**New**

13.14.2.9

C. "Controls" - ultimate regulating authority or any intermediate supervisory authority over any

person directly responsible for the operation of a title plant, who promulgates or administers the general policies

providing for the direction and management of a title plant, including general policies of maintenance, updating, and

retrieval of information from a title plant or the purchase, sale, or leasing of a title plant. **A lease of a title plant shall**

**qualify as "control" if the following conditions are met:**

**(1) All initial leases for a title plant must contain the terms of a minimum of five years and**

**renewals for a minimum term of three years. No early termination of leases shall be allowed without the express**

**written consent of OSI.**

**(2)A lease agreement shall be invalid unless approved by OSI.**

**Access to a title plant under a lease agreement has not been terminated, suspended or**

**denied.**

**(a) If the lessee is denied access to a leased title plant, the lessee shall notify OSI of**

**the date of denial of access and the reason.**

**(b) Upon notification of a lessee's denial of access to a leased title plant, OSI shall**

**notify each title insurer who has appointed the lessee of such denial of access.**

**Old**

13.14.2.9

C. “Controls” - ultimate regulating authority or any intermediate supervisory authority over any

person directly responsible for the operation of a title abstract plant, who promulgates or administers the general

policies providing for the direction and management of a title abstract plant, including general policies of

maintenance, updating, and retrieval of information from a title abstract plant or the purchase, sale, or leasing of a

title abstract plant.

**New**

13.14.2.11

**13.14.2.11 AUDITS: OSI may at any time audit any title insurance agent, agency, or title insurer. If the**

**audit provides cause for additional examination, such examination shall be conducted pursuant to Article 4 of**

**Section 59A NMSA 1978, as applicable**.

**Old**

13.14.2.15 AUDITS: On a random basis, agent and insurers experience reporting will be audited in order to

confirm the accuracy of their reports, and not as, or in lieu of, an examination pursuant to Chapter 59A, Article 4,

NMSA 1978 et seq. The cost of said examination will be paid by the Title Maintenance Fund. The superintendent

may bill the agent or insurer for all or part of the cost of said audit if insufficiency of the records of the agent or

insurer causes excess difficulty or time in performing the audit.

**New**

**13.14.2.12 TITLE INSURANCE AGENCIES CEASING OPERATION: Prior to ceasing the business of**

**title insurance, an agency shall comply with the following requirements:**

**A. Forty-five days prior to its ceasing of operations, the agency shall notify each of the following of**

**the cessation date:**

**(1) OSI title insurance bureau;**

**(2) all appointing title insurers; and**

**(3) the public by prominently displaying on the front of the business and on the landing page**

**of the agency website, a notice reading, "Notice: this title insurance agency will cease operations on "[date]."**

**B. The agency and its appointing insurers shall conduct a final audit of the agency's trust fund**

**accounts, the records pertaining thereto and the unused forms in the agency's possession.**

**(1) The final audit and final accounting required by this section shall be delivered to OSI and**

**to each appointing insurer within 90 days after the agency ceases operations.**

**(2) If an appointing title insurer does not receive a final audit report within 90 days, the title**

**insurer shall:**

**(a) report the non-receipt to OSI not later than the 100th day after the cessation**

**date; and**

**(b) use its best efforts to complete and submit a final audit to OSI within 150 days**

**of the cessation date. The title insurer shall provide written explanation and justification to OSI documenting those**

**portions of the final audit that the title insurer was not able to complete, and describing the records and personnel**

**available to the title insurer and the efforts used in the attempt to complete the final audit.**

**C. No later than 10 days after providing notice to OSI, the agency shall confer with OSI to develop a**

**wind down plan. If the agency does not fulfill this requirement, OSI will contact each appointing insurer of that**

**agency, who shall make arrangements satisfactory to OSI for the collection and preservation of the agency records.**

**D. The affiliation of any licensed title insurance agent employed by an agency who ceases business**

**shall automatically terminate upon cessation of the business.**

**Old**

none.

**New**

13.14.3.8 AGENCY AGREEMENTS:

A. All agreements and amendments between title insurers and title insurance agencies or agents shall

comply with these rules, and **shall be filed with OSI within 30 days of execution. All existing agency agreements**

**shall be amended within 60 days of the effective date of any applicable change to these rules. An amendment may**

**be in the form of an addendum to an existing agreement.**

**B. An agreement between a title insurance agency or agent and a title insurer shall specify that the**

**title insurance agency or agent has no authority to negotiate or settle policy claims.**

**Old**

13.14.3.12 AGENCY AGREEMENTS: All insurers shall amend existing agency agreements with each of

their respective licensed New Mexico agents after March 1, 1988 but before May 1, 1988 to conform with the

provisions of these regulations as last amended, and shall file the same with the superintendent on or before May 1,

1988. Such amendment may be in the form of an addendum to the existing agreement, attached to and made a part

thereof. All such agreements entered into henceforth shall conform with the provisions of these regulations as last

amended, and shall be filed with the superintendent promptly upon execution.

**New**

13.14.3.13 DUTIES OF TITLE INSURERS WITH RESPECT TO AGENCIES:

A. A title insurer shall not accept title insurance business from an agency unless there is in force a

written agreement between the title insurer and the agency.

**B. For each agency, the title insurer shall have on file a statement of financial condition. The**

**statement shall include an income statement of title insurance business done during the preceding year and a balance**

**sheet showing the condition of affairs as of the prior December 31. The agency shall certify the statement is true and**

**correct.**

**C. A title insurer shall, at least annually, conduct a review of the underwriting, claims, and escrow**

**practices of the agency which shall include a review of the title insurance policy form inventory and processing**

**operations. If the agency does not maintain separate financial institution or trust accounts for each title insurer it**

**represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books**

**of account and records of the agency.**

D. Within 30 days after **executing or** terminating an agreement with an agency, a title insurer shall

provide written notification **of the appointment** or termination and the reason for the termination to OSI. The notice

of appointment of an agency shall be made on a form prescribed or approved by OSI.

**E. A title insurer shall maintain an inventory of all title insurance policy forms or title insurance**

**policy numbers allocated to each agency.**

**F. Before entering into an agreement with an agency, a title insurer shall confirm that the agency has**

**a current and appropriate license to transact title insurance business.**

**Old**

13.14.2.9

Title insurers transacting the business of title insurance in New Mexico shall notify the

superintendent of insurance in writing, within thirty (30) days of the effective date of the cancellation of any

appointment of any individual or entity as an agent of said insurer…

E. Title insurers transacting the business of title insurance in New Mexico shall notify the

superintendent of insurance in writing, within thirty (30) days of the effective date of the cancellation of any

appointment of any individual or entity as an agent of said insurer.

**New**

13.14.4.8 REQUIREMENTS FOR PROVIDING ESCROW SERVICES: A title insurer or title

insurance agency providing escrow services shall:

A. only accept funds pursuant to escrow instructions;

B. not make changes to escrow instructions without the consent of all parties in the manner specified

by the escrow instructions;

C. receive and handle all funds pursuant to the requirements of Sections 58-28-1 et seq. and 59A-12-

22NMSA 1978;

(1) an escrow account shall be separate from all operating accounts, and shall be designated

as an escrow, trust or custodial account by the financial institution and in the books and records of the title insurer or

title insurance agency; and

(2) title insurers and title insurance agencies are prohibited from receiving for their own use

any interest from escrow accounts or money accepted for escrow, except that nothing herein shall preclude

participation in the Land Title Trust Fund Act pursuant to the Mortgage Loan Company Act, Section 58-28-1

NMSA 1978 et seq.;

D. disburse or deliver escrow funds only in accordance with escrow instructions;

**E. disburse funds only out of an escrow account deposited for that transaction**;

F. interplead or hold any funds that are the subject of conflicting demands by the parties to an escrow

until the title insurer or title insurance agency receives written instructions signed by all parties to the escrow

transaction which resolve the conflict or until a final court order;

13.14.4 NMAC 1

G. upon completion of an escrow transaction, deliver to each party a written statement of the escrow

specifying all receipts and disbursements of funds made by or on behalf of each party to the escrow, whether

disbursed to or from the escrow account, including from whom received and to whom made;

H. act with impartiality toward all parties to an escrow in the disbursement of funds; and

**I. comply with all escrow audits ordered by OSI and make available to OSI all information**

**requested by the superintendent.**

**Old**

13.14.4.8 REQUIREMENTS FOR PROVIDING SERVICES: A title insurer or title insurance agent

providing escrow services shall:

A. only accept funds pursuant to escrow instructions;

B. not solicit or accept any material addition to, or alteration of, original, amended or supplemental

escrow instructions, unless the addition or alteration is signed or initialed, or consented to in writing or by electronic

transmission by the affected parties or their duly appointed agent or attorney in fact; minor additions or alterations to

escrow instructions may be solicited or accepted if consented to by the affected parties, provided a written

memorandum of instructions is prepared and maintained in the escrow file;

C. receive and handle all funds pursuant to the requirements of Sections 58-28-1 et seq. and 59A-12-

22 NMSA 1978;

(1) all escrow accounts shall be fiduciary accounts separate from all operating accounts, and

shall be designated as a fiduciary account, an escrow account, a trust account, or a custodial account on the account

signature card and in the books and records of the title insurer or title insurance agent;

(2) title insurers and title insurance agents are prohibited from receiving for their own use

interest from escrow accounts or money accepted for escrow, except that nothing herein shall preclude participation

in the Land Title Trust Fund Act pursuant to Section 58-28-1 NMSA 1978 et seq.;

D. except as provided in this rule, disburse or deliver funds only in accordance with escrow

instructions;

E. disburse funds out of an escrow account only if the funds are available funds;

F. interplead or hold any funds which are the subject of conflicting demands by the parties to an

escrow until the title insurer or title insurance agent receives written instructions signed by all parties to the escrow

which resolve the conflict or until a court of competent jurisdiction has determined the rights of all parties to the

escrow or has ordered the funds released;

G. upon completion of an escrow, have delivered to each affected party a written statement of the

escrow specifying all receipts and disbursements of funds made by or on behalf of each affected party to or from the

escrow account, including from whom received and to whom made; and

H. not act with partiality toward any of the parties to an escrow as it relates to the disbursement of

funds.

**New**

13.14.4.9 BOOKS AND RECORDS:

A. A title insurer or agency shall, on a current basis:

Establish and maintain a separate subsidiary ledger for each escrow transaction;

B. post all receipts and disbursements from each subsidiary ledger to a control ledger daily and at

least monthly, prepare a trial balance of all subsidiary ledgers. The monthly trial balance reconciliation shall be

performed by a person who did not perform the receipt and disbursement function; and

**C. on a daily basis, reconcile the book balance and escrow account balance.**

**D. At least once each calendar month, prepare a three-way reconciliation for each escrow account.**

**Each three-way reconciliation is required to be prepared within 10 business days of the closing date of the bank**

**statement and to be approved by a title insurance agent who did not perform the reconciliation. The reconciliation**

**shall include at a minimum as of the reconcile date:**

**(1) the bank statement;**

**(2) reconciliation sheet or summary page with book balance;**

**(3) outstanding deposits list and list of deposits in transit;**

**(4) open escrow file listing or trial balance; and**

**(5) outstanding disbursements list, all as of the reconciliation date.**

**E. Reconciliations and underlying statements, listings and reports shall be preserved in a logical**

**sequence to trace an individual escrow transaction and shall be available electronically.**

**Old**

13.14.4.9 BOOKS AND RECORDS: In addition to the requirements of 13.14.16 NMAC, agent’s

statistical report, and 13.14.17 NMAC, underwriter’s statistical report, a title insurer or title insurance agent shall, on

a current basis and in accordance with accounting principles generally accepted in the United States of America:

A. establish and maintain a separate subsidiary ledger for each escrow;

B. post all receipts and disbursements from each subsidiary ledger to a control ledger and prepare a

trial balance of all subsidiary ledgers at least once each calendar month;

C. at least once each calendar month, reconcile all bank accounts for escrowed funds to the

appropriate control ledger and to the appropriate subsidiary ledger trial balance; and preserve and file in a logical

sequence the trial balances and reconciliations necessary to trace an individual escrow in an examination;

D. maintain for each escrow file and record which meets the requirements of 1.13.70 NMAC,

performance guidelines for the legal acceptance of public records produced by information technology systems and

1.12.7 NMAC, electronic authentication, copies of all receipts for escrowed funds and items, deposit slips, checks,

and closing or settlement statements signed by the parties; and

E. preserve for at least fifteen years all escrow account bank statements and all books and records

required by this section and 13.14.4.10 NMAC including copies of cancelled checks and wire transfer verifications,

as evidence of insurability of title pursuant to NMSA 1978, Section 59A-30-11(B) (collectively “escrow records”).

This fifteen year requirement for escrow records shall apply with respect to title policies issued on or after June 1,

2010.

**New**

13.14.4.10

ACCOUNTING PROCEDURES AND INTERNAL CONTROLS: A title insurer or agency shall:

A. require two signatures on all escrow checks; one signature of which shall be a title insurance

agent;

B. assign each escrow file a unique number; name identification is not acceptable;

**C. on a monthly basis, an owner, officer or director shall review and approve the reconciliation for**

**escrow accounts open for longer than six months;**

D. remove the signature blocks from voided checks or otherwise render them ineffective;

E. require management approval for any transfers of funds between escrow accounts;

**F. notify the seller within one day after receiving notice an earnest money check deposited in the**

**account is returned by the financial institution to the title insurer or agency due to insufficient funds, unless the**

**check is replaced by available funds within the one day time period; the insurer or agency shall retain a copy of**

**written notices**;

G. display related escrow file numbers directly on all escrow checks and deposit slips to provide a

clear and direct connection between the document and the related escrow file;

H. maintain in each escrow file a complete, current disbursement sheet that lists the date, source and

type of all receipts; date, check number, item description, payee and amount of any other disbursements and any

remaining balance; voided checks that have been canceled where funds have been credited back to the account shall

be shown on the disbursement sheet;

I. keep invoices substantiating, or sufficient evidence to support, all disbursements in the escrow

files;

**J. require reimbursement of all shortages from the title insurer's or agency's operating account**

**within three days that reflects the transaction creating the escrow receivable or shortage, unless the shortage is the**

**result of fraud or suspected fraud, in which case the shortage shall be cured within 45 days, unless otherwise ordered**

**by the superintendent**;

13.14.4 NMAC 2

K. if a settlement statement requires changes, prepare a new statement or have all parties affected by

the changes initial pen and ink changes;

L. issue a signed, pre-numbered receipt for any escrow funds received in cash;

M. if a bank does not return actual cancelled checks with bank statements, the agency shall either

acquire and retain clearly legible copies of the front and back of each check, or have on file in the office an

agreement with the depositor bank that ensures readily available access to such copies for at least four years;

N. an escrow account shall have the designation of "escrow" or "trust" on the bank account, checks

and deposit slips; and

0. preserve for at least 15 years all escrow transaction records. This 15 year requirement for escrow

records shall apply with respect to title policies issued on or after June 1, 2010.

**Old**

13.14.4.10 ACCOUNTING PROCEDURES AND INTERNAL CONTROLS: A title insurer or title

insurance agent shall, on a current basis and in accordance with accounting principles generally accepted in the

United States of America:

A. require each reconciliation to be approved by a manager, a supervisor, or, if neither of those

managerial employees are available, another employee;

B. require each reconciliation to be prepared by someone not associated with the receipt and

disbursement function; where size does not permit this, a manager or owner shall review each reconciliation;

C. require two signatures on all escrow checks; one signature must be that of a licensed agent or that

of a person authorized by a licensed agent to sign escrow checks; this requirement is waived if an insurer or agent

requires a manager, supervisor, or owner to review a list of monthly disbursements from escrow accounts; the

manager, supervisor or owner must sign the list of monthly disbursements indicating his or her approval of the

monthly disbursements;

D. assign each escrow file a unique number; name identification is not acceptable;

E. thoroughly investigate escrow accounts open for longer than six months and only allow

disbursements from these accounts with management approval;

F. remove the signature blocks from voided checks or otherwise render them ineffective;

G. require management approval for any transfers of funds between escrow files or escrow accounts

and document transfers between escrow files or accounts in both files;

H. notify the seller by written notice deposited in the mail and addressed to the seller’s address as

shown in the escrow file within seven (7) business days after an earnest money check deposited in the account is

returned by the financial institution to the insurer or agent due to insufficient funds, unless the check is replaced by

collected funds within the seven-day time period; the insurer or agent shall retain copies of written notices;

I. display related escrow file numbers directly on all escrow checks and deposit tickets to provide a

clear and direct connection between the document and the related escrow file;

J. maintain in each escrow file a complete, current disbursement sheet that lists the date, source and

type of all receipts; date, check number, item description, payee and amount of all checks; date, amount and type of

any other disbursements (i.e.; outgoing wire-transfers) and any remaining balance; voided checks that have been

canceled where funds have been credited back to the account shall be shown on the disbursement sheet;

K. keep invoices substantiating, or sufficient evidence to support, all disbursements in the escrow

files;

L. require reimbursement of all escrow receivables and other shortages by the appropriate party or

from the title insurer’s or title agent’s operating account within thirty (30) days from the closing date of the bank

statement of the account that reflects the transaction creating the escrow receivable or shortage;

M. if a settlement statement requires changes, prepare a new statement or have all parties affected by

the changes initial pen and ink changes, or maintain sufficient evidence to support the changes in the escrow file;

N. issue a signed, pre-numbered receipt for any escrow funds received in cash; and

O. if a bank does not return actual cancelled checks with bank statements, then copies of all checks

must be available in agent’s records, or the agent must obtain a signed acknowledgment from the bank that copies of

checks will be provided upon request and will meet the following criteria:

(1) copies of checks must be clearly legible;

(2) both sides of every check will be copied so that endorsements can be verified; and

(3) front and back images of the checks will be copied and provided in a manner that makes

it clear they belong together.

**New**

13.14.4.11 ANNUAL ESCROW COMPLIANCE PROCEDURES:

A. Title insurers and agencies shall, at their own expense, engage an independent certified public

accountant to cerify the procedures required by OSI. Title insurers and agencies shall require the certified public

accountant to follow and comply with all requirements of any order of OSI relating to the performances of escrow

duties as set out in these rules.

**B. The certified public accountant shall be licensed and in good standing.**

**Old**

13.14.4.11 INDEPENDENT ACCOUNTANT’S ANNUAL ESCROW COMPLIANCE PROCEDURES:

Title insurers and title insurance agents shall, at their own expense, have an independent certified public accountant

perform the procedures in this section.

A. Minimum standards.

(1) The accountant shall perform the agreed-upon procedures to determine whether the title

insurer or title agent maintains adequate escrow books and records and whether the title insurer or title agent is in

compliance with the requirements of 59A-12-22 and 59A-30-4 NMSA 1978 and this rule. The accountant shall

perform the agreed-upon procedures in accordance with attestation standards established by the American institute

of certified public accountants and the requirements of this section.

(2) The accountant may use sampling procedures to examine the contents of escrow files.

Based on the results of the examination of the sample, the accountant shall determine the number of files to be

examined and the appropriate degree of detail to be used.

(3) The accountant shall confirm individual escrow funds, accounts where funds have not

been fully disbursed, and escrow bank accounts. Since complete confirmation of all escrow accounts would be

impractical, the accountant may adopt a spot-check system of confirmations, consider evidence generated by the title

insurer or title agent, and use his or her judgment in accordance with sound attestation and auditing practices to

determine the extent to which confirmations are needed. Although positive confirmations and specific replies are

desirable, the accountant may use negative confirmations if, in the accountant’s judgment, the circumstances

warrant.

B. Instructions. The accountant shall:

(1) determine that available funds (as defined in Subsection D of 13.14.1.7 NMAC) for a

transaction are received and deposited before any disbursements are made in accordance with 59A-30-5.1 NMSA

1978;

(2) closely scrutinize funds which remain in an escrow account in a dormant condition for a

long period of time;

(a) title insurers and title agents must comply with the Uniform Unclaimed Property

Act, 7-8A-1, et seq.;

(b) all credit balances open for three (3) years or longer as of December 31 of the

year in question must be explained in detail on schedule B;

(3) carefully examine checks written from an escrow account to the agency’s operating

account or to another escrow account, especially if the checks appear to be disbursements for a purpose other than

normal charges to a specific escrow;

(a) transfer of funds from one account to another is permissible providing both files

contain proper authorization;

(b) the accountant shall examine a judgmentally determined number of cancelled

checks to determine properly authorized signatures, payees and endorsements;

(4) itemize and thoroughly explain all escrow receivables in excess of two-hundred dollars

($200.00) on schedule C and thoroughly explain any irregularities such as bank overdrafts on schedule D in light of

the requirements of NMSA 1978, Sections 59A-12-22 and 59A-30-4;

(5) determine that support for each disbursement is in the escrow file and that disbursements

were made to logical payees;

(a) if there are charges shown on the closing statement for overnight mail service,

messenger service, copies of documents, recording fees or tax certificates, the accountant shall determine that these

charges are actual charges or reasonable estimates of charges that must be made prior to closing;

(b) if there is evidence of a prior lien in the escrow file, such as a payoff statement

from a lending institution, the accountant shall determine that a check was written for the payoff of the loan and a

release was received; the accountant shall determine if there is a closing statement in the file and if the entries on the

closing statement can be traced to the escrow accounting records; the accountant shall determine if the insurer’s or

agent’s records include copies of all invoices, receipt items and disbursement checks; and

(6) inspect the monthly bank reconciliations on all escrow bank accounts to ensure

compliance with the requirements of 13.14.4.9 NMAC.

C. Required report forms. Insurers and agents shall require the independent accountant to use the

report forms prescribed in 13.14.4.13, 13.14.4.14, 13.14.4.15, and 13.14.4.16 NMAC when filing their report on

applying agreed-upon procedures; facsimiles of the required report forms may be used, but the formats must be

identical to the required report forms. The report shall include:

(1) schedule A: the form of opinion should be as set forth in schedule A unless circumstances

dictate otherwise;

(a) the opinion letter must be signed by an independent certified public accountant

or by a firm composed of independent certified public accountants;

(b) the firm name and address must be provided on schedule A;

(2) schedule B:

(a) schedule B requires detailed information regarding escrow files that have been

open for three (3) years or longer, including the reason the file is still open, such as “disputed earnest money,”

“funds escrowed for repairs,” “error at closing,” etc. and the status of the file - active or inactive;

(b) if a file is inactive or has been dormant for more than three (3) years, the insurer

or agent should consider clearing the file pursuant to the Unclaimed Property Act or through interpleader with the

court;

(c) individual escrow files with dormant balances of two-hundred dollars ($200.00)

or less may be reported in the aggregate for each specific reason the balances remain in the files;

(3) schedule C:

(a) the accountant shall provide a detailed explanation of every debit balance or

receivable in excess of two-hundred dollars ($200.00) occurring throughout the year, even if cleared before the

year’s end; the explanation should include the date the shortages were created, the cause of the shortages, the date

the shortages were cleared, and the method of clearance;

(b) schedule C provides columns for debit balances to be carried forward under each

month they remained open; debit balances up to and including two-hundred dollars ($200.00) should be included as

a lump sum, without separate explanations;

(4) schedule D:

(a) Section A: the accountant shall provide detailed information regarding any

overdrafts occurring during the fiscal year; the information should include the following: bank name and account

number, related escrow file number, amount of overdraft, dates of origin and clearance, and an explanation that

includes the method of disposition; if an overdraft situation was caused by an escrow receivable that has already

been reported in schedule C, the accountant shall make reference to this explanation;

(b) Section B: the accountant shall provide a complete explanation of any

irregularity discovered during the course of applying the agreed-upon procedures that has not been explained

elsewhere in the report.

D. Negative reports. All reports or exhibits reflecting no activity shall be filed and noted as “none.”

E. Filing reports. The accountant shall provide the title insurer or title agent with an adequate

number of reports in sufficient time to allow the insurer or agent to review them and mail copies with cover letters to

the title insurance bureau, by certified mail, within 180 days of the fiscal year end. In addition, each agent shall

simultaneously mail, by certified mail, a copy of the report to each insurer that the agent represents. The title

insurance bureau will not grant filing extensions.

**New**

13.14.4.12 NOTICE TO OSI:

A. A title insurer, agency or title insurance agent, who discovers any of the following, **shall provide**

**notice to OSI within five days of:**

**(1) notice of suit in any civil or criminal action against the title insurer, title insurance**

**agency, or title insurance agent involving any alleged misconduct or liability of the title insurer, title insurance**

**agency, or title insurance agent concerning a New Mexico escrow; or**

**(2) any disciplinary action taken by the disciplinary board or by the supreme court of New**

**Mexico involving misconduct concerning an escrow by a title insurer or title insurance agent who is a licensed**

**attorney.**

**B. A title insurer, agency or title insurance agent, who discovers theft or fraud of an escrow account,**

**shall notify OSI within two days of discovery.**

**Old**

13.14.4.12 NOTICE TO THE SUPERINTENDENT:

A. A title insurer or title insurance agent shall notify the superintendent of:

(1) the entry of a judgment in any civil action against the title insurer or title insurance agent

involving the misconduct or liability of the title insurer or title insurance agent concerning an escrow;

(2) the entry of a judgment in any civil action against an owner, officer, director, partner, or

employee of the title insurer or title insurance agent involving the misconduct or liability of the owner, officer,

director, partner, or employee concerning an escrow handled by the title insurer or title insurance agent;

13.14.4 NMAC 5

(3) the entry of a judgment of conviction in any criminal proceeding involving the

misconduct of the title insurer or title insurance agent or of any owner, officer, director, partner, or employee of the

title insurer or title insurance agent concerning an escrow handled by the title insurer or title insurance agent; and

(4) any disciplinary action taken by the disciplinary board or the supreme court of New

Mexico involving misconduct concerning an escrow by a title insurer or title insurance agent who is a licensed

attorney.

B. Title insurers and title insurance agents who have actual knowledge of judgments entered or

disciplinary actions taken after January 1, 2001, shall be required to notify the superintendent within ten (10) days

after the date judgment is entered or disciplinary action taken, or within ten (10) days after acquiring actual

knowledge thereof, whichever is later, by filing a written notice, which includes the names of the parties to the

escrow, a brief description of the escrow, and a copy of the judgment entered or disciplinary action taken.

C. If a judgment or disciplinary action is appealed, each subsequent decision of an appellate court

shall be subject to the notice requirements of this section.

D. If a title insurer or title insurance agent detects a defalcation regarding its escrow funds, the insurer

or agent must file the following notice with the superintendent within forty-five (45) days of the end of the month in

which the defalcation is detected: “We have detected circumstances regarding our escrow funds that may warrant an

investigation by the title insurance bureau. The amount of funds involved is believed to be $\_\_\_\_\_.”

**New**

13.14.5.13 PRO FORMA POLICIES: A pro forma policy may be issued only if the land is not one to four

family residential property. In such case, schedule A shall conspicuously state: "This is a pro forma policy

furnished to or on behalf of the party proposed to be insured for discussion only. It does not reflect the present status

of title and is not a commitment to insure the estate or interest as shown herein, nor does it evidence the willingness

of the company to provide any coverage shown herein. Any such commitment must be an express written

undertaking issued on the appropriate forms of the company."

**Old**

13.14.5.13 PRO FORMA POLICIES: For purposes of this rule, a “pro forma policy” is a sample of an

owner or loan policy prepared prior to payment for issuance and delivery of the policy, with completed schedules A

and B and endorsements, showing the proposed insured, the exceptions that are proposed to be placed in the final

policy to be issued, and the name of the title insurance company and title insurance agent. A pro forma policy may

be issued only if (a) the land is not one to four family residential property; (b) the proposed amount of insurance is

$500,000 or more; (c) each page of the completed schedules A and B and all endorsements conspicuously state

“This is a pro forma policy furnished to or on behalf of the party proposed to be insured for discussion only. It does

not reflect the present status of title and is not a commitment to insure the estate or interest as shown herein, nor

does it evidence the willingness of the company to provide any coverage shown herein. Any such commitment must

be an express written undertaking issued on the appropriate forms of the company.” and (d) the title agent receives a

written request for the pro forma policy from a proposed insured. A pro forma policy shall not be issued or used in

lieu of a title insurance commitment.

**New**

13.14.6.11

A.

REISSUE OWNER'S POLICIES:

An owners’ policy shall qualify for reissue rates only when insuring one of the following:

(1) a purchaser or lessee of the same real estate from one whose title thereto as owner's has

been insured by any company in a previous policy issued prior to the application for a new policy; or

(2) a purchaser or lessee of the same real estate from an insured under a loan policy of any

company which has acquired title to the same property described in said loan policy by foreclosure or by voluntary

conveyance in extinguishment of the debt.

B. The proof of a prior title insurance policy requires a complete copy of all schedules of the prior

policy.

C. The title insurer or agency which issues the reissue rate policy shall maintain proof of the prior

policy for at least two years. The reissue rate shall apply, only if proof of the prior policy is in the possession of the

title insurance insurer or agency issuing the reissue rate policy before the commencement of the title search for that

policy.

**D. The title insurer or agency may request the prior owner's policy from the prior title insurance**

**agency or title insurer. Within five days, the prior title insurance agency or title insurer shall provide a copy of that**

**policy in response to the request. The prior title insurance agency or title insurer may charge a reasonable retrieval**

**fee for providing the copy of the prior title policy as authorized by these rules.**

**Old**

13.14.6.18 REISSUED OWNER’S POLICIES:

A. Owner’s policies shall qualify for the reissue rates of 13.14.9.35 NMAC only when insuring either

of the following:

(1) A purchaser or lessee of the same real estate from one whose title thereto as owner has

been insured by any company in a previous policy issued prior to the application for a new policy; or

(2) A purchaser or lessee of the same real estate from an insured under a loan policy of any

company which has acquired title to the same property described in said loan policy by foreclosure or by voluntary

conveyance in extinguishment of the debt.

B. In either case the company issuing the reissue rate policy shall maintain proof of the previous

policy in its files for at least two years. In order for the reissue rate to apply, proof of the previous policy shall be in

the possession of the company issuing the reissue rate policy prior to the commencement of the title search for said

policy. Proof, as used in this context, shall mean a copy of the previous policy, which shall include the following

information: issuing company/underwriter, policy number, date of issue, policy amount, legal description of insured

property, name of insured, as well as complete copies of schedules A and B (and C, if applicable), and any attached

endorsements.

**New**

13.14.7.19 RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY: A title insurer or title

insurance agency may, issue NM form 45 if all of the following conditions exist:

A. the real property to be insured is one to four family residential property;

B. the real property is located within an approved and recorded subdivision;

C. the title insurance agency or title insurer has a complete copy of the loan policy issued to an

insured senior lender before the commencement of the title search; and

**D. the loan is less than or equal to $125,000.**

**Old**

13.14.7.23 ALTA RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY: Upon request, a

title agent or insurer may issue an ALTA Residential Limited Coverage Junior Loan Policy (NM form 45) if all of

the conditions required by this section exist. Use of the limited search policy is optional and no agency and/or

insurer need issue this form even if requested and the transaction meets all the requirements of these rules.

A. The real property to be insured under the policy is one to four family residential as defined in

Subsection A of 13.14.1.21 NMAC;

B. The real property is located within a county recorded subdivision as defined in Subsection B of

13.14.6.20 NMAC;

C. The agent or insurer has a complete copy of all schedules of an owner’s policy issued in favor of

the person(s) shown as vestee(s) in the proposed policy;

D. The loan to be made by lender is less than or equal to $75,000 and is a junior equity line of credit

or second mortgage; and

E. The policy is issued in conformance with the underwriting standards issued by the title insurance

company.

**New**

13.14.8.12 INSURING AROUND ENDORSEMENT:

**A. NM form 43 may be attached to a policy to insure around a lien or other adverse matter excepted**

**to in Schedule B if the title insurer has determined that the lien or other adverse matter does not pose a material risk**

**under the policy.**

B. In lieu of attaching NM form 43, the exception to the lien or other adverse matter may be omitted

from the policy provided the insured requests the omission, **and the request and approval are documented or**

**otherwise memorialized in writing.**

**Old**

13.14.8.13 INSURING AROUND ENDORSEMENT:

A. An insuring around endorsement NM form 43 may be attached to an owner’s policy, leasehold

owner’s policy, loan policy or leasehold loan policy for the purpose of insuring around a lien or other adverse matter

excepted to in schedule B. This endorsement shall only be issued where one or more of the following circumstances

exists at the time the policy is issued:

(1) where liens securing obligations which, though not released of record, have been

discharged to the satisfaction of the underwriter, and the underwriter or agent has evidence in this file that the lien

has been paid in full; provided that the underwriter or agent has the duty to obtain a release within a reasonable time

after closing if it is possible to do so;

13.14.8 NMAC 3

(2) where an insurer has previously issued a policy, through error or mistake, or pursuant to

an indemnity agreement or agreement to defend as provided under Paragraph (3) below, without taking exception to

a specific lien or other adverse, and is called upon to issue a new policy and is already obligated under such prior

policy;

(3) where an insurer has erred as in (2) above, or has accepted an indemnity or agreement to

defend pursuant to this paragraph and another insurer discovers the error in preparing to issue a subsequent policy,

the second insurer may rely upon an indemnity agreement or an agreement to defend by the first insurer, and attach

the endorsement; or

(4) Where an insurer has otherwise determined that the lien or other adverse matter does not

pose a material risk under the policy(ies).

B. In utilizing this insuring-around provision and in the discretion of the insurer, (1) the lien must

appear as an exception in schedule B of any policy and the endorsement shall be attached thereto, or (2) the lien or

other adverse matter may be intentionally omitted from any commitment or policy. This endorsement shall only be

issued where the underwriter considers the risk acceptable.

**New**

13.14.8.14 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:

A. Upon being furnished with a satisfactory survey:

(1) NM form 50 and NM form 50.1 may be attached to a loan policy;

(2) NM form 56 and NM form 56.1 may be attached to an owner's policy covering

unimproved land;

(3) NM form 57 and NM form 57.1 may be attached to m owner's policy covering improved

land; and

(4) NM Forms 50, 50.1, 56, 56.1, 57, and 57.1 shall not be attached to policies issued on one

to four family residential property.

B. Each endorsement is to be issued only in conjunction with the issuance of survey coverage

pursuant to Subsection C of 13.14.5.12 MA/LAC.

**C. Paragraph (3)(b) of NM form 50, Paragraph 4 of NM form 50.l, Paragraph(2) of NM form 56 and**

**NM form 56.1, Paragraph (2)(b) of NM form 57, or Paragraph 3 of NM form 57.1, as appropriate, may be deleted if**

**minerals rights have been severed and the insurer, in its discretion, deems the risk of such coverage to be acceptable**.

**Old**

13.14.8.16 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:

A. Upon being furnished with a satisfactory survey, and where the underwriter determines the risk to

be acceptable:

(1) NM form 50, restrictions, encroachments and minerals endorsement, and the NM form

50.1, restrictions, encroachments and minerals endorsement - lender improved land may be attached only to a loan

policy but shall not be issued where the intended use of the property is 1-4 family residential;

(2) NM form 56, restrictions, encroachments and minerals endorsement - unimproved land,

and the NM form 56.1 restrictions, encroachments and minerals endorsement - unimproved land may be attached

only to an owner’s policy covering unimproved land; and

(3) NM form 57, restrictions, encroachments and minerals endorsement - improved land, and

the NM form 57.1, restrictions, encroachments and minerals endorsement - improved land may be attached only to

an owner’s policy covering improved land.

B. Each endorsement is to be issued only in conjunction with the issuance of survey coverage, as

authorized by 13.14.6.14 NMAC or 13.14.7.13 NMAC.

C. The coverage relating to minerals provided under Paragraph (3)(b) of NM form 50, paragraph 4 of

NM form 50.1, Paragraph (2) of NM form 56 and NM form 56.1, Paragraph (2)(b) of NM form 57, or Paragraph 3

of NM form 57.1, as appropriate shall not be issued where minerals have been severed, unless (1) there has been a

waiver of the right of entry or surface usage of the mineral reservation, or (2) the insurer deems the risk of such

coverage to be acceptable in the insurer’s discretion.

D. The coverage provided by any part of each endorsement may be deleted but may not be increased

by:

(1) crossing out the part on the form of endorsement;

(2) retyping the form leaving out the part; or

(3) special endorsement.

E. Each endorsement may be issued only upon the written authorization of the underwriter. The

issuing agent shall retain such written authorization of the underwriter for a period of not less than two years

following issuance of the endorsement.

**New**

13.14.8.15 LAND ABUTS STREET ENDORSEMENT: NM form 51 may be attached to a policy**, upon**

**being furnished with a satisfactory survey.** This endorsement may not be attached to a policy that insures one to four

family residential property.

**Old**

13.14.8.17 LAND ABUTS STREET ENDORSEMENT: The “land abuts street” endorsement, NM form

51, may be attached to owner’s policies and loan policies provided the premium in 13.14.10.36 NMAC is paid. This

endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units.

Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

**New**

13.14.8.26 INDIRECT ACCESS AND ENTRY ENDORSEMENT: NM form 68 may be attached to a

policy **upon being furnished a satisfactory survey**. A separate endorsement shall be issued for each public street,

road or highway for which the insured wants access and entity coverage, and a separate premium shall be paid for

each endorsement issued.

**Old**

13.14.8.29 INDIRECT ACCESS AND ENTRY ENDORSEMENT: The “indirect access and entry”

endorsement, NM form 68, may be attached to owner’s policies and loan policies provided the premium in

13.14.10.50 NMAC is paid. This endorsement may not be attached to policies insuring residential property

containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards

concerning the use of this endorsement.

**New**

13.14.9.19 NON-POLICY CHARGES:

A. A charge shall be collected for the initial six months and for each additional six-month renewal or

extension (or portion thereof) of a commitment. If a new version of a commitment is issued to correct an error by the

title insurer or agency, the new version shall be issued at no charge.

B. If the transaction fails to close and no policy is issued, the title insurer or agency **shall** charge a

cancellation fee.

C. The charge for a pro forma policy shall be established in a title rate case. If a pro forma is issued to

correct an error by the issuing title insurer or agency, the corrected version shall be issued at no charge.

**Old**

13.14.9.19 NON-POLICY RATES:

A. Commitments to insure. The premium for each version of a commitment to insure (or an interim

title insurance binder) is one hundred dollars ($100) for the initial six months, and an additional one hundred dollars

($100) for each additional six month (or portion thereof) renewal or extension. If the version of the commitment is

issued to correct an error by the issuing agent, the version shall be issued at no charge.

B. Cancellation fee. If the transaction fails to close and no policy is issued by the company issuing

its commitment (or binder), the company may charge a cancellation fee that it determines reasonable and appropriate

considering the nature and extent of the services rendered by it.

C. Pro Forma Policies. The premium for the issuance of any form of owner’s or loan pro forma

policy is one hundred dollars ($100) for each pro forma policy, issued pursuant to 13.14.5.13 NMAC. If the version

of the commitment is issued to correct an error by the issuing agent, the version shall be issued at no charge.

**New**

13.14.16.8 AGENCY STATISTICAL REPORT: **Every agency shall report income and expenses annually**

**on both county-by-county and summary-of-all counties bases**. The agency shall use the agency statistical report

form set forth in this rule, Agency Statistical Report, and instructions published by OSI. The superintendent shall

annually issue an order to fix the date and location for the filing of each agency statistical report for the calendar

year and **shall notify each agency of the date at least sixty days prior to the filing deadline; provided, however, that**

**in no event shall an agency be required to file its statistical report prior to May 15th of the year following the end of**

**the calendar year being reported. Each agency shall** **maintain such minimum basic records on each New Mexico**

**transaction as shall be necessary to accurately report such transactions.**

**Old**

13.14.16.8 ANNUAL STATISTICAL REPORT REQUIRED: All agencies, whether independent,

affiliated, or direct operations, must complete all parts of this statistical report in accordance with the instructions issued

annually by the title insurance bureau for the next year’s reporting (e.g., instructions issued in 2005 shall be used for

reporting 2006 calendar year data; the report of 2006 data shall be filed in 2007).

**New**

13.14.17.8 ANNUAL STATISTICAL REPORT REQUIRED**: Every title insurer shall report income and**

**expenses annually on both county-by-county and summary-of-all counties bases**. The title insurer shall use the

statistical report form set forth in tis rule, insurer statistical report, and instructions published by OSI. The

superintendent shall annually issue an order to fix the date and location for the filing of each insurer statistical report

for the calendar year and **shall notify each title insurer of the date at least 60 days prior to the filing deadline;**

**provided, however, that in no event shall a title insurer be required to file its statistical report prior to May 15th of**

**the year following the end of the calendar year being reported. Each insurer shall maintain such minimum basic**

**records on each New Mexico transaction as shall be necessary to accurately report such transactions**.

**Old**

13.14.17.8 ANNUAL STATISTICAL REPORT REQUIRED: All licensed title insurers must complete all

parts of this statistical report in accordance with the instructions issued annually by the title insurance bureau for the

next year’s reporting (e.g., instructions issued in 2005 shall be used for reporting 2006 calendar year data; the report

of 2006 data shall be filed in 2007).

**New**

13.14.17.8 ANNUAL STATISTICAL REPORT REQUIRED: **Adds the following Transactions Codes:**

**0001 Charge for Additional Chain of Title (NMAC Rate Code 13.14.9.16)**

**0002 Charge for Tract of Unusual Complexity (NMAC Rate Code 13.14.9.16)**

**0003 Abstract Retirement Credit (NMAC Rate Code 13.14.9.24)**

**New**

13.14.18.8 PROMULGATED FORMS: For purposes of Section 59A-30-5 NMSA 1978, the

superintendent shall promulgate title insurance forms by order after conducting a hearing pursuant to 13.1.5 NMAC

or 13.1.6 NMAC, as the circumstances require. On his own motion, or at the request of an interested person, the

superintendent may, at any time, conduct a hearing to consider whether to promulgate a new form, to revoke a

previously promulgated form, or to modify a previously promulgated form.

**A. A title insurer or title insurance agency shall not use any new promulgated form unless:**

**(1) the superintendent promulgates a rate for the form, if the order promulgating the form**

**states that a rate is required to issue the form;**

**(2) the superintendent has promulgated a rule for the form, if the order promulgating the**

**form states that use of the form is contingent on promulgating a rule; and**

**(3) the title insurer has provided to its title insurance agencies underwriting guidelines,**

**compliant with these rules, to govern the use of the form.**

**B. A title insurer or title insurance agency shall not use any modified or replacement form unless:**

**(1) the superintendent determines that the existing rate and rule, if applicable, for the form**

**applies to the modified or replacement form, or the superintendent has promulgated a new rate and rule, if**

**applicable, for the modified or replacement form; and**

**(2) the title insurer has provided to its title insurance agencies underwriting guidelines,**

**compliant with these rules, to govern the use of the form.**

**(3) A title insurer shall only issue forms that match in all substantive respects the**

**promulgated forms authorized by these rules.**

**Old**

13.14.18.8 PROMULGATED FORMS: Policies, endorsements, binders, commitments, certificates, closing

protection letters, notice of availability of owners title insurance and facultative reinsurance agreements are not to be

filed with the superintendent for approval as the responsibility rests upon the title underwriting companies to see that

only standard promulgated forms are used by themselves and their authorized agents to insure interests in New

Mexico property.

**New**

13.14.18.9 ALTERATION OF FORMS PROHIBITED; EXCEPTIONS; AND LETTERS OF

INTERPRETATION OR WAIVER THAT CHANGE THE TERMS, PROHIBITED:

A. No person, firm or organization may alter or otherwise change any title insurance form

promulgated by the superintendent, or use any non-promulgated endorsement, whether by deletion or omission of

terms, except:

(1) upon a determination by the superintendent following a hearing pursuant to 13.1.5 or

13.1.6 NMAC, as applicable, that the same be proper; or

(2) in a manner specifically authorized by these regulations.

B. Factual information required to identify and describe the risk being undertaken may be inserted in

an authorized form. This includes, but is not limited to, information necessary to identify the insured, the insured's

estate or interest of record, the property description, all matters of record affecting the insured's interest which are

exceptions to the policy, all matters, facts and circumstances, whether or not shown by the public records,

constituting a lien, claim, encumbrance, impairment or limitation upon the estate to be insured, whether arising by

operation of law or by reason of no recorded information establishing the insured matters, the amount of liability of

the policy and, in case of a commitment, any matter constituting a requirement prior to issuance of a policy, may be

inserted in the proper places in the various forms, provided that other information necessary to complete each form

is inserted in the form prior to its issuance.

**C. Additions to language in the promulgated form, if required to correctly identify and describe the**

**risk being undertaken may be inserted in an authorized form. Any such modification must be approved by:**

**(l) Legal counsel for the insured; or**

**(2) An authorized representative of the insured in a transaction that does not involve one to**

**four family residential property.**

D. Nothing in this rule shall prevent a title insurer from:

(1) adding blanks, spaces, labels or brief instructions to the promulgated forms; or

(2) from typesetting a promulgated form utilizing type styles, margins or paginations

different from the promulgated forms; provided, however, that all language contained in each promulgated form

must appear verbatim in each form, and further provided that nothing may be added to a promulgated title insurance

form which changes any of the terms of such form except as specifically provided by these rules.

E. Nothing in these rules prohibits use of translated language other than English, provided, however,

that any translated form shall contain the following language in bold-face type on the first page of the form in

English and in the translated language: "This translation is provided as a convenience only. The English language

version of this form shall control and shall be the operative document for all legal purposes."

F. The following language shall be added at the top of schedule A of all commitments and policies in

a font not less than the font size of the remaining print of schedule A and be in bold italicized print **"Pursuant to the**

**New Mexico title insurance law Section 59A-30-4 NMSA 1978, and title insurance rule 13.14.18.9 NMAC, no part**

**of any title insurance commitment, policy or endorsement form promulgated by the New Mexico superintendent of**

**insurance may be added to, altered, inserted in or typed upon, deleted or otherwise changed from the title insurance**

**form promulgated by the New Mexico superintendent of insurance, nor issued by a person or company not licensed**

**with regard to the business of title insurance by the New Mexico superintendent of insurance, nor issued by a person**

**or company who does not own, operate or control an approved title abstract plant as defined by New Mexico law**

**and regulations for the county wherein the property is located, except as authorized by law."**

G. No title insurer or title insurance agency shall issue, publish or circulate a letter, memorandum or

other writing which directly or indirectly modifies or waives the terms or any part of the terms of any promulgated

form, nor shall any such person agree to directly or indirectly do or not do anything, the effect of which is or would

be to offer insurance coverages other than those in the promulgated title insurance forms, whether the same be more,

less, substitute, alternative, negative or affirmative coverages or risks, except as specifically authorized by these

rules; except that a title insurer shall waive, at no cost or charge to the insured, either by endorsement or language

added to schedule B of the policy, the right to demand arbitration pursuant to the conditions and stipulations of title

insurance policies issued in New Mexico. The endorsement or the language added to schedule B of the policy shall

read: "The company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of

the American Land Title Association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed

to by both the company and the insured."

**Old**

13.14.18.9 ALTERATION OR SUBSTITUTION OF FORMS PROHIBITED:

A. No person, firm or organization may alter or otherwise change any title insurance form

promulgated by the superintendent, or use any non-promulgated endorsement or rider, except (1) upon public

hearing called for such purpose and upon a determination by the superintendent that the same be proper, or (2) in a

manner specifically authorized by these regulations as amended from time to time.

B. Nothing in this regulation shall prevent a title insurer from (1) adding blanks, spaces, labels or

brief instructions to the promulgated forms for the purpose of collecting statistical data or (2) from typesetting a

promulgated form utilizing type styles, margins or paginations different from the promulgated forms; provided,

however, that all language contained in each promulgated form must appear in each form printed or used by each

title insurance underwriter or agent verbatim, and further provided that nothing may be added to a promulgated title

insurance form which changes any of the terms of such form except as specifically provided by these regulations.

C. Nothing herein shall prohibit the use of the forms in any language other than English, provided,

however, that any translated form shall contain the following language in bold-face type on the first page of the form

in English and in the translated language: “This translation is provided as a convenience only. The English

language version of this form shall control and shall be the operative document for all legal purposes.”

D. The following language shall be added at the top of schedule A of all commitments and policies in

a font not less than the font size of the remaining print of schedule A and be in bold italicized print: “Pursuant to the

New Mexico title insurance law Section 59A-30-4 NMSA 1978, control and supervision by superintendent and title

insurance regulation 13.14.18.10 NMAC, no part of any title insurance commitment, policy or endorsement form

promulgated by the New Mexico superintendent of insurance may be added to, altered, inserted in or typed upon,

deleted or otherwise changed from the title insurance form promulgated by the New Mexico superintendent of

insurance, nor issued by a person or company not licensed with regard to the business of title insurance by the New

Mexico superintendent of insurance, nor issued by a person or company who does not own, operate or control an

approved title abstract plant as defined by New Mexico law and regulations for the county wherein the property is

located.”