose, plus for either type of loan \$50.00 for those associations utilizing employees of the association to perform appraisal, attorney or loan closing functions; provided that the term "acquisition credits" does not include specifically itemized charges collected by an association from the borrower and paid out to third parties for necessary initial charges in connection with the mortgage loan.

C. "Amount of loan" means the face amount of the obligation executed by the primary obligor on a mortgage loan, except that with respect to a mortgage loan acquired by an association such term means the principal balance of such loan at the time of its acquisition by such association.

D. "Mortgage loan" means any loan or contract (or interest therein) on the security of real estate.

[3/31/78; 8/30/97; Recompiled 10/15/01]

12.20.44.8 ACCOUNTING PROCEDURES:

A. A premium paid by an association in connection with the acquisition of a mortgage loan may be charged off when paid or may be capitalized; if capitalized, a

proportionate amount thereof shall be charged to expense, at least semiannually, over the remaining term of the loan.

B. If an association purchases a loan at a discount, such discount shall be deferred and credited to an account descriptive of deferred discount income, and a proportionate amount of such discount shall be credited to income, at least semiannually, over a period of seven years. For the purpose of this sub-part [now part], a loan shall be deemed to have been purchased by an association at a discount if the price paid by such institution for such loan is less than the amount of the loan balance.

C. All acquisition charges, as hereinafter, in connection with the making or acquisition of a mortgage loan by an association shall be charged to such association's expense for the accounting period in which such charges are incurred and shall not be deferred beyond the end of such accounting period.

D. Any acquisition credits, as hereinafter defined, in connection with the making or acquisition of any mortgage loan by an association, not treated as provided in Subsection 8.5 of this sub-part [now Subsection E of 12.20.44.8 NMAC], shall be deferred and shall be credited to an account descriptive of deferred income, and a proportionate amount of all acquisition credits so deferred shall be credited to income, at least semiannually, over a period of seven years.

E. If, during any fiscal year, in connection with the making or acquisition of any mortgage loan, any acquisition credits are not deferred in the manner provided in Subsection 8.4 of this Sub-part [now Subsection D of 12.20.44.8 NMAC], an association shall credit from its net income for such fiscal year, to a reserve account that shall be established for losses and entitled "Reserve for Losses", an amount equal to the amount of acquisition credits applicable to such loan. Credits to such reserve account shall be in addition to and not a part of reserve credits required to be made; and such reserve account shall not be considered a part of such association's reserve account, shall not receive credit from any source other than that provided in this Subsection 8.5 [now Subsection E of 12.20.44.8 NMAC] and shall not receive any charges except as set forth in Subsection 8.6 of this sub-part [now Subsection F of 12.20.44.8 NMAC].

F. In each fiscal year one-seventh part of the credits required to be made during such fiscal year and during past fiscal years to the reserve account provided for in Subsection 8.5 [now Subsection E of 12.20.44.8 NMAC] shall become available for credit from such account to such association's reserve account. Charges for the purpose of absorbing losses may be made in any fiscal year for the reserve account provided for in Subsection 8.5 [now Subsection E of 12.20.44.8 NMAC] shall become available for credit from such account to such association's reserve account. Charges for the purpose of absorbing losses may be made in any fiscal year for the reserve account provided for in Subsection 8.5 [now Subsection E of 12.20.44.8 NMAC], provided the reserve account of such association and all its other reserve accounts established for the purpose of absorbing losses shall first have been exhausted by losses.

G. If a mortgage loan owned by an association is sold without recourse at a premium, such premium shall be credited to such association's income for the accounting period in which the loan is sold. If a mortgage loan owned by an association is sold without recourse at a loss or at a discount, such loss or discount shall be charged to the balance of any acquisition credits or purchase discount applicable to such loan that remains deferred at the time of such sale; any loss or discount in excess of such balance shall be charged to such association's expense for the accounting period in which the loan is sold.

H. When an association sells real estate owned by it, such association's records shall disclose the book value of such real estate at the time of such sale and the price at which it is sold. If such sale results in a profit, such part of the profit as is proportionate to the part of the sale price not received by the association in cash at the time of sale shall be deferred and credited to an account descriptive of unearned profit on real estate sold; thereafter such unearned profit shall be deemed to have been realized to no greater extent than is proportionate to the reduction of the unpaid balance of the sale contract or purchase money mortgage.

I. Every association shall maintain all major income and expense accounts on a full accrual basis.

[3/31/78; 8/30/97; Recompiled 10/15/01]

PART 45: REPORTS

12.20.45.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[3/31/78; 8/30/97; Recompiled 10/15/01]

12.20.45.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[8/30/97; Recompiled 10/15/01]

12.20.45.3 STATUTORY AUTHORITY:

Sections 58-10-72 and 58-10-73 NMSA 1978.

[3/31/78; 8/30/97; Recompiled 10/15/01]

12.20.45.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.20.45.5 EFFECTIVE DATE:

March 31, 1978, unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format effective August 30, 1997.

[3/31/78; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.45.6 OBJECTIVE:

The objective of this sub-part [now part] is to bring to state savings and loan associations the reporting requirements that conform to the provisions of this regulation.

[8/30/97; Recompiled 10/15/01]

12.20.45.7 DEFINITIONS:

[RESERVED]

[8/30/97; Recompiled 10/15/01]

12.20.45.8 REPORTS:

A. The officers of each savings and loan association shall make a monthly report to the association's board of directors on forms prescribed by the savings and loan supervisor, and shall forward one copy of such report to the savings and loan supervisor. (The savings and loan supervisor has approved a form of monthly report, copies of which any association may obtain from the financial institutions division. All insured associations may submit copies of the monthly reports furnished the federal home loan bank board in lieu of the report approved by the supervisor.)

B. Every association shall make such other reports as the savings and loan supervisor may, from time to time, require which will be in such form and filed on such date as may be prescribed by the supervisor.

[3/31/78; 8/30/97; Recompiled 10/15/01]

PART 46: [RESERVED]

PART 47: LOCATION OF BRANCH OFFICES

12.20.47.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[8/15/80; 8/30/97; Recompiled 10/15/01]

12.20.47.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[8/30/97; Recompiled 10/15/01]

12.20.47.3 STATUTORY AUTHORITY:

Subsection C of Section 58-10-17 NMSA 1978.

[8/30/97; Recompiled 10/15/01]

12.20.47.4 DURATION:

Permanent.

[8/30/97; Recompiled 10/15/01]

12.20.47.5 EFFECTIVE DATE:

August 15, 1980, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective August 30, 1997.

[8/15/80; 8/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.47.6 OBJECTIVE:

The objective of this sub-part [now part] is to amend the requirement described herein for all state savings and loan associations that conform to the provisions of this regulation.

[8/30/97; Recompiled 10/15/01]

12.20.47.7 DEFINITIONS:

[RESERVED]

[8/30/97; Recompiled 10/15/01]

12.20.47.8 LOCATION OF BRANCH OFFICES:

The provision contained in Section 58-10-17C NMSA 1978 (1979 Supp.), requiring that branch offices be located within a radius of one hundred statute air miles from the principal office of the parent association, shall not apply in the case of applications filed with the supervisor subsequent to July 1, 1980.

[8/15/80; 8/30/97; Recompiled 10/15/01]

PART 48: SERVICE CORPORATIONS

12.20.48.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100

[11/17/80; 9/15/97; Recompiled 10/15/01]

12.20.48.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[9/15/97; Recompiled 10/15/01]

12.20.48.3 STATUTORY AUTHORITY:

Section 58-10-50 NMSA 1978.

[9/15/97; Recompiled 10/15/01]

12.20.48.4 DURATION:

Permanent.

[9/15/97; Recompiled 10/15/01]

12.20.48.5 EFFECTIVE DATE:

November 17, 1980, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 15, 1997.

[11/17/80; 9/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.48.6 OBJECTIVE:

The objective of this sub-part [now part] is to bring to state savings and loan associations the authority to invest in service corporations within the provisions of this sub-part [now part].

[9/15/97; Recompiled 10/15/01]

12.20.48.7 DEFINITIONS:

A. "Aggregate outstanding investment" means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of service corporations and amounts paid to the association to retire obligations of service corporations.

B. "Conforming loan" means a loan or portion thereof which an association may make under any provision of the Savings and Loan Act or regulations promulgated thereunder. A guarantee or take-out commitment of a loan which could have been made by an association as a conforming loan may be deemed a conforming loan for purposes of this regulation if the association complied with all requirements of the act and regulations, as though it were itself making the loan subject to its guarantee or take-out commitment.

C. "Consumer loan" means a loan to one or more individuals, unsecured or secured by goods used or bought primarily for personal, family or household purposes.

D. "Joint venture" means any joint undertaking by a service corporation or a wholly owned subsidiary thereof with one or more persons or legal entities in any form, including a joint tenancy, tenancy in common or partnership, and including investment in a corporation other than a wholly-owned subsidiary.

E. "Subsidiary" includes a wholly-owned subsidiary and any joint venture in which a service corporation or wholly-owned subsidiary thereof:

(1) owns, controls or holds with power to vote more than 25 percent of the capital stock;

(2) is a general partner; or

(3) is a limited partner and has contributed more than 25 percent of the limited partnership's capital.

F. "Unsecured debt" and "unsecured loan" excludes accounts payable incurred in the ordinary course of business and paid within 60 days.

[11/17/80; 9/15/97; Recompiled 10/15/01]

12.20.48.8 GENERAL SERVICE CORPORATIONS:

An association may invest in the capital stock, obligations or other securities of a service corporation organized under the law of the state of New Mexico if:

A. the service corporation's entire capital stock is available for purchase by, and only by, any and all savings and loan associations with a home office in this state, and the capital stock is owned by more than one savings and loan association;

B. no savings and loan association owns, or may own, more than 10 percent of the service corporation's outstanding capital stock;

C. every eligible association may own an equal amount of such stock or may, on such uniform basis as the supervisor may determine, own an amount of such stock equaling a stated percentage of its assets or savings capital at the time it purchases any such stock; and

D. substantially all of the service corporation's activities, performed directly or through one or more wholly owned subsidiaries or joint ventures, consist of one or more of the following:

(1) originating, purchasing, selling and servicing any of the following:

(a) loans, and participation in loans, on a prudent basis and secured by real estate or first liens on mobile homes, including brokerage and warehousing of such loans;

(b) loans, with or without security, for altering, repairing, improving, equipping or furnishing residential real estate;

(c) educational loans; and

(d) consumer loans;

(2) making any of the following kinds of investments:

(a) investments specified in Section 58-10-45 NMSA 1978;

(b) investments in savings accounts in an association which is a stockholder in the service corporation, if the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;

(3) performing the following services, primarily for savings and loan associations:

(a) clerical services, accounting, data processing and internal auditing;

(b) credit information, appraising, construction loan inspection and abstracting;

(c) developing and administration of personnel benefit programs, including life insurance, health insurance and pension or retirement plans;

(d) research, studies and surveys;

(e) purchasing office supplies, furniture and equipment;

(f) developing and operating storage facilities for microfilm or other duplicate records;

(g) advertising and other services to procure and retain both savings accounts and loans;

(4) acquiring unimproved real estate for prompt development and subdivision, principally for construction of housing or for resale to others for such construction, or for use as mobile home sites. However, if the total cost to the service corporation to purchase, develop, subdivide and construct improvements on such real estate exceeds 20 percent of its asset, it shall notify the supervisor within 30 days after such acquisition. Notification shall include the number of lots or acres involved and the project's name, location, estimated completion date and total projected cost including dollar involvement of the service corporation.

(5) developing, subdividing and constructing improvements (including improvements to be used for commercial purposes, when incidental to a housing project) for sale or for rental on real estate referred to in Paragraph 8.4.4 [now Paragraph (4) of Subsection D of 12.20.48.8 NMAC]. However, such development, subdivision and construction of improvements must be completed within three years after commencement of development of such real estate and within five years after acquisition of the real estate, unless such period is subsequently extended by the supervisor upon written application by the service corporation. Acquisition of an option to purchase is not an acquisition for the purpose of determining such period;

(6) acquiring improved residential real estate and mobile homes to be held for rental;

(7) acquiring improved residential real estate for remodeling, renovating or demolishing and rebuilding for sale or for rental;

(8) maintaining and managing rental real estate referred to in paragraphs 8.4.5, 8.4.6, and 8.4.7 [now Paragraphs (5), (6) and (7) of Subsection D of 12.20.48.8 NMAC] and any real estate owned by holders of its capital stock;

(9) serving as insurance broker or agent, in accordance with applicable laws, primarily dealing in policies for savings and loan associations, their borrowers and account holders, which provide protection such as homeowner's, fire, theft, automobile, life, health, accident and title but excluding private mortgage insurance;

(10) serving as escrow agent or as trustee under deeds of trust;

(11) preparing state and federal tax returns for account holders of or borrowers from a stockholder of the service corporation (including their family members but not including an account-holder or borrower which is a corporation operated for profit);

(12) acquiring, maintaining and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities. However, without prior approval of the director, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed its consolidated net worth;

(13) issuing credit cards, extending credit in connection therewith, and otherwise engaging in or participating in credit card operations;

(14) activities reasonably incident to those listed in paragraphs 8.4.1 through 8.4.12 [now Paragraphs (1) through (12) of Subsection D of 12.20.48.8 NMAC]; and

(15) such other activities reasonably related to the activities of associations as the supervisor may approve.

[11/17/80; 9/15/97; Recompiled 10/15/01]

12.20.48.9 OTHER SERVICE CORPORATIONS:

In addition to investment in service corporations under Section 8 of this Sub-part [now 12.20.48.8 NMAC], an association may invest in the capital stock or other securities of a service corporation organized under the laws of this state if:

A. the corporation's entire capital stock is held by one or more savings and loan associations with a home office in this state;

B. the activities of such corporation, performed directly or through one or more wholly owned subsidiaries or joint ventures, consist solely of one or more of the activities specified in paragraphs 8.4.1 through 8.4.13 of this Sub-part [now Paragraphs (1) through (13) of Subsection D of Section 12.20.48.8 NMAC] and such other activities reasonably related to the activities of an association as the supervisor may approve;

C. In the case of a corporation in which fewer than five savings and loan associations hold capital stock or one association holds more than 40 percent of such stock, the following requirements are met:

(1) the corporation, including any subsidiary, does not have outstanding at any time consolidated debt (to holders of its capital stock and to others) exceeding the following limitations:

(a) unsecured debt - two times the total of its consolidated net worth plus unsecured debt to holders of at least 25 percent of its capital stock;

(b) secured and unsecured debt - ten times the total of its consolidated net worth plus unsecured debt to such stockholders; or if the corporation, including any subsidiary thereof, is engaged solely in activities specified in paragraph 8.4.1.1 of this regulation [now Subparagraph (a) of Paragraph (1) of Subsection D of Section 12.20.48.8 NMAC], 20 times such total;

(c) secured debt will be deemed unsecured for purposes of Subsection 9.3.1 [now Paragraph (1) of Subsection C of 12.20.48.9 NMAC] to the extent that it exceeds the market value of any security therefor at the time the loan is made. The term secured debt as used in Subsection 9.3.1 [now Paragraph (1) of Subsection C of 12.20.48.9 NMAC] shall include the entire amount of any obligation of the service corporation resulting from sale of consumer loans with recourse;

(d) the debt of each subsidiary of the corporation shall also conform to the debt limitations in the subsection;

(2) supervisor approval is obtained before any activity of the service corporation is performed through one or more joint ventures if a director, officer or controlling person of any stockholder of the service corporation has direct or indirect beneficial interest in the joint venture;

(3) supervisor approval is obtained for any investment:

(a) by an association in such a service corporation or in a corporation which will become such a service corporation as a result of such investment; and

(b) by such service corporation directly or indirectly through one or more of its wholly-owned subsidiaries or joint ventures if the purpose of such investment is to acquire a going business for an amount exceeding the fair market value of the tangible

net assets of that business from a director or officer of an association which owns any of the capital stock of the service corporation or from an entity in which a director or officer of the association has a direct or indirect beneficial interest or is a director, officer, controlling person, partner or trustee.

[11/17/80; 9/15/97; Recompiled 10/15/01]

12.20.48.10 AMOUNT OF INVESTMENT:

A. An association may invest in the capital stock, obligations or other securities of service corporations, provided that its aggregate outstanding investment does not exceed three percent of assets, and any investment in excess of two percent of assets serves primarily community, inner-city or community development purposes. The investment limitations of this subsection shall include all loans secured and unsecured, and all guarantees or takeout commitments of such loans, to service corporations or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, whether or not the association is a stockholder therein. An association with an aggregate outstanding investment in excess of two percent of assets shall designate investments that serve primarily community, inner-city or community development purposes, which shall include the following:

- (1) investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms or businesses that are local in character;
- (2) investments for the preservation or revitalization of either urban or rural communities;
- (3) investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or
- (4) other community, inner-city or community development related investments approved by the supervisor.

B. In addition to amounts which it may invest under Subsection 10.1 [now Subsection A of 12.20.48.10 NMAC], an association which has a net worth of at least five percent of withdrawable accounts and which has a ratio of scheduled items (other than assets acquired in a merger instituted for supervisory reasons) to specified assets of not more than 2.5 percent (except as provided in Subsection 10.4) [now Subsection D of 12.20.48.10 NMAC] may loan additional amounts as follows:

- (1) an aggregate outstanding amount not to exceed 20 percent of the association's net worth may be invested in conforming loans made to service corporations, or subsidiaries thereof, and to joint ventures, of such service corporations and subsidiaries; and

(2) an aggregate outstanding amount, including loans included in paragraph 10.2.1 [now Paragraph (1) of of Subsection B of 12.20.48.10 NMAC], not to exceed 50 percent of such association's net worth may be invested in conforming loans made to a service corporation of which the association owns or holds with power to vote not more than ten percent of the capital stock or to a joint venture in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations:

(a) own or hold with power to vote not more than a total of ten percent of the capital stock, or

(b) are limited partners and have contributed not more than ten percent of such joint venture's capital.

C. The limitation in Subsection 10.1 [now Subsection A of 12.20.48.10 NMAC] does not apply to conforming loans to a service corporation which qualifies under Section 10 of this Sub-part [now 12.20.48.10 NMAC] or to any service corporation in which the lending association does not have any investment made under authority of this subpart [now part].

D. An association whose net worth equals at least five percent of withdrawable accounts may apply to the supervisor for an exception from the scheduled items limitation in Subsection 10.2 of this Sub-part [now Subsection B of 12.20.48.10 NMAC]. The application shall be supported by information evidencing the association's sound investment, lending, appraisal and underwriting policies and favorable operating results. The application shall be filed with the supervisor. The application is approved, if, within 30 calendar days after the date the supervisor receives it, he has not notified the applicant that approval is withheld.

E. Examination: An association may invest in the capital stock, obligations or other securities of a service corporation only if the service corporation has executed and filed with the supervisor a written agreement that the service corporation will permit and pay the cost of examination of it by the supervisor to determine the propriety of any investment by an association under this Sub-part [now part].

F. Disposal of investment: Whenever a service corporation, including any subsidiary thereof, engages in an activity which is not permissible for or exceeds limitations on a service corporation in which an association may invest, or whenever the capital stock ownership requirements of this Sub-part [now part] are not met, an association having an interest in the corporation, including any subsidiary thereof, shall dispose of its investments promptly unless, within 90 days after the supervisor mails written notice to the association, the impermissible activity is discontinued, the limitation is complied with or the capital stock ownership requirements are met.

G. Corporate name: No association may invest in, or retain any investment in, the capital stock, obligations or other securities of any service corporation whose corporate name for the designation of whose subsidiary or office:

(1) includes the words "National", "Federal" or "United States" or the initials "U.S."; or

(2) could identify it with any entity which has not invested in it.

H. Any application made to the supervisor under this Sub-part [now part] shall be in the form he prescribes. One or more associations which propose investment in a service corporation which is not yet organized may make any application required by the Sub-part [now part].

I. Activities and limitations specified in this Sub-part [now part] may be revised from time to time.

J. Service corporations in which associations may invest shall not be used to acquire scheduled items except that such a service corporation may, for the purpose of providing housing, acquire real estate owned by an association domiciled in this state.

[11/17/80; 9/15/97; Recompiled 10/15/01]

PART 49: EXPANDED POWERS

12.20.49.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[10/15/82; 9/15/97; Recompiled 10/15/01]

12.20.49.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[9/15/97; Recompiled 10/15/01]

12.20.49.3 STATUTORY AUTHORITY:

Sections 58-10-72 and 58-10-83 NMSA 1978.

[9/15/97; Recompiled 10/15/01]

12.20.49.4 DURATION:

Permanent.

[9/15/97; Recompiled 10/15/01]

12.20.49.5 EFFECTIVE DATE:

October 15, 1982, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 15, 1997.

[10/15/82; 9/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.49.6 OBJECTIVE:

The objective of this sub-part [now part] is to expand the powers of savings and loan associations.

[9/15/97; Recompiled 10/15/01]

12.20.49.7 DEFINITIONS:

[RESERVED]

[9/15/97; Recompiled 10/15/01]

12.20.49.8 EXPANDED POWERS:

A. Demand deposits: An association may accept non-interest-bearing demand deposits from: (a) a commercial, corporate, business or agricultural entity for the sole purpose of effectuating payments thereto by a nonbusiness customer; or (b) any person or organization having a business, corporate, commercial or agricultural loan relationship with the association. An association may extend secured or unsecured credit in the form of overdraft privileges specifically related to demand deposits, but such overdraft loans must be aggregated with other commercial loans for purposes of the five percent of assets limitation. Overdraft loans made under authority of this regulation must be made pursuant to proper underwriting and with due regard for safety and soundness.

B. Governmental unit now accounts: An association may offer NOW accounts as defined in OTS Regulations Section 561.29 for deposit of public funds by an officer, employee or agent of the United States, any state, county, municipality or political subdivision thereof, the District of Columbia, the commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States or any political subdivision thereof.

C. Commercial loans: An association may invest up to five percent of its assets in secured or unsecured loans for commercial, corporate, business or agricultural purposes provided that loans to any one borrower shall not exceed the limits of OTS Regulations Section 563.93(c). Commercial loans made under authority of this regulation must be made with proper underwriting and with due regard for safety and soundness.

D. Consumer loans: An association may invest up to 30 percent of its assets in consumer loans. Investments in consumer loans no longer need to be aggregated with investments made in commercial paper and corporate debt securities. Section 2.1 (a) of Regulation 80-5 S and LB [now Paragraph (1) of Subsection A of 12.20.34.8 NMAC] is herewith rescinded.

[10/15/82; 9/15/97; Recompiled 10/15/01]

PART 50: POWER TO BORROW, FINANCE SUBSIDIARIES

12.20.50.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100

[4/11/85; 9/15/97; Recompiled 10/15/01]

12.20.50.2 SCOPE:

All savings and loan associations chartered by the state of New Mexico.

[9/15/97; Recompiled 10/15/01]

12.20.50.3 STATUTORY AUTHORITY:

Section 58-10-50 NMSA 1978.

[4/11/85; 9/15/97; Recompiled 10/15/01]

12.20.50.4 DURATION:

Permanent.

[9/15/97; Recompiled 10/15/01]

12.20.50.5 EFFECTIVE DATE:

April 11, 1985, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 15, 1997.

[4/11/85; 9/15/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.50.6 OBJECTIVE:

The objective of this sub-part [now part] is to permit financial institutions chartered under the provisions of the statutes of this state to have the same powers as a federal institution with regard to a finance subsidiary.

[9/15/97; Recompiled 10/15/01]

12.20.50.7 DEFINITIONS:

[RESERVED]

[9/15/97; Recompiled 10/15/01]

12.20.50.8 POWER TO BORROW; FINANCE SUBSIDIARIES:

Notwithstanding any provision of the Savings and Loan Act to the contrary, every association or corporation chartered under the provisions of the savings and loan laws of this state may, without limitation as to aggregate amount, borrow, give security and issue notes, bonds, debentures or other obligations or other securities, including capital stock, directly or indirectly through a finance subsidiary; and may invest in, transfer or make available assets to any such finance subsidiary to the same extent it could if it were a federal savings and loan association.

[4/11/85; 9/15/97; Recompiled 10/15/01]

PART 51-59: [RESERVED]

PART 60: EARNINGS [RESERVED]

PART 61-69: [RESERVED]

PART 70: LIQUIDITY [RESERVED]

PART 71: APPLICABILITY OF HOME LOAN PROTECTION ACT

12.20.71.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department.

[12.20.71.1 NMAC - N, 03/03/2004]

12.20.71.2 SCOPE:

All state chartered savings and loan associations otherwise subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003) ("Act").

[12.20.71.2 NMAC - N, 03/03/2004]

12.20.71.3 STATUTORY AUTHORITY:

Sections 58-10-50 and 58-10-72 NMSA 1978.

[12.20.71.3 NMAC - N, 03/03/2004]

12.20.71.4 DURATION:

Permanent.

[12.20.71.4 NMAC - N, 03/03/2004]

12.20.71.5 EFFECTIVE DATE:

March 3, 2004, unless a later date is cited at the end of a section.

[12.20.71.5 NMAC - N, 03/03/2004]

12.20.71.6 OBJECTIVE:

The objective of this part is to grant state chartered savings and loan associations the same powers and authority that federally chartered savings associations are authorized, empowered, permitted or otherwise allowed to exercise.

[12.20.71.6 NMAC - N, 03/03/2004]

12.20.71.7 DEFINITIONS:

[RESERVED]

[12.20.71.7 NMAC - N, 03/03/2004]

12.20.71.8 FINDINGS:

A. Section 58-10-50 NMSA 1978, authorizes the director to grant by regulation the rights, powers, privileges, immunities and exceptions possessed by federally chartered savings associations.

B. The office of thrift supervision, department of the treasury, the "OTS," is authorized by federal legislation to regulate and supervise federally chartered savings associations throughout the United States.

C. On September 2, 2003 the OTS issued a letter ruling (the "OTS preemption") clarifying the fact that the following sections and subsections of the act (the "preempted sections of the act") are pre-empted by federal law from applying to federally chartered savings associations operating in New Mexico:

(1) Section 58-21A-4.A. and B. (Prohibited practices and provisions regarding home loans);

(2) Section 58-21A-5.A., B., C., D., E., G., H., I., J., K., L., M., N., O., and P (Limitations and prohibited practices for high-cost home loans);

(3) Section 58-21A-6.A., B., C., D., and E. (default; notice; right to cure);

(4) Section 58-21A-9.A., B., and C. (civil action);

(5) Section 58-21A-11.B. and C. (actions based on home loans);

(6) Section 58-21A-12. (application of Unfair Practices Act); and

(7) Section 58-21A-13. (attorney general; enforcement of rules).

[12. 20.71.8 NMAC - N, 03/03/2004]

12.20.71.9 AUTHORITY:

State chartered savings and loan associations are provided the same powers and authority granted to federally chartered savings associations as a result of the OTS preemption.

[12.20.71.9 NMAC - N, 03/03/2004]

CHAPTER 21: COMMUNITY REVITALIZATION AND DEVELOPMENT

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: PROCEDURES OF THE MAIN STREET REVOLVING LOAN COMMITTEE

12.21.2.1 ISSUING AGENCY:

Main Street Revolving Loan Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.

[12.21.2.1 NMAC - N, 7/31/08]

12.21.2.2 SCOPE:

This rule applies to members of the committee, the state historic preservation officer, the historic preservation division, members of the public having business with the committee, the economic development department, the New Mexico main street program and property owners in New Mexico main street communities.

[12.21.2.2 NMAC - N, 7/31/08]

12.21.2.3 STATUTORY AUTHORITY:

Section 3-60C-4 NMSA 1978.

[12.21.2.3 NMAC - N, 7/31/08]

12.21.2.4 DURATION:

Permanent.

[12.21.2.4 NMAC - N, 7/31/08]

12.21.2.5 EFFECTIVE DATE:

July 31, 2008, unless a later date is cited at the end of a section.

[12.21.2.5 NMAC - N, 7/31/08]

12.21.2.6 OBJECTIVE:

This rule of procedure shall serve the public and members of the committee as a guide to the operations and policies of the main street revolving loan committee. The rule shall be used as a reference and guide by all those concerned with observance and enforcement of the Main Street Revolving Loan Act, Sections 3-60C-1 to 3-60C-6 NMSA 1978.

[12.21.2.6 NMAC - N, 7/31/08]

12.21.2.7 DEFINITIONS:

A. "Committee" means the main street revolving loan committee.

B. "Division" means the historic preservation division, department of cultural affairs.

C. "Eligible property" means a site, structure, building or object that is subject to the Main Street Act (3-60B-1 NMSA 1978) or otherwise found pursuant to the rule of the committee to merit preservation pursuant to the main street revolving loan act.

D. "Fund" means the main street revolving loan fund.

E. "Property owner" means the sole owner, joint owner, owner in partnership or an owner of a leasehold interest with a term of five years or longer of an eligible property.

[12.21.2.7 NMAC - N, 7/31/08]

12.21.2.8 THE COMMITTEE:

A. The name of this committee shall be the "main street revolving loan committee," hereinafter referred to as the "committee."

B. The powers and duties of the committee shall be those enumerated in Section 3-60C-4 NMSA 1978.

C. The committee shall promulgate and revise as necessary those rules authorized by the act to effectuate the act.

D. The fiscal year of the committee shall end on June 30.

[12.21.2.8 NMAC - N, 7/31/08]

12.21.2.9 MEMBERS OF THE COMMITTEE:

A. Members of the committee are those appointed pursuant to Section 3-60C-4 NMSA 1978.

B. Members of the committee shall receive per diem and travel compensation as provided by the Per Diem and Mileage Act (Sections 10-8-1 through 10-8-8, NMSA 1978 Comp.) for official meetings or business of the committee.

[12.21.2.9 NMAC - N, 7/31/08]

12.21.2.10 MEETINGS OF THE COMMITTEE:

A. The committee shall meet at the call of the chair but no less than four times per year.

B. Any meeting or hearing of the committee may be held at any place within the state of New Mexico.

C. At each regular meeting of the committee, the committee and the historic preservation division shall agree on the place, date, time, and when appropriate, subject matter of the next meeting. An agenda and any required supporting documents, consistent with this decision, shall be issued by the historic preservation division two weeks prior to each scheduled meeting.

D. Special meetings may be called at any time for a stated purpose, consistent with the current open meetings resolution of the committee, by agreement of the chairman of the committee.

[12.21.2.10 NMAC - N, 7/31/08]

12.21.2.11 ORGANIZATION OF THE COMMITTEE:

At the first meeting after the beginning of each fiscal year, the committee shall organize by the election and installation of a chairman, a vice-chairman and a secretary from among its members.

[12.21.2.11 NMAC - N, 7/31/08]

12.21.2.12 DUTIES OF THE OFFICERS AND PERMANENT MEMBERS OF THE COMMITTEE:

A. The chairman shall preside at all meetings and shall appoint all subcommittees. He shall otherwise perform all duties pertaining to the office of the chairman.

B. The vice-chairman shall, in the absence or incapacity of the chairman, exercise the duties and shall possess all the powers of the chairman. In the absence of both the chairman and the vice-chairman, the secretary shall assume said duties and powers.

C. According to the Open Meetings Act Section 10-15-1 NMSA 1978, there will be minutes for the meeting. The historic preservation division may keep the meeting notes on the committee's behalf.

[12.21.2.12 NMAC - N, 7/31/08]

12.21.2.13 MEETING PROCEDURE:

A. The order of business shall be as follows:

- (1) approval of agenda;
- (2) review of minutes;
- (3) chairman's report;

- (4) historic preservation division report;
- (5) loan applications;
- (6) committee matters;
- (7) subcommittee matters;
- (8) old business;
- (9) new business;
- (10) date of meetings; and
- (11) adjournment.

B. The order of business may be revised or tabled at the discretion of the chairman in order to accommodate the schedules of interested persons who are present to discuss items on the agenda.

C. Standard parliamentary procedure shall govern the proceedings of the committee meetings except as otherwise provided for in this rule. Where a provision in this rule conflicts with standard parliamentary procedure, the provision in this rule shall be followed.

D. A simple majority shall constitute a quorum.

E. At a regular meeting, no member of the committee may participate in a final decision in any matter before the committee unless he has heard the evidence or familiarized himself with the record. Further, such member must be present at said meeting for actual participation in the final decision.

F. The historic preservation division shall send out, two weeks prior to a meeting, an agenda incorporating all matters identified by the division as requiring the attention of the committee. The committee may at its discretion accept any matter for consideration, providing such consideration is not inconsistent with the act and with the current open meetings resolution of the committee.

[12.21.2.13 NMAC - N, 7/31/08]

12.21.2.14 ORGANIZATION AND DUTIES OF SUBCOMMITTEES:

A. The chairman shall appoint from the membership of the committee and the division any necessary subcommittees to serve for a period not exceeding the chairman's term of office.

B. The chairman shall specify the duties of such subcommittees as he may create.

[12.21.2.14 NMAC - N, 7/31/08]

PART 3: LENDING PROCEDURES OF THE MAIN STREET REVOLVING LOAN FUND

12.21.3.1 ISSUING AGENCY:

Main Street Revolving Loan Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.

[12.21.3.1 NMAC - N, 12/15/08]

12.21.3.2 SCOPE:

This rule applies to the members of the main street revolving loan committee, the state historic preservation officer, the historic preservation division, members of the public having business with the committee, the economic development department, the New Mexico main street program, property owners in main street districts, lending institutions and federal agencies or non-profit organizations with funds available for making loans to owners of main street properties.

[12.21.3.2 NMAC - N, 12/15/08]

12.21.3.3 STATUTORY AUTHORITY:

Section 3-60C-4, NMSA 1978.

[12.21.3.3 NMAC - N, 12/15/08]

12.21.3.4 DURATION:

Five years.

[12.21.3.4 NMAC - N, 12/15/08]

12.21.3.5 EFFECTIVE DATE:

December 15, 2008, unless a later date is cited at the end of a section.

[12.21.3.5 NMAC - N, 12/15/08]

12.21.3.6 OBJECTIVE:

This rule establishes lending procedures for loans and loan subsidies made to New Mexico main street property owners for the repair, rehabilitation, restoration and preservation of eligible main street properties and to promote preservation and economic development in main street communities. The regulations describe the eligibility requirements for property owners and their property for loans or loan subsidies. The regulations describe the procedures that are followed and the documentation required and entered into by the state of New Mexico, the committee, historic preservation division and lending institutions or other entities that participate in the loan, and property owners, including descriptions of the preliminary loan application, the loan participation agreement, and the development agreement and preservation covenants and deed restrictions. The regulations also describe the terms and conditions contained in the required documentation and agreements entered into between the committee, division, lending institution, any other entity, and the borrower. This rule governs projects jointly funded by the state historic preservation division through the main street revolving loan fund and lending institutions. Entities other than lending institutions, e.g., non-profit organizations, may also contribute funding to the projects.

[12.21.3.6 NMAC - N, 12/15/08]

12.21.3.7 DEFINITIONS:

A. "Acquisition" means the acquiring of a fee simple interest or of a lesser interest by appropriate mechanism, including but not limited to easement or lease, in a main street property.

B. "Development agreement and covenants and deed restrictions" means the agreement entered into between the committee, division and the property owner/borrower.

C. "Committee" means the main street revolving loan committee.

D. "Division" means the historic preservation division, department of cultural affairs.

E. "Eligible property" means a site, structure, building or object that is subject to the Main Street Act (3-60B-1 NMSA 1978) or otherwise found pursuant to rule of the committee to merit preservation pursuant to the main street revolving loan act.

F. "Fund" means the main street revolving loan fund.

G. "Lending institution" means a commercial bank, savings and loan, credit union or non-profit organization with lending as part of its by-laws.

H. "Loan contributions" means the amount of funds from the main street revolving loan fund deposited into the loan pool.

I. "Loan participation agreement" means the agreement entered into between the division and a lending institution.

J. "Loan pool" means an account established and administered by a lending institution that contains contributions from the main street revolving loan fund, funds from participating lending institution(s), and may include funds from private and federal agencies.

K. "Main street revolving loan fund" or MSRL fund means the revolving loan fund established by Section 3-60C-1 through 3-60C-6, NMSA 1978, of the Main Street Revolving Loan Act, consisting of funds appropriated by the legislature of the state of New Mexico, funds available from federal agencies, non-profit organizations, and private funds made available for purposes of the Main Street Revolving Loan Act and receipts from the repayment of loans or loan subsidies made pursuant to the Main Street Revolving Loan Act.

L. "Non-profit organization" means an organization who has received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

M. "Property owner" means the sole owner, joint owner, owner in partnership or an owner of a leasehold interest with a term a term of five or longer of an eligible property.

N. "State historic preservation officer" or "SHPO" means the state official designated by the Cultural Properties Act, Section 18-6-8 NMSA 1978, to serve as the director of the state historic preservation division and administer the Cultural Properties Act and the Main Street Revolving Loan Act, Section 3-60C-4 to administer the main street revolving loan act.

O. "Standards" means the MSRL fund standards for rehabilitation adopted by the committee. The standards are for rehabilitation to guide projects on main street buildings under the Main Street Revolving Loan Act.

[12.21.3.7 NMAC - N, 12/15/08]

12.21.3.8 MSRL FUND CONTRIBUTIONS TO THE LOAN POOL AND THE LOAN POOL:

A. MSRL funds are contained in the main street revolving loan fund. Funding of restoration, rehabilitation, repair and preservation of an eligible property is accomplished by the division contributing an amount of MSRL funds into the loan pool.

B. For each approved project, the division and the lending institution shall establish a schedule for disbursement of loan funds to the borrower. The schedule shall be included in the loan participation agreement as provided for in Subsection E of 12.21.3.13 NMAC of these regulations, and indicate the stages of work progress and the anticipated dates of disbursements and amount of MSRL contributions to be

directed toward each stage of work progress. The period during which all disbursements of the MSRL contributions for a project shall not exceed a period of twelve months from the date the first disbursement of loan funds was made to the borrower or a period otherwise agreed to by the parties in the loan participation agreement. In either event, such period shall not exceed two years from the date of project loan approval by the division. The disbursement schedule for the MSRL funds from the loan pool shall be based upon the planned restoration, rehabilitation, repair and authorized use of MSRL funds.

C. Prior to the date of a scheduled disbursement of MSRL Funds, the lending institution shall notify the division that a deposit of a specified amount of MSRL funds into the loan pool is necessary. The division shall make an appropriate request to the New Mexico state treasurer's office to effect the deposit of the specified amount of MSRL funds into the loan pool for disbursement to the borrower by the lending institution. An MSRL contribution that is not disbursed to the borrower as provided in Subsection B of 12.21.3.8 NMAC herein shall be returned by the lending institution to the division.

D. The division shall only deposit MSRL funds into the loan pool to pay the costs of completed rehabilitation, restoration, or repair work, or for reimbursement of payment of approved materials delivered to the project site, including eligible costs approved by the division.

E. In addition to MSRL funds, the funds in the loan pool may include other funds from other sources that are available for loans or loan subsidies made pursuant to the MainStreet Revolving Loan Act.

F. MSRL funds contributed into and disbursed from the loan pool shall be used in accordance with these regulations.

G. Non-MSRL contributions in the loan pool may be available for costs of land acquisition, purchase, or other costs for which MSRL funds cannot be used.

H. Use of non-MSRL contributions in the loan pool shall be governed by any applicable restrictions, requirements, terms or conditions of the lending institution or other funding entity.

[12.21.3.8 NMAC - N, 12/15/08]

12.21.3.9 ELIGIBILITY OF PROPERTY:

A. An eligible property is any property in the designated main street district, historic and non-historic.

B. Eligible properties may be restored, rehabilitated, repaired, and preserved with a loan or loan subsidy using MSRL contributions to the loan pool.

[12.21.3.9 NMAC - N, 12/15/08]

12.21.3.10 ELIGIBILITY OF PROPERTY OWNERS:

A. An eligible property owner is a sole owner, joint owner, owner in partnership, corporate owner or owner of a leasehold interest of a term not less than five years, of any eligible property as described in Subsection A of 12.21.3.9 NMAC of these regulations.

B. A loan or loan subsidy from the loan pool shall be made only to eligible property owners who agree:

(1) to repay the loan and maintain the registered cultural property as restored, rehabilitated or repaired for a period of not less than five years; and

(2) that the property owner's failure to so maintain the property in conformity with Paragraph (1) of Subsection B of 12.21.3.10 NMAC of these regulations shall constitute a default of the loan or loan subsidy promissory note and mortgage agreement and shall be cause for acceleration of the unpaid loan or subsidy balance and exercise of foreclosure remedies against the collateral by the lending institution; and

(3) to execute a development agreement and covenants and deed restrictions with the committee and other loan agreements or documentation that may be required by the lending institution; and

(4) to rehabilitate, restore or repair a main street property, including rehabilitation of a portion of its front façade, in compliance with the standards as determined and agreed upon by the division; and

(5) to maintain complete and proper financial records regarding the eligible property and to make such records available to the division upon request; and

(6) to complete the proposed rehabilitation, repair or restoration work on the main street property within two years from the date the loan or loan subsidy is approved by the committee and closed by the lending institution; and

(7) to provide sufficient collateral security interest in the property to the state of New Mexico in accordance with 12.21.3.16 NMAC of these regulations; and

(8) to meet the committee criteria for priority ranking of loans or subsidies made from the MSRL contributions to the loan pool; and

(9) to meet the income eligibility criteria to satisfy the lending institution; and

(10) to credit the program with a job sign at least 36" in height by 24" in width, including the names of lender, other participating funding organizations, MSRL fund and the division.

[12.21.3.10 NMAC - N, 12/15/08]

12.21.3.11 MSRL CONTRIBUTIONS - ELIGIBLE COSTS:

Costs which can be paid with MSRL funds to the loan pool are architectural, design, graphic design, construction and engineering documents and planning costs, inspection of work in progress, contracted restoration, rehabilitation, and repair and costs necessary to meet code compliance. The division or the lending institution with prior approval of the committee, may use the MSRL funds to the loan pool to pay costs associated with enforcement of the obligations of the borrower under the promissory note, mortgage or loan agreement.

[12.21.3.11 NMAC - N, 12/15/08]

12.21.3.12 MSRL CONTRIBUTIONS - INELIGIBLE COSTS:

A. MSRL contributions to the loan pool shall not be used to pay costs of land acquisition, legal costs, fiscal agents' fees, loan origination fees, points, or other charges incurred by the borrower or which may be imposed by the lending institution or other lending entity, including fees described in 12.21.3.17 NMAC of these regulations and costs that are not expressly permitted in 12.21.3.11 NMAC of these regulations.

B. The borrower shall not apply MSRL funds contributions to the loan pool toward the acquisition or purchase of property.

[12.21.3.12 NMAC - N, 12/15/08]

12.21.3.13 COMMITTEE AND DIVISION PROCEDURES:

The committee shall consider loan applications at a regularly scheduled public meeting. The committee will review the application for conformance with the applicable standards and will take action on the application. Such action will take the form of an approval, approval with conditions, tabling or denial. Applicants will be notified of the committee's decisions within 14 calendar or 10 business days of the committee's meeting. If approved division staff will prepare the state's agreement documents for review and approval of the committee.

A. All plans, specifications and descriptions for a project shall be included in the application. All work that will affect the property during the project time frame shall be described, whether or not it is eligible for the state loan funding. The application shall be received in the office of the division at least 15 business days prior to the committee meeting in which it shall be reviewed or an alternate time established by the committee.

The division shall determine whether the information being presented is complete and adequate for committee review. The division shall provide the committee with a staff recommendation for the project conformance with applicable standards.

B. Projects must be completed within 24 months of approval date. Alterations to approved projects must be submitted to the division. Major project alterations shall be submitted to the committee for action at a regularly scheduled meeting. The committee may assign to the division review and approval authority for minor project alterations.

C. Loan participation agreement: The committee shall enter into a loan participation agreement with one or more lending institutions, a federal entity, or other funding entity, to make MSRL funds available for deposit into the loan pool for purposes of the Main Street Revolving Loan Act.

D. The loan or loan subsidy from the MSRL contributions to the loan pool for a repair, restoration or rehabilitation project, shall be governed by the terms of the loan participation agreement.

E. The loan participation agreement shall contain the following:

(1) the names and street addresses of all parties participating in the project by making a contribution of funds to the loan pool; and

(2) recitals of the project, definitions, and

(3) a statement specifying the parties' respective percentages of financial participation or "share" in the loan pool, such participation shall be described as a "sale of participation" in the loan or loan subsidy by each party; and

(4) a statement describing the manner in which MSRL funds will be contributed to the loan pool; the lending institution shall notify the division that according to the schedule for disbursements of loan funds to the borrower, a contribution of MSRL funds into the loan pool is necessary; the division shall make an appropriate request to the department of finance and administration and the state treasurer's office to effect a contribution of MSRL funds into the loan pool; and

(5) a statement that upon deposit of the MSRLF contribution to the loan pool, the MSRLF contribution shall accrue interest at the rate of three percent per annum; and

(6) a statement that the lending institution shall disburse loan funds to the borrower in no more than five separate installments and as provided in Subsection B of 12.21.3.8 NMAC herein; and

(7) a statement that the division shall establish an inspection schedule relating to the purposes and goals of the Main Street Revolving Loan Act, authorized

uses of the MSRL contributions, and compliance with the development agreement and preservation covenants and deed restrictions and the MSRL standards; and

(8) a statement that provides that the lending institution shall establish an inspection schedule relating to construction progress; and

(9) a statement that provides that MSRLF contributions that are not disbursed to the borrower, as provided in Subsection B of 12.21.3.8 NMAC herein, shall be returned by the lending institution to the division; and

(10) a statement describing the rates of interest charged to the borrower for the loan or loan subsidy attributable to each party who contributed to the loan pool, including the rate charged on the MSRLF contribution as stated in Section C of 3-60C-6 NMSA 1978, and other rates charged on funds contributed by the lending institution; and

(11) a statement indicating the combined interest rate of the loan or loan subsidy; and

(12) a statement describing the administration of the loan pool by the lending institution, including that the lending institution shall:

(a) receive and deposit the MSRLF contributions into the loan pool and, within five working days after receipt of a payment from the borrower, transfer to the division its share of any collections, including interest due to the division; and

(b) service and manage the loan or loan subsidy and collateral according to customary and prudent lending practices; and

(c) be responsible for all aspects of loan origination, servicing, collections, and security; and

(d) document the loan or loan subsidy in the form a promissory note, loan agreement, mortgage and other security agreements(s) that may be required by the lending institution; and

(e) require that the promissory note, mortgage and other loan documents provide that events of default include the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions; and

(f) ensure that the original priority of the mortgage extends to each subsequent disbursement of loan proceeds to the borrower; and

(g) provide the division with copies of all documents pertaining to the loan or loan subsidy; and

(h) monitor the borrower's maintenance of any insurance required on the collateral, payment of all taxes, fees and other charges assessed or otherwise imposed upon the collateral; and

(i) promptly notify the committee and division of any event of default existing for more than thirty days, and of other significant information relating to the loan; and

(j) upon notification of a default, consult with the division as to the appropriate course of action and take such agreed upon action with the prior written approval of the division; and

(13) a statement that the lending institution shall execute and deliver satisfactions, endorsements, receipts, discharges or releases as may be necessary in the proper serving and collection of the loan or loan subsidy; the lending institution shall not modify or supplement any documents associated with the loan or loan subsidy, agree to any extension of time or waiver or forgiveness of debt, take or permit any action that will release the borrower or any guarantor from any obligation or liability with regard to the loan, or impair the validity or priority of the lending institution's or committee's interest in the collateral unless the lending institution obtains the committee's prior written consent; and

(14) a statement permitting payment of charges related to loan origination, closing, and other service charges incurred by the lending institution in its administration of the loan pool, to be paid from loan funds contributed by the lending institution; and

(15) a statement describing the committee and division's right to have access to loan or loan subsidy records in the possession of the lending institution; and

(16) a statement describing all terms of the loan or loan subsidy issued from the loan pool, including:

(a) a detailed description of all repair, restoration or rehabilitation for the project as approved by the division and any modifications, exhibits or additional documents as approved by the division and the lending institution; and

(b) a statement that the restoration, rehabilitation, or repair must be completed within two years from the date the loan is approved by the division and closed by the lending institution; and

(c) a statement that the term of the loan or loan subsidy shall be five years and interest and principal shall be paid in equal installments no less than annually with the first installment due within one year of the date the loan is closed by the lending institution; this statement shall also provide that the loan shall be amortized over a period not to exceed twenty years, with a balloon payment due at the end of the five year term; in lieu of a balloon payment, the lending institution may purchase the remaining loan amount due to the division; and

(d) a statement that the loan or loan subsidy shall be secured by the collateral; and

(e) a statement that all restoration, rehabilitation, or repair shall be completed in conformity with the MSRL fund standards for rehabilitation as determined by the division; and

(f) a statement that failure by the borrower to comply with the standards shall be an event of default under the promissory note and the mortgage; and

(g) a statement that the division shall notify the borrower of any noncompliance with the standards, that the borrower has a specific period of time to cure the noncompliance, and if the default is not cured the division shall notify the lending institution of the default and the lending institution shall pursue appropriate remedies as stated in the loan participation agreement, promissory note or mortgage; and

(h) a statement that the lending institution shall condition the closing of the loan or loan subsidy upon the borrower's execution of a development agreement and covenants and deed restrictions with the committee, as described in Subsection F of 12.21.3.13 NMAC of these regulations; and that if the loan is repaid prior to the expiration of five years from the date the loan or loan subsidy is closed by the lending institution, the covenants and deed restrictions shall not be extinguished and shall remain in effect until the termination date of the development agreement and covenant and deed restriction; and a requirement that this provision be contained in the mortgage and all other documents evidencing security for the loan or loan subsidy; and

(i) a statement that the promissory note, mortgage, and any other documents pertaining to security for the loan or loan subsidy shall include provisions stating that the borrower's default in connection with any loan, loan subsidy or other obligation secured by a lien superior to the mortgage or development agreement and covenants and deed restrictions shall constitute an event of default of the mortgage and loan agreement; the division and the lending institution shall have the right (but not the obligation) to cure any default in connection with superior liens and charge the costs of curing to the borrower; and

(j) a statement requiring that a construction sign acknowledging the assistance of the MSRL, division and the lending institution, or other participating party, shall be displayed prominently at the project being restored, rehabilitated or repaired; and

(k) a statement requiring the lending institution to require the borrower to maintain financial records regarding the project throughout the term of the loan or loan subsidy and shall make such records available to the lending institution and the division upon request; and

(17) a statement regarding the lending institution's transfer of payments to the division, including any interest, in conformity with the division's share of participation in the loan pool; and

(18) a statement regarding quarterly reports to the participating parties from the lending institution concerning the project's financial and restoration, rehabilitation or repair status; and

(19) a statement identifying the name and street address of individuals to whom written notice of matters concerning the project shall be addressed and directed; and

(20) a statement describing the applicable law that governs the loan participation agreement; and

(21) a statement providing for severability, non-assignability, amendment of the loan participation agreement, and

(22) a statement regarding execution of the loan participation agreement in counterparts; and duly witnessed signatory lines of the parties.

F. Development agreement and covenants and deed restrictions: The committee shall enter into a development agreement and covenants and deed restrictions with the property owner/borrower to govern the restoration, rehabilitation, or repair of a project. The development agreement and covenants and deed restrictions shall contain the following:

(1) the names and street addresses of the parties, including the property owner's heirs, successors and assigns and the date the agreement is executed; and

(2) recitals, including a statement that all covenants and deed restrictions shall run with the land for no less than a period of five years, shall bind all future owners and occupants of the property during that time, and be recorded; and

(3) covenants applicable to the property owner and that pertain to the owner's obligations to do or refrain from doing specified activities that affect the condition of the restoration, rehabilitation or repaired property; and

(4) a statement that nothing in the development agreement prohibits the owner from obtaining financial assistance from sources other than the MSRL fund, provided that the lien of the covenants and deed restrictions shall not be made subordinate to any mortgage or other lien interest made in connection with other financial assistance without the committee's approval; and

(5) a statement that the standard of review for compliance with the covenants and deed restrictions or review of construction, alteration, repair, maintenance, or

casualty damage, shall be the MSRL standards and any applicable state or local standards; and

(6) a statement that the division determines the applicability of the standards and the application of alternative standards that the division determines to be reasonable; and

(7) a provision regarding casualty damage or destruction to the property; and

(8) covenants applicable to the committee and that pertain to conveyance, assignment or transfer of its interest in the development agreement; and

(9) a provision regarding inspection of the property; and

(10) a provision describing the division's remedies to correct violations of the development agreement and covenants and deed restrictions; and

(11) a provision regarding notice from the owner to the committee in the event the owner proposes to sell the property; and

(12) a requirement that as long as the covenants and deed restrictions run with the land, the owner shall insert the covenants and deed restrictions in any subsequent deed or other legal instrument by which the owner divests itself of either the fee simple title to, or its possessory interest in the property; and

(13) a provision regarding recording of the development agreement and covenants and deed restrictions; and

(14) provisions regarding subordination of subsequent mortgages and the rights of the division with respect to senior liens, which shall require that:

(a) the covenants and deed restrictions shall have priority over all mortgages, other rights affecting the property including tax liens, which are granted after execution and recording of the development agreement; and

(b) the covenants and deed restrictions shall not be extinguished or terminate upon a mortgagee taking title to the property within five years of the date of closing of the loan, as a result of foreclosure or otherwise; and

(c) that the borrower's default in connection with any loan or other obligation secured by a lien superior to the mortgage or lien of the covenants and deed restrictions shall constitute an event of default of the covenants and deed restrictions, and that the division or lending institution shall have the right to cure any such default and charge the costs of curing to the borrower; and

(d) if a mortgage grants to a mortgagee the right to receive proceeds of a condemnation proceeding arising from an exercise of eminent domain as to any part of the property or the right to receive insurance proceeds as a result of any casualty, hazard or accident occurring to or about the property, the mortgagee shall have a superior claim to the insurance and condemnation proceeds and entitled to the same in preference to the division until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to the covenants and deed restrictions; and

(e) if a mortgagee has received an assignment of the leases, rents and profits of the property as security or additional security for a loan, the mortgagee shall have a superior claim to the leases, rents and profits of the property and shall be entitled to receive same in preference to the division until said mortgagee's debt is paid off, notwithstanding that the mortgage is subordinate to the covenants and deed restrictions; and

(f) until a mortgagee or purchaser at foreclosure obtains ownership of the property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under the covenants and deed restrictions; and

(15) a statement of the name and street address of the individuals to whom written notice is to be directed; and

(16) a requirement that upon the request of the division, the owner shall provide evidence of compliance with terms of the development agreement and covenants and deed restrictions; and

(17) provisions regarding evidence of compliance, and interpretation and enforcement of the development agreement and covenants and deed restrictions; and

(18) an expiration date of the development agreement and covenants and deed restrictions, and duly witnessed and notarized signature lines of the owner and the division.

G. Promissory note:

(1) A promissory note signed by the borrower and evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement of Paragraph (2) of Subsection G of 12.21.3.13 NMAC below, the form of the note and its terms shall be determined by the lending institution using customary and prudent lending practices by lending institutions in New Mexico.

(2) The promissory note shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions.

H. Mortgage:

(1) A mortgage evidencing the security interest for the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection H of 12.21.3.13 NMAC below, the form of the mortgage and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions.

I. Loan agreement:

(1) A loan agreement evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection G of 12.21.3.13 NMAC below, the form of the agreement and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions.

[12.21.3.13 NMAC - N, 12/15/08]

12.21.3.14 PRIORITY RANKING OF MAIN STREET PROJECTS AND PRELIMINARY LOAN APPLICATION FORM:

A. The committee in consultation with the division shall annually review and adopt a system for priority ranking of criteria applied to loan applications in a regular public meeting of the MSRLC. The priority ranking will assist the committee and the division in the review of applications and in funding decisions.

B. The division shall provide annual public notice of the availability of loans or loan subsidies from the main street revolving loan fund and the availability of a main street preliminary loan application form from the division.

C. A preliminary loan application form shall consist of the street address of the property, the names and street addresses of the parties, and their tax identification; the status of the property in a main street district per Subsection E of 12.21.3.7 NMAC, ownership, existence of legal protections, application date, description of proposed work, photographs, statement of condition, drawings or plans when required to describe work, and cost estimates of rehabilitation, restoration, or repairs, project start and

completion dates, agreement to provide financial information per Paragraph (9) of Subsection B of 12.21.3.10 NMAC, and signature and date lines for the applicants. It will also include a certification page with a statement that the division has reviewed the project according to the priority ranking and the MSRL standards and recommends the project to the committee for approval, approval with conditions, denial, or tabling the application pending further information, division staff and committee signature and date lines.

[12.21.3.14 NMAC - N, 12/15/08]

12.21.3.15 LENDING INSTITUTION'S PROCEDURES:

A. After approval by the committee of a preliminary loan application form and identification of a lending institution, the designated officer of the lending institution will advise the property owner of any additional documentation required by the lending institution.

B. Applicants will be notified in writing by the lending institution regarding its determination to approve or disapprove a loan for a project. The designated officer of the lending institution will advise the borrower of the amount, terms and conditions of the loan.

C. Approval of a loan or loan subsidy from the loan pool will be made in accordance with the lending institutions customary and prudent lending practices.

[12.21.3.15 NMAC - N, 12/15/08]

12.21.3.16 PROPERTY OWNER'S COLLATERAL SECURITY INTEREST:

A. The sufficiency of the collateral security interest in a main street property whose repair, rehabilitation or restoration is to be funded with funds from the main street revolving loan fund and lending institution(s) shall be determined by the participating lending institution(s) in accordance with the customary and prudent lending practices.

B. The offer of collateral security in the form of an assignment to the state of New Mexico and the committee, of a first mortgage, second mortgage, or assignment of lease, shall be commensurate with risk and approved by the division in consultation with the lending institution.

[12.21.3.16 NMAC - N, 12/15/08]

12.21.3.17 LENDING INSTITUTION'S LOAN PROCESSING FEES AND RELATED CHARGES:

Recording, title, credit report fees and costs charged by the lending institution(s) participating in the loan for a project shall not be paid with MSRL contributions to the loan pool.

[12.21.3.17 NMAC - N, 12/15/08]

12.21.3.18 MSRL LOAN AMOUNT AND REPAYMENT BY PROPERTY OWNER:

A. The amount of MSRL funds contributed to the loan pool shall not exceed \$75,000 for any one project except if granted by a waiver of the committee at a public meeting.

B. The property owner of an approved project will repay the loan or loan subsidy in monthly installments. Payment on the interest and principal shall be in accordance with Subparagraph (c) of Paragraph (16) of Subsection C of 12.21.3.13 NMAC of these regulations.

[12.21.3.18 NMAC - N, 12/15/08]

12.21.3.19 MSRL STANDARDS FOR REHABILITATION:

The committee shall review architectural applications for conformance with the following MSRL standards:

A. Rehabilitation standards for all eligible projects applying to the program provide the applicant with guidance on maintaining the architectural, design, historic, and main street character of the property, during and after the contracted restoration, rehabilitation, repair and work necessary to meet code requirements.

B. The following standards have been adopted by the committee as the standards for rehabilitation for eligible properties.

(1) A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

(2) The historic character of a property will be retained and preserved. The removal of distinctive materials or alterations of features, spaces, and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible materials. Replacement of missing features will be substantiated by documentary and physical evidence.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archaeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(9) New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(10) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

[12.21.3.19 NMAC - N, 12/15/08]

12.21.3.20 COMPLIANCE WITH MSRL STANDARDS, INSPECTION AND REPORTING REQUIREMENTS:

A. All rehabilitation, restoration, repair and preservation of projects funded by a loan or loan subsidy from the main street revolving loan fund shall be governed by the MSRL standards as applicable.

B. The committee may require professional design, architectural or engineering services for any rehabilitation, restoration, repair and preservation projects funded by a loan or loan subsidy from the main street revolving loan fund.

C. All plans and specifications, when required, shall be approved by the committee and the division prior to commencement of rehabilitation, restoration, repair and preservation of a project. The committee or its architectural subcommittee may also review project plans and specifications.

D. The committee may direct the division to review a project in progress at any time upon notice to the property owner and may require correction of any work not

conforming to the standards or approved plans and specifications. The division will review all completed projects to ensure conformity with the standards and the approved application, plans and specifications.

E. Written progress reports on projects undergoing rehabilitation, restoration, repair and preservation shall be submitted by the property owner to the division with a request for a draw and after a division inspection of work. Reports shall include a detailed description of progress to date, a status report for the entire project and a financial summary.

[12.21.3.20 NMAC - N, 12/15/08]

12.21.3.21 AGREEMENT PROVISION VARIANCES:

The requirements described in any section of these regulations may be subject to variance in accordance with the agreement and negotiations of the parties. Changes or divergence from the provisions described therein are within the discretion of the committee and the division.

[12.21.3.21 NMAC - N, 12/15/08]

CHAPTER 22-23: [RESERVED]

CHAPTER 24: COLLECTION AGENCIES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: COLLECTION AGENCY REGULATORY ACT

12.24.2.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.24.2.2 SCOPE:

All collection agencies licensed by the state of New Mexico.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.24.2.3 STATUTORY AUTHORITY:

Laws 1987, Chapter 252.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.24.2.4 DURATION:

Permanent.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.24.2.5 EFFECTIVE DATE:

June 19, 1987 unless a later date is cited at the end of a section or paragraph.
Reformatted in NMAC format effective September 30, 1997.

[6/19/87; 9/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.24.2.6 OBJECTIVE:

The objective of this part is to define licensing requirements for collection agencies in the state of New Mexico.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.24.2.7 DEFINITIONS:

The term "liquid assets" as used in Section 9 of the Act is defined to mean cash or its equivalent, United States government obligations (direct or guaranteed), securities listed with a nationally recognized stock exchange and current (not more than 30 days overdue) accounts receivable from clients of the applicant.

[6/19/87; 9/30/97; Recompiled 10/15/01]

12.24.2.8 LICENSING REQUIREMENTS:

A. In determining the amount of bond to be furnished by an applicant for renewal of a collection agency license, the penal sum of the bond shall be the greater of \$5,000.00 or an amount equal to the proceeds due clients for at least two months average collections during the previous licensing year; provided, however, no licensee shall be required to furnish a bond in excess of \$25,000.00 unless the financial condition of the applicant is such as to cause the director concern about sufficient protection for clients, in which case the director may require a bond in minimum amount of at least six months proceeds due clients during the previous licensing year. If the financial statement of the applicant reflects a condition where current liabilities are equal to or are in excess of

current assets, the director may deny application for an original or renewal license pending applicant's taking steps to improve its financial condition.

B. The director shall not approve licenses to applicants using trade styles that indicate or infer a condition that is not true; viz., "credit bureau" when there is no bona fide credit reporting service; "national association", etc. where there is no such connection; "detective agency", etc., where there is no such actual activity or any name that may imply a municipal, county, state or federal affiliation.

C. Any employee or owner of a collection agency who uses any alias must register same with the director.

D. The director shall not approve licenses to applicants using trade names or styles in a particular area where those trade names or styles are so similar to that of another licensee or other business in the same area as to cause confusion as to identity.

E. No licensee shall use any form notice to debtors without first obtaining approval of said form by the director or his designee. Individual notices or communications to debtors need not be approved by the director, but content thereof shall comply with the spirit and intent of the act and these rules and regulations. Specifically, but not all inclusively, licensees shall not threaten, coerce, infer consequences or effects in which there is no truth in substance, simulate legal process, use innuendoes or misleading phraseology, or engage in unethical or unfair practices (including, but not limited to, those practices which are prohibited by the federal Fair Debt Collection Practices Act). Legal action or process may not be threatened unless the collection agency, or the creditor, intends to take such action and the agency can establish that such action is normally taken.

F. No licensee shall conspire with any law enforcement official relative to deferring payment of costs or paying costs on a "contingent basis" nor shall any law enforcement official be paid any fee, salary or any remuneration by a collection agency other than prescribed by law and paid through the offices of a court of competent jurisdiction.

G. Every licensee shall deal openly, fairly and honestly in the conduct of the collection agency business with both client and debtor and shall at all times conform to the canons of business ethics and practices of the American collectors association, to the applicable rules and regulations of the federal trade commission and to the provisions of the Fair Debt Collection Practices Act.

H. Clients' shares of collections shall be deposited into a trust account within two banking days, except that if such monies are less than \$100,000.00, deposits may be made weekly.

I. Whenever a person actively in charge of an office ceases to be in charge and the licensee has notified the director in writing within ten days from such cessation as required by Section 23 of the Act, the licensee shall have forty days from such cessation

in which to have a proper application for a manager's license filed and the agency license shall remain in force until the director examines and acts on said manager's application. If the application for manager's license is not approved by the director, the licensee shall have an additional thirty days in which to file an additional application for a manager's license or show cause for an extension of time to submit the required application. Failure to adhere to this procedure will render the agency license void *ipso facto*. The notice to be given pursuant to Section 23 of the Act, shall specify the exact date when the person previously in active charge of the office ceased to be in charge.

J. Every collection agency licensee shall maintain a complete record of all checks outstanding against its trust account(s) which have not been presented for payment as of the date of most recent trust account bank statement(s). Such record shall be made available to the director or his representatives upon demand.

K. Every collection agency licensee shall maintain and have available at all times, for examination by the director or his representatives, a record showing at least the following information on all collections made on each day:

- (1) the amount of each collection paid to the licensee;
- (2) the amount of each collection paid directly to the client;
- (3) the amount of the client's share of the collection;
- (4) the amount of the licensee's share of the collection;
- (5) any other costs or charges retained by the licensee;
- (6) the amount deposited to the trust accounts;
- (7) the name or code number of the client for which the collection was made;
- (8) the amount remitted to the client on all collections.

(a) Numbered receipts filed consecutively shall be used for cash payments; however, totals for paragraphs 1, 2, 3, 4, 5, 6 and 8 [now Paragraphs (1), (2), (3), (4), (5), (6) and (8) of Subsection K of 12.24.2.8 NMAC] must be provided for each monthly accounting period.

(b) Said records may contain any additional information which the licensee may desire to include as an aid to its record keeping and operations.

L. Licensed collection agencies may appoint solicitors who shall be of good moral character, knowledgeable in good collection agency practices and ethics, and having a reputation for fair and honest dealings with the general public. The name and address of such person appointed as a solicitor must be submitted to the financial institutions

division on a form prescribed by the director. The director, pursuant to Section 29 of the Act, shall thereupon, if the solicitor meets all the requirements of this regulation and of Section 29 *supra*, issue a solicitor's license bearing the name of the licensed collection agency by whom the solicitor is employed.

(1) All solicitor's licenses shall expire on June 30 of each year unless renewed at the same time as the licensed agency bearing the name of the same. In the event of the cancellation of an agency license, the licenses of all solicitors authorized for that agency by the director shall be concurrently canceled and the solicitors shall be notified by regular mail. In the event that a solicitor ceases to be employed by a licensed agency, the agency shall, within ten days thereafter, notify the director, at which time the solicitor's license shall be voided and the solicitor may not thereafter be employed by any licensed collection agency until such time as the solicitor has been issued a new license as herein provided.

(2) A person shall be considered a solicitor only after being employed by a licensed collection agency for a period of 120 days to collect debts for the agency. No license shall be required until such time unless requested by the licensee.

[6/19/87; 9/30/97; Recompiled 10/15/01]

CHAPTER 25: ESCROW COMPANIES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: ESCROW COMPANY ACT

12.25.2.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, New Mexico 87505. Telephone No. (505) 476-4885.

[12.25.2.1 NMAC - Rp, 12 NMAC 25.2.1, 10/1/15]

12.25.2.2 SCOPE:

All escrow companies required to be licensed by the state of New Mexico.

[12.25.2.2 NMAC - Rp, 12 NMAC 25.2.2, 10/1/15]

12.25.2.3 STATUTORY AUTHORITY:

Section 58-22-6(A) NMSA 1978.

[12.25.2.3 NMAC - Rp, 12 NMAC 25.2.3, 10/1/15]

12.25.2.4 DURATION:

Permanent.

[12.25.2.4 NMAC - Rp, 12 NMAC 25.2.4, 10/1/15]

12.25.2.5 EFFECTIVE DATE:

October 1, 2015, unless a later date is cited at the end of a section.

[12.25.2.5 NMAC - Rp, 12 NMAC 25.2.5, 10/1/15]

12.25.2.6 OBJECTIVE:

The objective of this sub-part is to effectuate the purposes of the Escrow Company Act.

[12.25.2.6 NMAC - Rp, 12 NMAC 25.2.6, 10/1/15]

12.25.2.7 DEFINITIONS:

A. "Act" means the Escrow Company Act, Sections 58-22-1 NMSA 1978 *et seq.*, as amended.

B. "Banking day" means a day a financial institution is open for the normal conduct of its business, but does not include Saturday, Sunday or any legal holiday.

C. "Director" means the director of the financial institutions division.

D. "Division" means the financial institutions division of the regulation and licensing department, state of New Mexico.

E. "Escrow" means any transaction wherein any written instrument, money, evidence of title to real or personal property or other thing of value is delivered to a person not otherwise having any right, title or interest therein for the purpose of effecting the sale, transfer, encumbrance or lease of real or personal property, to be held by that person as a neutral third-party until the happening of a specified event or the performance of a prescribed condition when it is then to be delivered by such person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the written instructions of the principals to the transaction; escrow also includes accepting payments on loans for remission to a third party, otherwise known as "servicing".

F. "Escrow agent" means any person, other than escrow closing agent as defined in Subsection F of 12.25.2.7 NMAC, who engages in the business of receiving escrows for deposit or delivery and who receives or is promised any fee, commission, salary or

other valuable consideration, whether contingent or otherwise, for or in anticipation of performance.

G. "Escrow closing agent" means an escrow company which, in the normal course of business, acts as the agent of a buyer and seller of real estate for the purpose of consummating a sale, including, but not limited to, the performance of the following described functions:

(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of buyers' and seller' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of a down payment, realtors' commissions, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents.

H. "Escrow company" means any person, other than an escrow closing agent as defined in Subsection F of 12.25.2.7 NMAC, engaged in the business of receiving escrows for deposit or delivery for compensation who is required to be licensed under the Escrow Company Act.

I. "Generally accepted accounting principles" means professional standards of accounting practice as promulgated from time to time by the American institute of certified public accountants.

J. "Ledger" means a chronological record of dated debits and credits maintained either in a bookkeeping ledger book or in a readily retrievable electronic format.

K. "Licensee" means a person holding a valid license as an escrow company or escrow agent.

L. "Person" means an individual, cooperative, association, company, firm, partnership, corporation or other legal entity.

M. "Principal(s)" means all the actual parties or legal entities to the escrow closing transaction, and the term principal(s) shall be deemed to include a duly appointed agent or attorney-in-fact.

[12.25.2.7 NMAC - Rp, 12 NMAC 25.2.7, 10/1/15]

12.25.2.8 ESCROW COMPANY ACT REGULATIONS:

A. Surety bond:

(1) the surety bond shall run concurrent with the licensing period and shall be in the minimum amount of \$100,000.00 for the benefit of the people of the state of New Mexico;

(2) it shall be in a form devised by the director; and

(3) the escrow company shall provide the director with notice of cancellation of the bond at least fifteen (15) days prior to the effective date of cancellation.

B. A person may satisfy the requirements of Subsection A of 12.25.2.8 NMAC by depositing with the financial institutions division, in an amount equal to the surety required, a deposit consisting only of the following: cash, certificates of deposit in any financial institution doing business in the state of New Mexico which are insured by the federal deposit insurance corporation or the national credit union administration, or any combination of these. The deposit shall be accepted and held by the financial institutions division. No claimant or judgment creditor of the escrow company or escrow agent shall have the right to attach or levy upon any of the assets or securities held on deposit. The director, by order, shall have discretion to use such deposit, as follows:

(1) to satisfy any final judgment entered against the escrow company for actual damages suffered by any person by reason of any fraud, dishonesty, misrepresentation or concealment of material fact growing out of any escrow transaction;

(2) for use in the liquidation of the escrow company under the provisions of Section 58-22-27 (B) NMSA 1978 of the Escrow Company Act; and

(3) to release any or all of such deposit to the escrow company when, in the opinion of the director, such deposit is no longer required by state law.

C. Manager's experience: The office manager of an applicant to be licensed as an escrow company under the act shall be an employee of the applicant, and shall:

(1) not have been convicted of a felony or a misdemeanor involving moral turpitude, subject to the provisions of the "Criminal Offender Employment Act," Section 28-2-1 NMSA 1978 *et seq*; and

(2) have at least two (2) years previous escrow experience with a title company, abstract company, real estate company, trust department of a bank or any other entity conducting an escrow business; and

(3) have at least two (2) years experience in the bookkeeping or accounting field, one (1) year of which involved the handling of custodial funds while in the employ of a financial organization; or

(4) have such other experience as the director may deem acceptable.

D. Accounting controls:

(1) An escrow company shall establish and maintain on a current basis the following books and records, which shall be maintained in accordance with generally accepted accounting principles:

(a) a separate ledger for each escrow account, which shall contain a record of all receipts and disbursements made on that particular escrow account;

(b) a general ledger and a cash receipts and disbursements journal;

(c) a control ledger with each bank the escrow company is doing business with, listing the name and account number of the buyer or obligor and recording the monies paid to the escrow company by the buyer or obligor for taxes and insurance; the control ledger shall be reconciled at least once each calendar month with the trust account(s) and copies of the monthly reconciliation accompanied by corresponding bank statements, for the three (3) months immediately preceding the license renewal, shall be remitted to the division as part of the license renewal package;

(d) trust funds held for future payments, such as semiannual or annual payments, shall be documented and reconciled showing the current balance; a separate ledger or control sheet shall be maintained, showing all trust funds collected by the escrow company and not disbursed.

(2) An escrow company shall post all receipts and disbursements to the cash receipts and disbursements journal and the general ledger. The reconciliation necessary to trace the individual transaction in an examination and shall be preserved and maintained in a logical sequence.

(3) Receipts shall be reconciled with disbursements at least once each calendar month, and a permanent record of each reconciliation and shall be retained by the escrow company.

(4) Each entry on the general ledger and the cash receipts and disbursements journal shall include a cross reference to the separate escrow ledger to which it relates. Receipts and disbursements corresponding to the same cross referenced transaction on the separate escrow ledger shall be in balance.

(5) The general ledger and cash receipts and disbursements journal shall be reconciled with the trust account at least monthly and not later than the 30th day after

the last day of each calendar month. The net interim debits and credits reflected on the general ledger and cash receipts and disbursements journal shall be in balance with the debits and credits to the trust account(s) during the same time period or the differences, if any, shall be explained to the satisfaction of the director. All reconciliations shall be approved and signed by the escrow manager or by an employee otherwise designated by the escrow manager. A permanent record of each reconciliation shall be retained by the escrow company.

(6) The provisions of Paragraph (5) of Subsection D above, shall also apply to any other accounts maintained by the escrow company, provided, however, that such accounts must be reconciled monthly or as frequently as statements are issued by the depository institution.

(7) An escrow company shall submit to the director at the time of license renewal the following information for the tax or accounting year most recently closed:

(a) copy of the federal and state tax return for the year immediately preceding the license renewal or if the income and expenses of the escrow company are reported on an individual federal tax return, then the schedule C associated with the escrow company;

(b) a statement of financial condition of the escrow company prepared in accordance with generally accepted accounting principles;

(c) a statement of income and expense;

(d) a financial statement of the principal owners prepared in accordance with generally accepted accounting principles;

(e) a summary of the amount of trust funds received and disbursed each month and the amount of trust funds received and disbursed for the entire year;

(f) a list of total number of accounts serviced and dollar amount serviced by the escrow company;

(g) reconciliations for the three (3) months immediately preceding renewal, accompanied by the corresponding bank statements; and

(h) in the event that required information is not available, the director shall use discretion as to whether a conditional license will be issued pending receipt of requisite information.

E. Records:

(1) The records of an escrow company shall include, but are not limited to:

(a) copies of all pre-numbered cash receipt forms used by the escrow company, which shall be filed in numerical order with all numbers accounted for, including voided cash receipts;

(b) all pre-numbered vouchers and pre-numbered blank checks used by the escrow company, which shall be stored in numerical order with all numbers accounted for, including voided vouchers and checks with signature blocks removed from voided checks;

(c) copies of all forms, other than checks, used by the escrow company to make transfers of funds between customer escrow accounts; and

(d) an accounting for all lost or missing receipts, checks, vouchers or transfer memos; such statement shall be renewed at least once in each calendar quarter, and shall be dated and signed by the person designated, by the escrow company, as responsible for maintaining the records required by this section.

(2) No cash shall be received in trust by the escrow company without issuing a receipt therefor. No funds shall be disbursed out of trust by an escrow company without issuing a check or obtaining a wire transfer memo or electronic confirmation from the bank to account for the transaction. All cash receipt forms and checks used by the escrow company shall be pre-numbered in consecutive numerical order and, when used, shall bear the number of the pertinent escrow account on its face.

F. Record inspection:

(1) The offices, places of business, books, records, accounts, safes, files and papers of an escrow company shall be maintained freely accessible and available for inspection or examination during normal business hours by the director or a duly authorized representative of the director.

(2) The escrow company shall, upon request, provide to the director or the director's designee, continuing authorization to certify the actual balance in any trust account. Such authorization shall be placed on file with the depository institution in which the account is maintained and a copy filed with the director. The director shall give twelve (12) hours advance notice to the escrow company before using the continuing authorization unless waived by the escrow company.

(3) Section 58-22-19 NMSA 1978 of the Escrow Company Act provides that division examination reports, financial information contained in licensee applications and renewal applications and information on investigations relating to violations of the Escrow Company Act that do not result or have not yet resulted in administrative, civil or criminal action are not subject to the Inspection of Public Records Act, are not subject to subpoena, and may be disclosed only with the consent of the director.

G. Preservation of records: An escrow company shall preserve for at least six (6) years all bank statements of its bank accounts and all records required by these regulations.

H. Trust fund accounts:

(1) All money deposited in escrow shall be deposited and maintained in a federally insured bank, savings and loan association or credit union and kept separate and distinct and apart from funds belonging to the escrow company or escrow agent. Such funds, when deposited, are to be designated as trust funds, indicating that the funds are not the funds of the escrow company.

(2) The escrow company shall notify the director in writing of the opening and closing of pooled trust accounts within ten (10) days following the date of opening or closing. The notification shall include the licensed name of the escrow company, the name of the bank, savings and loan association or credit union, the number of each account opened or closed and the designation for each account opened.

(3) Each escrow company shall maintain a permanent record of all investments of trust funds, including, but not limited to, amounts and dates of deposits and withdrawals, copies of certificates of deposit, corresponding debits and credits to affected trust accounts, and amounts and dates of interest earned or credited.

(4) Trust funds are not subject to execution or attachment on any claim against an escrow company.

I. Written escrow instructions:

(1) An escrow company or escrow agent may not accept funds, property or documents in escrow without dated, written escrow instructions from the principals to the transaction, or their agent, or a dated executed agreement in writing between the principals to the transaction.

(2) An escrow company or escrow agent may not close an escrow or disburse any funds or property except as provided by Paragraph (6) of Subsection I of 12.25.2.8 NMAC without obtaining dated escrow instructions in writing from the principals to the transaction or their duly appointed agent, adequate to administer and close the transaction, or, in the case of disbursement, to disburse the funds and property.

(3) An escrow company or escrow agent may not solicit or accept any original, amended or supplemental escrow instructions containing any blank to be filled in after signing. An escrow company or escrow agent shall not allow any alteration of original, amended or supplemental escrow instructions, unless the alteration is signed or initialed by the principals.

(4) If a real estate contract or promissory note which is the subject of an escrow provides for a late payment fee, the fee shall be treated by the escrow company as the property of the payee, unless expressly stated otherwise in the contract, note or written escrow instructions.

(5) An escrow company, except a company acting as an escrow closing agent as defined in these codes, shall use, deliver or transfer documents or other property deposited in escrow only in accordance with the written instructions of the principals to the escrow transaction or pursuant to an order of a court of competent jurisdiction.

(6) If an escrow agent receives conflicting demands from the parties, regarding the performance of duties, the escrow agent may hold any money or documents related to the conflicting demands. The money or documents may be held until mutual instructions, that resolve the conflict, are received by all parties to the escrow or until a civil action has been finally concluded in a court of competent jurisdiction determining the rights of all parties to the escrow. In any civil action commenced to resolve the conflicting demands of the parties to the escrow, the escrow agent may recover a reasonable amount of attorney's fees and costs.

J. Restriction on escrow clients:

(1) When an escrow company is appointed by the parties to an escrow as their mutual or dual agent, the escrow company shall not act with partiality to any of the parties to the escrow.

(2) An escrow company shall not act as an escrow agent in any escrow transaction in which it or any of its owners, officers, directors, partners or employees may directly or indirectly have a monetary or title interest in the real property either as buyer or seller, unless the escrow company upon acquiring knowledge of the existence of an interest discloses that interest to the parties to the escrow.

(3) An escrow company shall not act as escrow agent in any transaction in which the escrow company is related to any party to a promissory note, mortgage, deed of trust, real estate contract or other debt instrument for which the escrow company acts as escrow agent, unless the escrow company, upon acquiring knowledge of the existence of a relationship, fully discloses such relationship to the parties to the escrow.

(4) An escrow company, upon acquiring knowledge of either an "interest" as described in Paragraph (2) of Subsection J of 12.25.2.8 NMAC, or a "relationship" as described in Paragraphs (3) and (5) of Subsection J of 12.25.2.8 NMAC, shall:

(a) immediately upon receipt of the escrowed documents, deliver or cause to be delivered to the parties to the document a written notice disclosing the nature and extent of the relationship; the notice shall contain substantially the following statement: "we call this interest (relation) to your attention in order to be perfectly open and fair with you; this interest (relation) will not, IN OUR OPINION, prevent us from being a fair and

impartial escrow agent in this transaction; nevertheless, you may request that this transaction be handled by some other escrow company or agent if you so desire";

(b) obtain proof of a receipt from each party to whom the notice is delivered;

(c) maintain a separate file of all notices delivered and proof of receipt obtained pursuant to this section;

(d) if, within ten (10) business days after delivery of a notice of disclosure required by this section, any party to the document requests in writing that the file be transferred to another escrow company or agent, then the escrow company shall permit such transfer, without imposing any additional fees against the party.

(5) For the purposes of this section, an escrow company shall be deemed to be "related" to a party if:

(a) the escrow company is owned in whole or in part by the party or by an owner, officer, director, partner or an employee of the party;

(b) the escrow company or any of its owners, officers, directors, partners or employees owns, in whole or in part, a party which is a legal entity;

(c) any owner, officer, director, partner or employee of the escrow company is also a party or is an owner, officer, director, partner or an employee of a party; and

(d) any owner, officer, director, partner or employee of the escrow company is related by blood or marriage to a party, or to any owner, officer, director, partner or employee of a party which is a legal entity.

K. Required notice to the director:

(1) Except as otherwise provided, an escrow company or escrow agent shall notify the director of:

(a) the entry of a judgment against the escrow company in any civil action involving the alleged misconduct of the escrow company or escrow agent in an escrow transaction;

(b) the entry of a judgment against an officer, director, partner, employee or owner of the escrow company involving the alleged misconduct of the officer, director, partner, employee or owner in an escrow transaction handled by the escrow company or escrow agent; and

(c) the entry of a conviction judgment by a court of competent jurisdiction in any criminal proceeding involving the alleged misconduct of the escrow company or of

any officer, director, partner, employee or owner of the escrow company or escrow agent in an escrow transaction handled by the escrow company or escrow agent.

(2) The notification to the director required by Paragraph (1) of Subsection K of 12.25.2.8 NMAC shall be in writing and shall include a brief description of the escrow transaction involved and the names of the principals. In a civil action, the notification shall include a copy of the conviction judgment entered.

(3) The notification of the director required by Paragraphs (1) and (2) of Subsection K of 12.25.2.8 NMAC shall be made within ten (10) business days after the date of entry of the judgment. Notification shall include whether or not the judgment has been or will be appealed. If a judgment is appealed, each subsequent decision of an appellate court shall be subject to the notification requirements of this section.

L. Required notice to parties to an escrow account:

(1) Within ten (10) business days of a written request made by a party to the escrow agreement, a licensee shall provide a full statement of the escrow account, setting forth credits to principal and interest for the period and other information requested.

(2) Within ten (10) business days following a buyer depositing the final payment on an account, the licensee shall send a notice to the seller and the buyer of property, containing a final statement of account, which statement shall disclose at a minimum the following:

(a) the names of all sellers and all buyers on the account;

(b) the address or legal description of real property or a definitive description of the property if it is not real property;

(c) a statement that the account was paid in full;

(d) the amount of the final payment;

(e) the date that the final payment was deposited with the licensee; and

(f) the date that the final payment was or is expected to be disbursed by the licensee; money shall be disbursed within five (5) business days of the money becoming available to the licensee.

(3) A copy of the notice required by this section shall be retained by the licensee and shall be available for examination by the director pursuant to Section 58-22-17 NMSA 1978.

M. Unauthorized business practices: In addition to the unauthorized business practices listed in Section 58-22-26 NMSA 1978 as amended, it shall be an unauthorized business practice for an escrow company to do the following:

(1) refuse to provide to any party to an escrow account, upon written request, any information pertaining to that party's escrow account such as the date a payment was received and disbursed, a history which provides all details as to monies received and disbursed and amount applied to interest and principal, and copies of the escrow instructions;

(2) arbitrarily charge higher fees to individuals who transfer their escrow account from one (1) escrow company to another;

(3) assess escrow fees without notifying in writing all parties to the escrow account to be charged;

(4) borrow or otherwise appropriate trust funds for the use of the escrow company, escrow agent or its owners, officers, directors, partners or employees; or

(5) operate a trust account which for any reason is unable to meet its current obligations.

N. Escrow fees: Escrow fees charged by the escrow company for collection or disbursement shall be withdrawn from any trust account within two (2) business days after the fees become available, except that if escrow fees are recorded on a fee ledger separate from the account ledger they shall be withdrawn from the trust account no less than once each month. The check or voucher used to withdraw the escrow fees shall disclose the pertinent escrow account number and the amount of each fee included in the check total.

O. Escrow closing agents: The following requirements shall be applicable to escrow closing agents.

(1) All funds received in conjunction with an escrow closing shall be considered trust funds and shall be placed in a trust account. All trust funds received into escrow shall be deposited in the trust account no later than the close of business of the business day following the date of receipt, unless the escrow closing agent is instructed in writing by all principals to the transactions to delay such deposit.

(2) Immediately upon deposit of trust funds, the escrow closing agent shall create and maintain a separate ledger dedicated to each individual escrow upon which funds have been received. The escrow closing agent shall close and escrow only upon specific written instructions from all principals to the transaction. Such written escrow instructions shall be in the form of loan closing instructions from a lender in the case of loan closings or by any other specific document executed by all principals to the transaction which incorporates instructions for closing.

(3) Upon completion of an escrow transaction, an escrow closing agency shall deliver to each principal to the transaction, an appropriate, duly verified statement of the applicable escrow account in writing. The statement shall specify all receipts and disbursements of escrow funds for that account and shall include to whom made.

(4) All documents furnished to or prepared by the escrow closing agent together with the escrow closing agent's accounting records shall be retained for a period of not less than six (6) years.

P. Internal controls: An escrow company shall maintain the following:

(1) an operations guide containing detailed daily operating procedures of the escrow company;

(2) written procedures regarding cash controls and deposit policies; written procedures including, but not limited to, accepting payments, cash accounting, handling and safeguarding, separation of duties; written procedures regarding dual controls and security;

(3) an employee manual that includes definitive information on employee positions and duties.

[12.25.2.8 NMAC - Rp, 12 NMAC 25.2.8, 10/1/15]

CHAPTER 26: CEMETERIES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-7: [RESERVED]

PART 8: CERTIFIED AUDIT

12.26.8.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[11/8/93; 9/30/97; Recompiled 10/15/01]

12.26.8.2 SCOPE:

All cemeteries licensed by the state of New Mexico.

[9/30/97; Recompiled 10/15/01]

12.26.8.3 STATUTORY AUTHORITY:

Endowed Care Cemetery Act of 1961 ("Act"), Sections 58-17-1 to 58-17-17 NMSA 1978.

[11/8/93; Recompiled 10/15/01]

12.26.8.4 DURATION:

Permanent.

[11/8/93; 9/30/97; Recompiled 10/15/01]

12.26.8.5 EFFECTIVE DATE:

November 8, 1993 unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 30, 1997.

[11/8/93; 9/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.26.8.6 OBJECTIVE:

The objective of this subpart [now part] is to clarify the term "certified audit".

[11/8/93; 9/30/97; Recompiled 10/15/01]

12.26.8.7 DEFINITIONS:

[RESERVED]

[9/30/97; Recompiled 10/15/01]

12.26.8.8 CERTIFIED AUDIT:

For the purposes of Section 58-17-13(A) of the Act, a "certified audit" shall consist of the following procedures.

A. Obtain the entire population of contracts used in the cemetery operation representing all sales occurring in a specific year.

B. Determine that there are no missing contracts. Verify that the first contract in the current year is the next contract after the last contract of the previous year.

C. Depending on the volume of business transacted, choose two or more months, at random, in order to reduce the "test size" of the examination.

D. Review all of the contracts in each sample, and tally all sales of endowed care properties. Calculate the proper amount to be placed in trust in accordance with the Act.

E. Obtain cemetery deposit records and compare the recording of deposits to the result of the calculation performed under paragraph 8.1.4 of this section [now Subsection D of 12.26.8.8 NMAC].

F. Obtain bank trust account statements and review the deposits.

G. Ensure that the deposits are sufficient in amount. Note: Section 58-17-6 of the Act allows a cemetery authority to make deposits on installments on a pro-rata basis. Contracts for the sale of numerous goods and services that include the sale of endowed care property are common. Determine what proportion to the total sale the endowed care sale represents. Multiply that factor times the installment payment and then determine the required statutory percentage.

Example:

Total contract sale \$1,000.00

Endowed care sale (plot) . . . \$ 750.00

Endowed care sale = 75% of the total sale.

Installment of \$100.00/month for 10 months.

$\$100.00 \times .75 = \75.00

$\$75.00 \times .25 = \18.75 required deposit to trust fund.

Check point: $\$750.00 \times .25 = \187.50

$\$ 18.75 \times 10$ installments = $\$187.50$

Review Section 58-17-6 of the Act for compliance.

H. Ensure that the deposits are made on a timely basis. Compare the date of deposit to the date of close of the month in which monies were received. Not more than thirty days should have elapsed.

I. Trace trust account disbursements from the bank to the cemetery's record(s) of expenditures. Acceptable expenditures are those listed under the definition of "endowed

care". Note: cemeteries should have accounting controls and procedures to enable an examiner to trace bank disbursements to specific expenditures.

[11/8/93; 9/30/97; Recompiled 10/15/01]

PART 9: ACTUAL COST OF EXAMINATIONS

12.26.9.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.

[11/8/93; 9/30/97; Recompiled 10/15/01]

12.26.9.2 SCOPE:

All cemeteries licensed by the state of New Mexico.

[9/30/97; Recompiled 10/15/01]

12.26.9.3 STATUTORY AUTHORITY:

Endowed Care Cemetery Act of 1961 ("Act"), Sections 58-17-1 to 58-17-17 NMSA 1978.

[9/30/97; Recompiled 10/15/01]

12.26.9.4 DURATION:

Permanent.

[9/30/97; Recompiled 10/15/01]

12.26.9.5 EFFECTIVE DATE:

November 8, 1993 unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective 9-30-1997.

[11/8/93; 9/30/97; Recompiled 10/15/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.26.9.6 OBJECTIVE:

The objective of this part is to clarify Section 58-17-13(B) of the Act.

[9/30/97; Recompiled 10/15/01]

12.26.9.7 DEFINITIONS:

For the purposes of Section 58-17-13(B) of the Act, the term "actual cost" is defined as the examiner's salary computed on a pro rata basis, mileage, airfare, automobile rental, per diem and copying costs. Travel days or any portion thereof shall be included in determining actual costs.

[11/8/93; 9/30/97; Recompiled 10/15/01]