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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

Volume XXXVII, Issue 8

April 21, 2026

Table of Contents

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

Notice of Rulemaking Hearing to Consider Repeal and Replace Existing Rule 20.11.7 NMAC-Variance Procedure.....407

GAME AND FISH DEPARTMENT

State Game Commission Meeting and Rule Making Notice (19.31.3 NMAC).....409
State Game Commission Meeting and Rule Making Notice (19.31.16 NMAC & 19.31.21 NMAC).....409

HIGHER EDUCATION DEPARTMENT

Notice of Proposed Rulemaking (5.3.9 NMAC).....410
Notice of Proposed Rulemaking (5.3.10 NMAC).....411
Notice of Proposed Rulemaking (5.5.2 NMAC).....412
Notice of Proposed Rulemaking (5.5.6 NMAC).....412
Notice of Proposed Rulemaking (5.7.3 NMAC).....413
Notice of Proposed Rulemaking (5.100.8 NMAC).....414

PUBLIC EDUCATION DEPARTMENT

Notice of Proposed Rulemaking.....415

SPACEPORT AUTHORITY

Notice of Proposed Rulemaking.....416

SUPERINTENDENT OF INSURANCE, OFFICE OF

Notice of Proposed Rulemaking.....416

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

AUDITOR, OFFICE OF THE STATE

2.2.2 NMAC R Requirements for Contracting and Conducting Audits of Agencies.....419
2.2.2 NMAC N Requirements for Contracting and Conducting Audits of Agencies.....419

ECONOMIC DEVELOPMENT DEPARTMENT

ECONOMIC DEVELOPMENT DIVISION

2.95.1 NMAC N Strategic Economic Development Site Readiness Act - General Provisions.....461

HEALTH CARE AUTHORITY

INCOME SUPPORT DIVISION

8.100.130 NMAC A Eligibility and Verification Standards.....464
8.139.410 NMAC A Nonfinancial Eligibility Criteria.....465

REGULATION AND LICENSING DEPARTMENT

DENTAL HEALTH CARE, BOARD OF

16.5.3 NMAC	R	Mandatory Reporting Requirements.....	468
16.5.7 NMAC	R	Dentists, Temporary or Public Service Licensure.....	468
16.5.11 NMAC	R	Dentists, License Expiration and Renewal.....	468
16.5.23 NMAC	R	Dental Hygienists, Continuing Education Requirements.....	468
16.5.24 NMAC	R	Dental Hygienists, License Expiration and Renewal.....	468
16.5.32 NMAC	R	Dental Assistants, Fee.....	468
16.5.36 NMAC	R	Dental Assistants, Continuing Education Requirements.....	468
16.5.3 NMAC	N	Mandatory Reporting Requirements.....	468
16.5.7 NMAC	N	Dentists, Temporary or Public Service Licensure.....	469
16.5.11 NMAC	N	Dentists, License Expiration and Renewal.....	474
16.5.23 NMAC	N	Dental Hygienists, Continuing Education Requirements.....	475
16.5.24 NMAC	N	Dental Hygienists, License Expiration and Renewal.....	476
16.5.32 NMAC	N	Dental Assistants, Fee.....	478
16.5.36 NMAC	N	Dental Assistants, Continuing Education Requirements.....	478
16.5.1 NMAC	A	Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions.....	479
16.5.5 NMAC	A	Dentists, Fees.....	486
16.5.6 NMAC	A	Dentists, Licensure by Examination.....	487
16.5.8 NMAC	A	Dentists, Licensure by Credentials.....	489
16.5.9 NMAC	A	Non-Dentists Owners.....	491
16.5.10 NMAC	A	Dentists, Continuing Education Requirements.....	494
16.5.15 NMAC	A	Dentists, Anesthesia/Sedation Administration.....	495
16.5.16 NMAC	A	Dentists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions.....	497
16.5.17 NMAC	A	Dentists and Dental Hygienists, Collaborative Practice.....	487
16.5.18 NMAC	A	Dental Hygienists, Fees.....	501
16.5.19 NMAC	A	Dental Hygienists, Licensure by Examination.....	502
16.5.20 NMAC	A	Dental Hygienists, Licensure by Credentials.....	503
16.5.28 NMAC	A	Dental Hygienists, Local Anesthesia Certification.....	504
16.5.33 NMAC	A	Dental Assistants, Requirements for Certification.....	506
16.5.41 NMAC	A	Expanded Function Dental Auxiliary, Fees.....	508
16.5.44 NMAC	A	Expanded Function Dental Auxiliary, Continuing Education Requirements.....	508
16.5.49 NMAC	A	Community Dental Health Coordinator, Fees.....	509
16.5.52 NMAC	A	Community Dental Health Coordinator, Continuing Education Requirements.....	509
16.5.59 NMAC	A	Expedited Licensure and Expedited Licensure for Military Service Members, Spouses and Veterans.....	510
16.5.60 NMAC	A	Dental Therapists, Fees.....	511
16.5.62 NMAC	A	Dental Therapists, Continuing Education Requirements.....	512

SUPERINTENDENT OF INSURANCE, OFFICE OF

13.19.2 NMAC	R	Writing Surplus Line Business.....	512
13.19.2 NMAC	R	Writing Surplus Line Business.....	512

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF RULEMAKING HEARING TO CONSIDER REPEAL AND REPLACE OF EXISTING RULE 20.11.7 NMAC- VARIANCE PROCEDURE

The Albuquerque-Bernalillo County Air Quality Control Board (AQCB) will hold a public hearing on June 10, 2026 at 5:30 p.m. to consider AQCB Petition No. 2026-01, filed by the City of Albuquerque Environmental Health Department (EHD). The hearing is expected to last no more than one hour, with the Board making a decision immediately following the hearing. The hearing will be held in-person (with a remote option) at the Plaza del Sol Building, Basement Hearing Room, 600 Second Street NW, Albuquerque, NM 87102. Final details will be posted online no later than June 5, 2026.

Contact Information – to learn more, receive updates, or submit comments.

Websites: www.cabq.gov/airquality/air-quality-control-board and www.cabq.gov/airquality/regulation-development/public-notices-and-comment-opportunities.

Phone: Hearing Clerk- (505) 768-1915.

Email: airboard@cabq.gov.

In-Person Address: EHD, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102 (8 am - 5 pm).

Postal Mail Address: EHD/AQP, PO Box 1293, Albuquerque, NM 87103.

Hearing Details. The proposed regulatory change would repeal and replace existing rule 20.11.7 NMAC-*Variance Procedure*, to add language clarifying the variance procedure outlined in the New Mexico Air Quality Control Act (NMAQCA), updating procedural requirements to allow for electronic mail and remove

requirements for certified mail, and adding language that the board is to consider the public interest consistent with requirements in the NMAQCA.

The docket, including copies of the proposed regulatory change, is accessible at www.cabq.gov/airquality/air-quality-control-board. A link to the record can also be found under the heading “Rulemaking Procedures” on the AQCB’s website. The proposed text is identified as Exhibit B to EHD’s petition. Copies may also be obtained by contacting the Hearing Clerk. EHD charges fifty (50) cents per page for paper copies.

The hearing will be conducted in accordance with the Air Quality Control Act, NMSA 1978, Section 74-2-6; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Section 9-5-1-6; Bernalillo County Code, Article II, Section 30-35; 20.11.82 NMAC, Rulemaking Procedures-AQCB; and other applicable procedures, including any pre-hearing orders. Pre-hearing orders will be included in the docket.

Public Participation. AQCB hearings are open to the public. All interested persons are encouraged to participate and will be given a reasonable opportunity to submit relevant data, views or arguments, orally or in writing, and to examine witnesses by filing a notice of intent to present technical testimony (“NOI”), filing an entry of appearance, or participating as a member of the general public.

Technical Testimony. Persons intending to present technical testimony must file a written NOI at least fifteen (15) days before the hearing. In addition to any requirements in a pre-hearing order, an NOI shall: (1) identify the person for whom the witness(es) will testify; (2) identify each technical witness and state the qualifications of that witness, including a description of their education and work background; (3) include a copy of the direct testimony of each technical witness

and state the anticipated duration of the testimony; (4) include the text of any recommended modifications to the proposed regulatory change; (5) list and attach an original copy of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (6) be served pursuant to 20.11.82.16 NMAC and pre-hearing orders, including served on EHD. Unless otherwise provided for in a pre-hearing order, a NOI filing shall be accomplished by delivering the document to the Hearing Clerk via the email, in-person address, or postal mail address listed in the Contact Information.

Entry of Appearance. Any person who is or may be affected by the proposed regulatory change may file, and serve upon all parties, an entry of appearance at least fifteen (15) days prior to the hearing date and shall be a party. A timely NOI shall be considered an entry of appearance.

Non-Technical Testimony/Public Comment. Any member of the general public may present non-technical testimony and/or offer non-technical exhibits. No prior notification is required. A member of the general public, who wishes to submit a non-technical written statement for the record instead of oral testimony, shall file the written statement prior to the hearing or submit it at the hearing. Unless otherwise provided for in a pre-hearing order, written statements submitted prior to the hearing shall be delivered to the Hearing Clerk in the same manner described above for filing a NOI. The public comment period will begin on April 21, 2026 and conclude on May 21, 2026.

Notice to Persons with Disabilities or Special Needs. If you have a disability or require special assistance to participate, including interpretation or an auxiliary aid, please contact the Hearing Clerk as soon as possible but no later than seventy-two (72) hours before the hearing. Those in need of hearing assistance can call 711.

Nondiscrimination Notice. The AQCB does not discriminate on the basis of race, color, national origin, sex, age or disability. If you believe you have been discriminated against, you may submit a complaint at www.cabq.gov/airquality/non-employee-discrimination-complaints.

Nếu bạn muốn thông báo này được dịch sang tiếng Việt, vui lòng truy cập www.cabq.gov/airquality/regulation-development/public-notices-and-comment-opportunities và sử dụng tính năng Dịch ở đầu trang.

**AVISO DE AUDIENCIA
DE REGLAMENTACIÓN
PARA CONSIDERAR LA
DEROGACIÓN Y SUSTITUCIÓN
A LA NORMATIVA
VIGENTE 20.11.7 NMAC-
PROCEDIMIENTOS DE
VARIACIÓN POR PARTE DE
LA JUNTA DE CALIDAD DEL
AIRE DEL CONDADO DE
ALBUQUERQUE-BERNALILLO**

La Junta de Calidad del Aire del Condado de Albuquerque-Bernalillo (AQCB, por sus siglas en inglés) llevará a cabo una audiencia el 10 de junio de 2026, a las 5:30 pm, para considerar la Petición No. 2026-01 de la AQCB, presentada por el Departamento de Salud Ambiental de la Ciudad de Albuquerque (EHD, por sus siglas en inglés). La audiencia durará aproximadamente una hora, con deliberaciones inmediatamente después. La audiencia presencial (con participación a través del internet) se realizará en el edificio Plaza del Sol, en la sala de audiencias del sótano, 600 Second St. NW, Albuquerque, NM 87102. Los detalles finales serán publicados en línea a más tardar el 5 de junio de 2026.

Información de contacto - para saber más, recibir actualizaciones, o enviar comentarios.

Páginas web: www.cabq.gov/airquality/air-quality-control-board y www.cabq.gov/airquality/regulation-development/public-notices-and-comment-opportunities.

Teléfono: Secretaria de audiencia-(505) 768-1915.
Correo electrónico: airboard@cabq.gov.
Dirección en persona: EHD, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102 (8 am – 5 pm).
Dirección de correo postal: EHD, PO Box 1293, Albuquerque, NM 87103.

Detalles de la Audiencia. El cambio normativo propuesto derogaría y sustituiría la normativa vigente 20.11.7 del Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés)- *Procedimientos de Variación*, para incorporar: texto que clarifique los procedimientos indicados en el Acta del Control de Calidad del Aire de Nuevo Mexico (NMAQCA, por sus siglas en inglés), requisitos procedurales que permitan el uso del correo electrónico y elimine el requisito para correo certificado, y establezca que la AQCB debe considerar el interés público de acuerdo con los requisitos en el NMAQCA.

Se puede acceder al expediente normativo, incluyendo copias del cambio normativo propuesto, en <https://www.cabq.gov/airquality/air-quality-control-board>. También se puede encontrar un enlace al registro normativo bajo el encabezado “Rulemaking Procedures” (Procedimientos de Normativas) en la página de la AQCB. El texto propuesto de se identifica como Anexo B a la petición del EHD. Se puede obtener copias comunicándose con la Secretaria de Audiencias. El EHD cobra cincuenta (50) centavos por página.

La audiencia se llevará a cabo de acuerdo al NMAQCA, NMSA 1978, Sección 74-2-6; Ordenanza de la Junta de Calidad del Aire, Ordenanzas Revisadas de Albuquerque 1994, Sección 9-5-1-6; Código del Condado de Bernalillo, Artículo II, Sección 30-35; 20.11.82 NMAC, Procedimientos de Normativas-AQCB; y otros procedimientos aplicables, incluyendo todas las órdenes previas a la

audiencia. Las órdenes previas a la audiencia se incluirán en el expediente normativo.

Participación pública. Las audiencias de la AQCB están abiertas al público. Todas las personas interesadas se les alienta a participar y se otorgará una oportunidad razonable para presentar datos relevantes, opiniones o argumentos, de forma oral o escrita, e interrogar a testigos luego de completar un aviso de intención de presentar testimonio técnico (NOI, por sus siglas en inglés), una actuación de comparecencia, o al participar como miembro del público general.

Testimonio técnico. Las personas que pretendan presentar testimonio técnico deberán completar un NOI escrita al menos quince (15) días antes de la audiencia. Además de todos los requisitos que una orden previa a la audiencia debe tener, un NOI deberá: (1) identificar a la persona en favor de la cual testificará el testigo; (2) identificar a cada testigo técnico e indicar las calificaciones de ese testigo, incluyendo una descripción de sus antecedentes de educación y de trabajo; (3) incluir una copia del testimonio directo de cada testigo técnico e indicar la duración estimada del testimonio; (4) incluir el texto de todas modificaciones recomendadas al cambio normativo propuesto; (5) enumerar y adjuntar una copia original de todas las pruebas que se espera que esa persona ofrezca en la audiencia, incluyendo todas las declaraciones de las razones propuestas para la adopción de las normativas; y (6) ser notificado de conformidad a 20.11.82.16 NMAC y a las órdenes previas a la audiencia, incluidas las del EHD salvo que se proporcionen en una orden previa a la audiencia, un NOI se debe completar y enviar a la Secretaria de Audiencia por medio de correo electrónico, la dirección en persona, o correo postal que se detalla en la información de contacto.

Actuación de comparecencia. Cualquier persona que se vea o

pueda verse afectada por el cambio normativo propuesto puede completar y presentar una personación a todas las partes al menos quince (15) días antes de la fecha de la audiencia y queda constituido como parte. Un NOI oportuno será considerado una actuación de comparecencia.

Testimonio no técnico/opinión pública. Cualquier miembro del público general puede presentar un testimonio no técnico y/o presentar pruebas no técnicas. No se necesita notificación previa. Un miembro del público general que desee entregar una declaración por escrito para el registro en lugar de testimonio oral deberá presentarlo antes o durante la audiencia. A menos que se entreguen en una orden previa a la audiencia, las declaraciones por escrito presentadas antes de la audiencia deberán entregarse a la Secretaria de Audiencia, de la misma forma en la que se debe enviar un NOI. El período de comentario público comenzará el 21 de abril de 2026 y se acabará el 21 de mayo de 2026.

Aviso para personas con discapacidades o necesidades especiales. Si usted tiene una discapacidad o requiere de asistencia especial para participar, incluyendo interpretación o una asistencia auxiliar, comuníquese con la Secretaria de Audiencia lo antes posible, pero no después de setenta y dos (72) horas antes de la audiencia. Aquellos que necesiten asistencia auditiva pueden llamar al 711.

Aviso de no discriminación. La AQCB no discrimina por motivos de raza, color, nacionalidad de origen, sexo, edad o discapacidad. Si usted cree que se lo ha discriminado, puede enviar una queja a www.cabq.gov/airquality/non-employee-discrimination-complaints.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a meeting and rule hearing on Thursday May 28, 2026, beginning at 9:00 a.m. at the New Mexico Institute of Mining and Technology, Fidel Student Union Building, 801 Leroy Pl., Socorro, NM 87801. The purpose of this meeting is to hear and consider action as appropriate on the presentation of proposed changes to the Hunting and Fishing Licenses and Application Rule 19.31.3.

Synopsis

The proposal is to amend the Hunting and Fishing Licenses Application Rule 19.31.3 NMAC which will become effective April 1, 2027.

PROPOSED CHANGES TO THE HUNTING AND FISHING LICENCES APPLICATION RULE

The eligibility requirements for the Mobility Impaired Certification are amended to focus specifically on the hunter’s inability to walk. The department would like to make the mobility impaired provision permanent for those who qualify.

A full text of changes for all rules will be available on the Department’s website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes for the Hunting and Fishing Licenses and Application Rule to: special.hunts@dgf.nm.gov.

Individuals may also submit written comments to the physical address below. Comments are due by 1:00 p.m. on May 27, 2026. The final proposed rules will be voted on by the Commission during a public meeting on May 28, 2026. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearings to be held on May 28, 2026.

Full copies of text of the proposed new rules, technical information related to proposed rule changes, and the agenda can be obtained from the

Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department’s website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director’s Office at (505) 476-8000, or the Department’s website at www.wildlife.state.nm.us for updated information.

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

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission’s Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a meeting and rule hearing on Friday May 28, 2026 beginning at 9:00 a.m. at the NM Institute of Mining and Technology, Fidel Student Union Building, 801 Leroy Pl., Socorro, NM 87801. Please check the Department’s website for any changes at <https://wildlife.dgf.nm.gov/commission/meeting-agendas/>. The purpose of this meeting is to hear and

consider action as appropriate on the proposed changes to the Turkey Rule and the Javelina Rule.

Synopsis:

Turkey Rule

The proposal is to amend the Turkey Rule 19.31.16 NMAC which will become effective April 1, 2027. The most recent version of the rule will expire on March 31, 2027. The proposed changes are as follows:

1. Adjust hunt dates based on calendar dates
2. Increase up-to permit number for Gould's once-in-a-lifetime hunt in GMU 26 and 27 to 15
3. In unit 8, increase permits from 15 to 20
4. Require the purchase of a license at least one day prior to hunting.

Javelina Rule

The proposal is to amend the Javelina Rule 19.31.21 NMAC which will become effective April 1, 2027. The most recent version of the rule will expire on March 31, 2027. The proposed changes are as follows:

1. Increase licenses in OTC areas - Any-legal weapon: 1,200 increasing to 1,300 (8%).
2. Expand the validity of the GMUs 19, 23, 24, 25, 26, 27 (bootheel) javelina licenses to include OTC areas (excluding GMU 28), effectively making these "statewide" licenses. This approach is consistent with an existing youth hunt, which already allows this.
3. Eliminate GMU 28 hunt of 10 licenses (only 30% of hunters show up for hunt and its logistically challenging for the military to implement).
4. Require the purchase of a license at least one day prior to hunting.

A full text of changes for all rules will be available on the Department's website at: <https://wildlife.dgf.nm.gov/>. Interested persons may submit comments on the proposed changes for the Turkey Rule to DGF-Gamebird@dgf.nm.gov, and for

the Javelina Rule to DGF-Javelina-Rule@dgf.nm.gov. Individuals may also submit written comments to the physical address below. Comments are due by 1:00 p.m. on May 26th, 2026. The final proposed rules will be voted on by the Commission during a public meeting on May 28, 2026. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearings to be held on May 28, 2026.

Full copies of text of the proposed new rules, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at <https://wildlife.dgf.nm.gov/commission/proposals-under-consideration/>. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at <https://wildlife.dgf.nm.gov/> for updated information.

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

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on May 28, 2026. The hearing will begin at 10:30 AM and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding the proposed repeal and replacement of **5.3.9 NMAC, CAPITAL BUDGETS - PLANNING AND FUNDING RECOMMENDATIONS.**

Join via Microsoft Teams:

<https://teams.microsoft.com/212517908545?p=lezDf2n5udwZmbtW3q>

Or call in (audio only):

+ 1 (505) 312-4308
Phone Conference ID: 318 337 66#

Purpose:

The purpose of the proposed repeal and replacement of 5.3.9 NMAC is to update and clarify the processes by which the Department reviews, evaluates, and recommends capital outlay projects submitted by public post-secondary educational institutions and tribal colleges. The amendments correct the statutory authority for the rule, expand its applicability to tribal colleges, and incorporate new definitions and review criteria to ensure consistent and transparent administration of capital planning requirements. The proposed changes also implement provisions established by the enactment of House Bill 8 (H.B. 8), 59th Legislature, 1st Session (2026), which created the Higher Education Major Projects Fund to be administered by the Department. The amendments establish procedures, matching requirements, and eligibility standards necessary for

the Department to administer the fund and evaluate major capital project requests in accordance with legislative direction. Additional revisions align institutional planning requirements with the Department of Finance and Administration's Infrastructure Capital Improvement Plan guidelines and make technical and editorial updates to improve clarity and readability.

Summary of Proposed Rule:

Significant proposed changes are made throughout the rule to incorporate provisions related to the Higher Education Major Projects Fund. This includes various proposed changes within the 5.3.9 NMAC sections listed below:

5.3.9.2 NMAC, SCOPE
5.3.9.5 NMAC, EFFECTIVE DATE
5.3.9.6 NMAC, OBJECTIVE
5.3.9.8 NMAC, REVIEW CRITERIA
5.3.9.8 NMAC, INSTITUTIONAL FACILITY PLANNING

Additionally, corrections are made to 5.3.9.3 NMAC, STATUTORY AUTHORITY and various definitions are added to the previously reserved section 5.3.9.7 NMAC, DEFINITIONS. Grammatical and stylistic changes are also included.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is posted on the NMHED website and may be accessed at <https://hed.nm.gov/> under the "Data, Reports & Rules" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on May 28, 2026 from 10:30 AM until 11:30 AM via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe,

NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on May 22, 2026.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-21 NMSA 1978 and Section 21-1-26 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on May 28, 2026. The hearing will begin at 11:30 AM and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding the proposed amendment of **5.3.10 NMAC, CAPITAL PROJECTS APPROVAL BY THE NEW MEXICO HIGHER EDUCATION DEPARTMENT**.

Join via Microsoft Teams:

<https://teams.microsoft.com/meet/>

286563046434397?p=VwJlczkM7oE5WBKNlw

Or call in (audio only):

+ 1 (505) 312-4308
Phone Conference ID: 608 392 528#

Purpose:

The primary purpose of the proposed amendment of 5.3.10 NMAC is to increase thresholds for the Department's approval authority for major remodel, major renovation, alteration or site improvement projects. The changes to the thresholds would align with State Board of Finance's procedures for approval of projects. The State Board of Finance updated its procedures through the 2025 amendment of 2.70.4 NMAC, POLICY ON CAPITAL EXPENDITURES BY STATE EDUCATIONAL INSTITUTIONS.

Amendments:

5.3.10.6 NMAC, OBJECTIVE
5.3.10.7 NMAC, DEFINITIONS
5.3.10.8 NMAC, PRINCIPLES AND PROCEDURES
5.3.10.9 NMAC, INFORMATION TO BE SUBMITTED
5.3.10.14 NMAC, EMERGENCY SITUATIONS

Summary of Proposed Rule:

Section 6 of 5.3.10 NMAC is amended to include "renovations" amongst the approvals included in the objective. Definitions are edited or added in Section 7 of 5.3.10 NMAC. Thresholds listed within Section 8 of 5.3.10 NMAC are increased. The department also proposes changes to the information which must be submitted on the Department's capital request forms pursuant to Section 9 of 5.3.10 NMAC. Grammatical and stylistic changes are included. Lastly, amendments are made throughout various sections of the rule to reference the defined term "department."

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is posted on the NMHED website and may be

accessed at <https://hed.nm.gov/> under the “Data, Reports & Rules” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on May 28, 2026 from 11:30 AM until 12:30 PM via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on May 22, 2026.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-21 NMSA 1978, Section 21-1-26 et seq. NMSA 1978 and Sections 21-2A-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on May 28, 2026. The hearing will begin at 1:30 PM and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding the proposed amendment of **5.5.2 NMAC, APPROVAL OF NEW GRADUATE PROGRAMS**.

Join via Microsoft Teams:

<https://teams.microsoft.com/meet/24325489946626?p=P1R0iBQmS2bj7pQBFi>

Or call in (audio only):

+ 1 (505) 312-4308
Phone Conference ID: 314 818 037#

Purpose:

The purpose of the proposed amendment is to clarify procedures relating to discontinued graduate programs and dormant programs.

Amendments:

5.5.2.7 NMAC, DEFINITIONS
5.5.2.9 NMAC, SUBJECT TO APPROVAL

Summary of Proposed Rule:

The proposed amendment adds a definition for discontinued graduate program. Subsequent definitions are re-lettered to accommodate the addition. Provisions are added to clarify approval requirements for programs that have been reported to the department as dormant. Provisions are also added to clarify approval requirements for discontinued graduate programs an institution seeks to reinstate.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is posted on the NMHED website and may be accessed at <https://hed.nm.gov/> under the “Data, Reports & Rules” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on May 28, 2026 from 1:30 PM until 2:30 PM via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on May 22, 2026.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-2-5 NMSA 1978, Section 21-1-26 NMSA 1978, and Section 21-1-24 NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on May 28, 2026. The hearing will begin at 2:30 PM and will be held via Microsoft Teams and in person at the New Mexico Higher Education

Department. The purpose of the hearing is to take public comment regarding the proposed amendment of **5.5.6 NMAC, APPROVAL OF NEW UNDERGRADUATE PROGRAMS.**

Join via Microsoft Teams:

<https://teams.microsoft.com/meet/224930127090608?p=0VJa3LREIX5d7vp69G>

Or call in (audio only):

+1 (505) 312-4308
Phone Conference ID: 460 709 906#

Purpose:

The purpose of the proposed amendment is to clarify procedures relating to discontinued undergraduate programs and dormant programs.

Amendments:

5.5.6.7 NMAC, DEFINITIONS
5.5.6.9 NMAC, SUBJECT TO APPROVAL

Summary of Proposed Rule:

The proposed amendment adds a definition for discontinued undergraduate program. Subsequent definitions are re-lettered to accommodate the addition. Provisions are added to clarify approval requirements for programs that have been reported to the department as dormant. Provisions are also added to clarify approval requirements for discontinued undergraduate programs an institution seeks to reinstate.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is posted on the NMHED website and may be accessed at <https://hed.nm.gov/> under the "Data, Reports & Rules" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on May 28, 2026 from 2:30 PM until 3:30 PM via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505.** Any

person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on May 22, 2026.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-2-5 NMSA 1978, Section 21-13-12 NMSA 1978, and Section 21-1-26 NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on May 28, 2026. The hearing will begin at 8:30 AM and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding the proposed repeal and replacement of **5.7.3 NMAC, NEW MEXICO HEALTH PROFESSIONAL**

LOAN REPAYMENT PROGRAM (HPLRP).

Join via Microsoft Teams:

<https://teams.microsoft.com/meet/21064386957794?p=BiBNUtnISbRCGJGsIo>

Or call in (audio only):

+ 1 (505) 312-4308
Phone Conference ID: 686 559 473#

Purpose:

The purpose of the proposed repeal and replacement of 5.7.3 NMAC is to align the rule with provisions established through the signing of House Bill 66 (H.B. 66) 59th Leg., 1st Sess. (N.M. 2026). H.B. 66 implemented various changes to the Health Professional Loan Repayment Program.

Summary of Proposed Rule:

Significant amendments are proposed throughout the rule to incorporate new program requirements established by H.B. 66. These changes affect the following sections of 5.7.3 NMAC:

5.7.3.2 NMAC, SCOPE
5.7.3.5 NMAC, EFFECTIVE DATE
5.7.3.6 NMAC, OBJECTIVE
5.7.3.7 NMAC, DEFINITIONS
5.7.3.8 NMAC, HEALTH PROFESSION ADVISORY COMMITTEE
5.7.3.9 NMAC, PARTICIPANT ELIGIBILITY
5.7.3.10 NMAC, SELECTION OF LOAN REPAYMENT PARTICIPANTS
5.7.3.11 NMAC, PARTICIPATION AGREEMENT
5.7.3.12 NMAC, PENALITIES
5.7.3.13 NMAC, INELIGIBLE DEBTS
5.7.3.13 NMAC, REPORTS

The Department proposes adding and retitleing sections, reorganizing provisions for clarity, and removing language no longer consistent with H.B. 66. Definitions are added, deleted, or revised. Amendments incorporate new requirements related to applicant eligibility, eligible health professions, award amounts, contract

terms, participant service obligations, eligible debts, and repayment obligations for participants who fail to meet contract terms. Changes are also proposed to the participant selection process, priority criteria for practice sites, and award prioritization. The Department proposes changing “shall” to “may” in the Health Profession Advisory Committee membership requirement to allow flexibility when a representative is unavailable. Language regarding loan payment frequency is updated to provide for one annual payment instead of quarterly payments. Provisions related to the Health Professional Loan Repayment Fund and other funds under the Health Professional Loan Repayment Act are added. Reporting requirements for the Department are updated. Finally, corrections are made to 5.7.3.8 NMAC, STATUTORY AUTHORITY, along with grammatical and stylistic revisions.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is posted on the NMHED website and may be accessed at <https://hed.nm.gov/> under the “Data, Reports & Rules” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on May 28, 2026 from 8:30 AM until 9:30 AM via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on May 22, 2026.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written

comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-22D et seq. NMSA 1978 and Section 21-1-26 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on May 28, 2026. The hearing will begin at 9:30 AM and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding the proposed amendment of **5.100.8 NMAC, CLOSURE OR SUBSTANTIAL CHANGE TO LOCATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT.**

Join via Microsoft Teams:

<https://teams.microsoft.com/meet/212494459731280?p=NRGbaHzc6CTnAU7flp>

Or call in (audio only):

+ 1 (505) 312-4308
Phone Conference ID: 221 600 42#

Purpose:

The purpose of the proposed

amendment is to update procedures governing the maintenance of student records when an institution ceases operations, discontinues a program with enrolled students, or makes a substantial change in location. The amendment applies to private post-secondary educational institutions with a physical presence and state authorization under 5.100.6 NMAC or 5.100.7 NMAC. The proposed amendment removes existing requirements for institutions to file student records with a designated custodian of record and instead requires submission of those records to the Department. The amendment is intended to proactively address long-term challenges associated with perpetual record maintenance by transferring responsibility for the preservation of student records to the Department.

Amendments:

5.100.8.2 NMAC, SCOPE
5.100.8.6 NMAC, OBJECTIVE
5.100.8.7 NMAC, DEFINITIONS
5.100.8.9 NMAC, PLAN
5.100.8.11 NMAC, RECORDS MAINTENANCE

Summary of Proposed Rule:

The proposed amendment clarifies the scope and purpose of the rule and adds a definition for “custodian of record,” along with a minor, non-substantive correction to the definition of “post-secondary educational institution.” The amendment updates the plan requirements in Section 9 of 5.100.8 NMAC for institutions that cease operations, discontinue programs with enrolled students, or make a substantial change, aligning those requirements with the new process for submitting student records to the Department. Significant revisions to Section 11 remove procedures related to filing records with a custodian other than the Department and establish new requirements for the format, minimum content, and submission timelines for student records provided to the Department. Subsections are added, removed, and renumbered as necessary to implement these changes.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is posted on the NMHED website and may be accessed at <https://hed.nm.gov/> under the “Data, Reports & Rules” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on May 28, 2026, from 9:30 AM until 10:30 AM via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on May 22, 2026.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

PUBLIC EDUCATION DEPARTMENT**NOTICE OF PROPOSED RULEMAKING****Public Hearing**

The New Mexico Public Education Department (PED) gives notice on Tuesday, April 21, 2026, that it will conduct a public hearing for the following proposed rulemakings on Wednesday, June 3, 2026, from 1:30 p.m. to 2:30 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501.

Amendment to 6.63.2 NMAC, Licensure for School Nurses Grades K-12

The PED will give a verbal summary statement, on record, at the hearing.

The purpose of the public hearing is to receive public input on the proposed rulemakings. Attendees who wish to provide public comments on the record will be given three minutes to make a statement concerning the proposed rulemaking. To submit written comments, please see the Public Comment section of this notice.

Explanation of Purpose of Rulemaking, Summary of Text, and Statutory Authority**6.63.2 NMAC, Licensure for School Nurses Grades K-12**

Explanation: Make updates based on changes to the School Personnel Act, per House Bill 34 from the 2026 Legislative Session.

Summary: The proposed rulemaking would make technical and conforming changes to the school nurse licensure system. It would allow both level two and level three nurses to evaluate and mentor level one nurses and expand eligibility for level three licenses to nurses with three years of equivalent registered nursing experience. It also

removes outdated references to the highly objective uniform statewide standard of evaluation.

Statutory Authority: Sections 9-24-8, 22-2-1, 22-2-2, 22-10A-8.2, 22-10A-10.1, 22-10A-11.11, 22-10A-17, and 22-10A-24 NMSA 1978.

No technical information served as a basis for these proposed rule changes.

Public Comment

Interested parties may provide comments at the public hearing or may submit written comments by mail or e-mail.

Mailing Address

Policy and Legislative Affairs
Division
New Mexico Public Education
Department
300 Don Gaspar Avenue, Room 121
Santa Fe, New Mexico 87501

E-Mail Address

Rule.Feedback@ped.nm.gov

Written comments must be received no later than 5 p.m. (MDT) on Wednesday, June 3, 2026. The PED encourages early submission of written comments.

Public Comment Period

The public comment period is from Tuesday, April 21, 2026, to Wednesday, June 3, 2026, at 5:00 p.m. (MDT). The PED will review all feedback received during the public comment period and issue communication regarding a final decision of the proposed rulemaking at a later date.

Copies of the proposed rule may be obtained from Denise Terrazas at (505) 470-5303 during regular business hours or may be accessed through the PED Policy and Legislative Affairs webpage titled, “Proposed Rules,” at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Terrazas at (505) 470-5303 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

SPACEPORT AUTHORITY

NOTICE OF PROPOSED RULEMAKING

Public Notice: The New Mexico Spaceport Authority gives notice that it will conduct a public hearing for the proposed rulemaking at the corporate offices of the Authority, 4605 Research Park Circle, Suite A, Las Cruces, NM 88001, on Thursday, May 21, 2026 at 1:00 p.m. (MST). Virtual participation will also be available. The purpose of the public hearing is to receive public input on proposed amendments to 18.61.3 NMAC – Bylaws of the Board of Directors of the New Mexico Spaceport Authority.

Authority: 18.61.3.27 NMAC,
18.61.3.28 NMAC

Purpose: The proposed amendments to Section 16 seek to:

- * Eliminate ambiguity of what constitutes a quorum;
- * Set a preference for remote participation of board members during board meetings;
- * Provide flexibility for establishing quarterly board meetings; and
- * Update Open Meetings Act notice requirements for special and emergency meetings.

Notice Date: April 21, 2026
Hearing Date: May 21, 2026
Technical Citations: 18.61.3.9
NMAC, 18.61.3.16 NMAC

Copies of Proposed Rules: These proposed rule changes will be

contained in 18.61.3.16 NMAC. The register and the proposed rules are available on the New Mexico Spaceport Authority website at <https://www.spaceportamerica.com/governance>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting Amanda Garcia, via email at amanda.garcia@spaceportamerica.com.

Public Comment: Interested persons may provide comment at the public hearing held at the Authority's corporate office and via virtual link that will be available on the New Mexico Spaceport Authority website at <https://www.spaceportamerica.com/governance> seventy-two (72) hours before the hearing.

Written comments must be received no later than 5:00 p.m. (MST) on May 21, 2026, and will be given the same consideration as oral testimony made at the public hearing. The Authority encourages early submission of written comments.

Interested persons may address written comments to:

New Mexico Spaceport Authority,
Legal Department
ATTN: Bylaws Amendments
4605 Research Park Circle, Ste. A
Las Cruces, NM 88001

Interested persons may also address comments via electronic mail to amanda.garcia@spaceportamerica.com.

Accommodations: If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Office Administrator of the Authority to discuss your accessibility needs at least one week prior, or as soon as possible, by emailing Amanda Garcia at amanda.garcia@spaceportamerica.com or by telephone at 575-267-8500.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

The OSI eDocket Number for this rulemaking is: 2026-0100

NOTICE IS HEREBY GIVEN that the Office of Superintendent of Insurance (OSI or Superintendent) will hold a public hearing in person, via video conference, and via telephone conference regarding a new proposed rule 13.2.13 NMAC, Redomestication of Insurers. **The hearing in this rulemaking will commence on Wednesday, May 27, 2026, at 10:00 a.m., MDT.**

PURPOSE OF THE PROPOSED RULE: The purpose of this rulemaking is to establish procedures to allow for the redomestication of foreign insurers in New Mexico.

STATUTORY AUTHORITY: Sections 14-4-1 *et seq.*, NMSA 1978, State Rules Act, and Sections 59A-2-8, 59A-2-9, and 59A-5-10, NMSA 1978.

TO ATTEND THE HEARING IN PERSON: Office of Superintendent of Insurance - 1120 Paseo de Peralta, (PERA Building), 4th Floor Hearing Room, Santa Fe, NM 87501

PLEASE NOTE: The entrance to the PERA Building is on the ground floor. All guests must sign in with the ground floor receptionist, then each guest will be escorted to the 4th Floor Hearing Room. Please give yourself extra time to check in before 10:00 a.m.

TO ATTEND THE HEARING BY ELECTRONIC VIDEO CONFERENCE VIA MS TEAMS MEETING:

Meeting ID: 282 948 146 208 71 –
Passcode: XV9tW7z4

Please copy the link below into your browser to get to the video conference meeting

<https://teams.microsoft.com/meet/28294814620871?p=PoSmbNSjtj5YjXfTglo>

**TO ATTEND THE HEARING
DIAL BY PHONE:**

+1 505-312-4308,,594408092#
United States, Albuquerque – Phone
conference ID: 594 408 092#

PUBLIC COMMENT: The Superintendent designates Erin McCullough, as the hearing officer for this hearing. Oral comments will be accepted at the public hearing from members of the public and other interested parties in-person or via electronic video conference. Copies of the Notice of Proposed Rulemaking and proposed rule are available by electronic download from the OSI eDocket: <https://edocket.osi.state.nm.us/home>, you must login or register to get access if you are not already registered. You may also request copies of the Notice of Proposed Rulemaking and proposed rule by emailing Elisabeth Johnson at: elisabeth.johnson@osi.nm.gov or by phone at: 505-500-9387, email communication is preferred. To view all filings in OSI's rulemaking information, please visit the **OSI website** at: <https://www.osi.state.nm.us/en/legal-information/rulemaking/>, the OSI rulemaking record is filed on the eDocket **(please follow the instructions on the web page for using the eDocket, there is no charge for using the eDocket, to find this rulemaking use the following eDocket Number: 2026-0100)**, or on the Sunshine Portal at: https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic (from the "Agency" drop down menu, select "Office of Superintendent of Insurance")

DEADLINE TO SUBMIT

WRITTEN COMMENTS: Written comments will be accepted through 4:00 p.m. on Friday, May 22, 2026. Responses to written comments or to oral comments delivered at the hearing will be accepted

through 4:00 p.m. on Thursday, May 28, 2026. All comments shall be filed electronically through the OSI eDocket. Please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/home>, you must login or register to get access. **To find this rulemaking use the following Docket Number: 2026-0100.**

FILING WRITTEN COMMENTS:

To file written comments on the OSI eDocket please send written comments to the following email address: osi-docketfiling@state.nm.us
Please send written comments by at least 3:30p.m. to ensure filing by the 4:00p.m. deadline.
To access filings on the OSI eDocket, please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/home>, you must login or register to get access. **To find this rulemaking use the following Docket Number: 2026-0100.**

Written comments may be sent via U. S. mail to:

**OSI Records and Docketing
NM Office of Superintendent of
Insurance
P.O. Box 1689, Santa Fe, NM
87504-1689**

Written comments must be received by OSI and stamped as accepted between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent will consider all oral comments and will review and consider all timely submitted written comments and written responses. For help submitting a filing, please send an email to: osi-docketfiling@state.nm.us. **The docket number and title below must be indicated on all written comments submitted to the OSI:**

**Docket Number: 2026-0100
IN THE MATTER OF NEW
RULE 13.2.13 NMAC,
REDOMESTICATION OF
INSURERS**

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Andrea Padilla, at 505-531-7171 no later than ten (10) business days prior to the hearing.

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

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Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

AUDITOR, OFFICE OF THE STATE

The Office of the State Auditor reviewed at its 3/17/2026 hearing, to repeal its rule 2.2.2 NMAC, Audits of Governmental Entities - Requirements For Contracting Audits of Agencies (filed 3/15/2023) and replace it with 2.2.2 NMAC, Audits of Governmental Entities - Requirements For Contracting Audits of Agencies, adopted 4/7/2026 and effective 4/21/2026.

AUDITOR, OFFICE OF THE STATE

TITLE 2 PUBLIC FINANCE
CHAPTER 2 AUDITS OF GOVERNMENTAL AGENCIES
PART 2 REQUIREMENTS FOR CONTRACTING AND CONDUCTING AUDITS OF AGENCIES

2.2.2.1 ISSUING AGENCY: Office of the state auditor.
 [2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 4/21/2026]

2.2.2.2 SCOPE: All agencies and local public bodies as defined by the Audit Act and designated independent public accountants contracting for and performing professional services related to the examination of financial affairs and transactions of those agencies and local public bodies.
 [2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 4/21/2026]

2.2.2.3 STATUTORY AUTHORITY: Audit Act, Section 12-6-12 NMSA 1978.

[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 4/21/2026]

2.2.2.4 DURATION: Permanent.
 [2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 4/21/2026]

2.2.2.5 EFFECTIVE DATE: April 21, 2026, unless a later date is cited at the end of a section.
 [2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 4/21/2026]

2.2.2.6 OBJECTIVE: The objective is to establish policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements for the examination of the financial affairs of all governmental agencies and local public bodies of the state of New Mexico.
 [2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 4/21/2026]

2.2.2.7 DEFINITIONS: In addition to the definitions in the Audit Act, Section 12-6-2 NMSA 1978, the following definitions will apply to all financial examinations performed under this rule:

A. Definitions beginning with the letter "A":
(1) "AAG GAS" means AICPA Audit and Accounting Guide - Government Auditing Standards and Single Audits (latest edition).

(2) "AAG SLV" means AICPA Audit and Accounting Guide - State and Local Governments (latest edition).

(3) "Abuse" includes, but is not limited to, behavior that is deficient or improper when compared with behavior that a prudent person would consider

reasonable and necessary business practice given the facts and circumstances but excludes fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements. Abuse also includes misuse of authority or position for personal interests or for the benefit of another or those of an immediate or close family member or business associate.

(4) "ACFR" means the state of New Mexico's annual comprehensive financial report.

(5) "Attestation engagement" means an engagement to issue, or where an IPA issues, an examination, a review, AUP report, or report on subject matter, or an assertion about subject matter that is the responsibility of an agency or local public body, including engagements performed pursuant to AICPA and GAGAS attestation standards and all engagements pursuant to Subsection A of Section 12-6-3 NMSA 1978.

(6) "Audit" means an examination of the financial affairs or performance of an agency or local public body pursuant to the authority of the Audit Act, 12-6-1, *et seq.*, NMSA 1978.

(7) "Audit documentation" means the record of procedures performed, relevant evidence obtained, and conclusions reached (terms such as working papers or workpapers are also sometimes used).

(8) "Auditor" means designated independent public accountants, including auditors of the OSA, performing audit or attestation work as defined in the Audit Act and the Public Accountancy Act.

(9) "AICPA" means American institute of certified public accountants.

(10) “AU-C” means AICPA codification of U.S. auditing standards (clarified).

(11) “AUP” means agreed upon procedures.

B. Definitions beginning with the letter “B”:
[RESERVED]

C. Definitions beginning with the letter “C”:

(1) “Component unit” means a legally separate entity required to be reported in the financial statements of an agency or LPB due to the entity’s close financial relationship with the primary agency or LPB.

(2) “CPE” means continuing professional education.

D. Definitions beginning with the letter “D”:
“DFA” means the New Mexico department of finance and administration.

E. Definitions beginning with the letter “E”:
“ERB” means the New Mexico educational retirement board.

F. Definitions beginning with the letter “F”:
(1) “FCD” means financial control division of DFA.

(2) “FDS” means financial data schedule.

(3) “Fraud” means obtaining something of value through willful misrepresentations. This includes, but is not limited to, fraudulent financial reporting, misappropriation of assets, corruption, and use of public funds for activities prohibited by the constitution or laws of the state of New Mexico. Fraudulent financial reporting means intentional misstatements or omissions of amounts or disclosures in the financial statements to deceive financial statement users, which may include intentional alteration of accounting records, misrepresentation of transactions, or intentional misapplication of accounting principles. Misappropriation of assets means theft of an agency’s or LPB’s assets, including theft of property, embezzlement of receipts,

or fraudulent payments. Corruption means bribery and other illegal acts.

G. Definitions beginning with the letter “G”:

(1) “GAAP” means generally accepted accounting principles that are accepted in the United States of America.

(2) “GAAS” means generally accepted auditing standards, which are systematic guidelines used by auditors when conducting audits of an entity’s financial records in the United States of America.

(3) “GAGAS” means generally accepted government auditing standards, or the most recent revision of the yellow book issued by the comptroller general of the United States.

(4) “GASB” means governmental accounting standards board.

(5) “GASBS” means governmental accounting standards board statements.

(6) “GSD” means the New Mexico general services department.

H. Definitions beginning with the letter “H”:

(1) “HCA” means the New Mexico health care authority

(2) “HED” means the New Mexico higher education department.

(3) “HUD” means the United States department of housing and urban development.

I. Definitions beginning with the letter “I”:

(1) “Independence” means both:

(a) independence of mind: The state of mind that permits the conduct of an engagement without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism; and

(b) independence in appearance: The absence of circumstances that would cause a reasonable and informed third

party to reasonably conclude that the integrity, objectivity, or professional skepticism of an audit organization or member of the engagement team had been compromised.

(2) “IPA” means an independent public accountant designated by the state auditor to perform financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements for the examination of the financial affairs of agencies and local public bodies.

J. Definitions beginning with the letter “J”:
[RESERVED]

K. Definitions beginning with the letter “K”:
[RESERVED]

L. Definitions beginning with the letter “L”:
(1) “LGD” means the local government division of DFA.

(2) “LPB” means local public body as defined in the Audit Act, Section 12-6-2 NMSA 1978.

M. Definitions beginning with the letter “M”:
“MT” means mountain time zone.

N. Definitions beginning with the letter “N”:
(1) “NMAC” means New Mexico administrative code.

(2) “NMSA” means New Mexico statutes annotated.

(3) “Non-attestation engagement” means any engagement that is not an attestation engagement, including, but not limited to, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency-initiated or other engagements in which the IPA’s role is to perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts.

O. Definitions beginning with the letter “O”:
“Office” or “OSA” means the office of the state auditor of New Mexico.

P. Definitions beginning with the letter “P”:
 (1) **“PED”** means the New Mexico public education department.
 (2) **“PERA”** means the New Mexico public employee retirement association.
 (3) **“Primary government”** means the primary agency or primary local public body that a component unit is attached to due to their financial relationship.

Q. Definitions beginning with the letter “Q”:
 [RESERVED]

R. Definitions beginning with the letter “R”:
 (1) **“REC”** means regional education cooperative.
 (2) **“Report”** means a document issued as a result of an annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic accounting engagement, or AUP engagement regardless of whether the document is on the contractor’s letterhead or signed by the contractor.
 (3) **“RHCA”** means the New Mexico retiree health care authority.
 (4) **“RSI”** means required supplementary information.

S. Definitions beginning with the letter “S”:
 (1) **“SHARE”** means statewide human resources accounting and management reporting system.
 (2) **“SOC”** means system organization controls, which is an audit review in connection with system-level controls of a service organization or entity-level controls of other organizations.
 (3) **“SOC-1”** means an audit that provides an opinion regarding the controls as the service organization that are likely to be relevant to user entities’ internal control over financial reporting.

(4) **“SOC-2”** means an audit that provides an opinion about controls at the service organization related to security, availability, processing integrity, confidentiality, or privacy to support users’ evaluations of their own system of internal control.
 (5) **“SOC-3”** means an audit to provide an opinion about the effectiveness of controls at the service organization relevant to security, availability, processing integrity, confidentiality, or privacy.
 (6) **“Special audit”** means a limited-scope audit of an agency’s or local public body’s financial affairs and transactions, in whole or in part, including both attest engagements and non-attest engagements, performance audits, forensic accounting engagements, and any other engagement that is not part of the annual financial statement and compliance audit, depending on designation or scope.
 (7) **“Special investigation”** or **“special examination”** means a limited-scope investigation into or examination of an agency’s or local public body’s financial records and other information designed to investigate allegations of waste, fraud, abuse, theft, non-compliance, or misappropriation of funds, or to quantify the extent of such losses.
 (8) **“State auditor”** may refer to either the elected state auditor of the state of New Mexico, or personnel of the office designated by the state auditor.

T. Definitions beginning with the letter “T”:
“Tier” is established based on the amount of each LPB’s annual revenue, pursuant to Section 12-6-3 NMSA 1978.

U. Definitions beginning with the letter “U”:
 (1) **“Uniform guidance”** means Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(2) **“U.S. GAO”** means the United States government accountability office.

V. Definitions beginning with the letter “V”:
 [RESERVED]

W. Definitions beginning with the letter “W”:
“Waste” includes, but is not limited to, the act of using or expending resources carelessly, extravagantly, or to no purpose. Importantly, waste can include activities that do not include abuse. Rather waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight. Waste does not necessarily involve fraud or illegal acts. However, waste may be an indication of internal control weakness, non-compliance, fraud, or illegal acts.

X. Definitions beginning with the letter “X”:
 [RESERVED]

Y. Definitions beginning with the letter “Y”:
 [RESERVED]

Z. Definitions beginning with the letter “Z”:
 [RESERVED]
 [2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 4/21/2026]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:
A. Firm profiles: For an IPA to be included on the OSA’s list of approved firms to perform audits, AUPs, and other attestation engagements, an IPA shall submit a firm profile online annually on the fifth business day in January, in accordance with the guidelines set forth herein. The OSA shall review each firm profile for compliance with the requirements set forth in this rule. IPAs shall notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts for audit, AUPs, and other attestation engagements only with IPAs who have submitted a complete and correct firm profile that has been approved by the OSA, and who have complied with all the requirements of this rule, including but not limited to:

(1) Subsection A of 2.2.2.14 NMAC, continuing professional education requirements for all staff that the firm will use on any New Mexico governmental engagements;

(2) for IPAs who have audited agencies under this rule in the past, they shall have previously complied with: 2.2.2.9 NMAC, report due dates, including notifying the state auditor regarding late audit reports and 2.2.2.13 NMAC, review of audit reports and audit documentation.

B. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts, AUPs, and other attestation engagements with agencies. The state auditor's list of approved firms shall be reviewed and updated on an annual basis. An IPA on the list of approved firms is approved to perform government audits, AUPs, and other attestation engagements for agencies and local public bodies until the list of approved firms is published for the following year; provided that the OSA may restrict firms at any time for failure to submit firm profile updates timely. An IPA that is included on the state auditor's list of approved firms for the first time may be subject to an OSA engagement quality review of the IPA's working papers for audits, AUPs and other attestation engagements. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date, as posted on the OSA's audit reports website). The state auditor shall approve contracts for audits, AUPs and other attestation engagements only with IPA firms that have submitted a complete and correct firm profile complying with all the requirements set forth in this rule and that has been approved by the OSA. The OSA shall inform all IPAs whose firm profiles were submitted by the due date whether they are on the list of approved firms for audits, AUPs and other attestation engagements

and shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency's annual financial audit. Firms that only perform non-attestation engagements, or otherwise do not meet applicable requirements, be included on the list of approved firms with appropriate descriptors.

C. Disqualified firms: An IPA firm may not be included on the list of approved firms for audits, AUPs, and other attestation engagements if any of the following applies to that IPA:

- (1) the firm received a peer review rating of "failed";
- (2) the firm does not have a current New Mexico firm permit to practice, if applicable;
- (3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of 2.2.2.14 NMAC, to perform GAGAS audits (however, firms seeking to contract only for AUP engagements will not be disqualified if GAGAS CPE requirements have not been met);
- (4) the IPA has been restricted in the past and has not demonstrated improvement (this includes submitting excessively deficient audit reports or having excessively deficient workpapers);
- (5) the IPA made false statements in their firm profile or any other official communication with the OSA that were misleading enough to merit disqualification; or
- (6) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

D. Restriction:

- (1) IPAs may be placed on restriction based on the OSA's review of the firm profile and deficiency considerations as described below. Restriction may take the form of limiting either the type of engagements or the number

of audit contracts, or both, that the IPA may hold. The OSA may impose a corrective action plan associated with the restriction. The restriction remains in place until the OSA notifies the IPA that the restriction has been modified or removed. The deficiency considerations include, but are not necessarily limited to:

- (a) failure to submit reports in accordance with report due dates provided in Subsection A of 2.2.2.9 NMAC, or the terms of their individual agency contract(s);
- (b) failure to submit late report notification letters in accordance with Subsection A of 2.2.2.9 NMAC;
- (c) failure to comply with this rule;
- (d) poor quality reports as determined by the OSA;
- (e) poor quality working papers as determined by the OSA;
- (f) a peer review rating of "pass with deficiencies" with the deficiencies being related to governmental audits;
- (g) failure to contract through the OSA for New Mexico governmental audits or AUP engagements;
- (h) failure to inform agency in prior years that the IPA is restricted;
- (i) failure to comply with the confidentiality requirements of this rule;
- (j) failure to invite the state auditor or the auditor's designee to engagement entrance conferences, progress meetings or exit conferences after receipt of related notification from the OSA;
- (k) failure to comply with OSA referrals or requests in a timely manner;
- (l) suspension or debarment by the U.S. general services administration;
- (m) false statements in the IPA's firm profile or any other official communication with the OSA;

(n) failure to cooperate timely with requests from successor IPAs, such as reviewing workpapers;

(o) failure to have required contracts approved by the OSA; or

(p) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

(2) The OSA shall notify any IPA that it proposes to place under restriction. If the proposed restriction includes a limitation on the number of engagements that an IPA is eligible to hold, the IPA shall not submit proposals or bids to new agencies if the number of multi-year proposals the IPA possesses at the time of restriction is equal to or exceeds the limitation on the number of engagements for which the IPA is restricted.

(3) An IPA under restriction is responsible for informing the agency whether the restricted IPA is eligible to engage in a proposed contract.

(4) If an agency or local public body submits an unsigned contract to the OSA for an IPA that was ineligible to perform that contract due to its restriction, the OSA shall reject the unsigned contract.

E. Procedures for imposition of restrictions:

(1) The state auditor may place an IPA under restriction in accordance with Subsection D of 2.2.2.8 NMAC.

(a) The state auditor or the auditor’s designee shall cause written notice of the restriction to be sent by email and certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction. The letter shall contain the following information:

- (i) the nature of the restriction;
- (ii) the conditions of the restriction;
- (iii) the reasons for the restriction;

(iv) the action to place the IPA on restriction is brought pursuant to Subsection A of Section 12-6-3 NMSA 1978 and these regulations;

(v) the IPA may request, in writing, reconsideration of the proposed contract restriction which shall be received by the OSA within 15 calendar days from the date of the letter of restriction; and

(vi) the e-mail or street address where the IPA’s written request for reconsideration shall be delivered, and the name of the person to whom the request shall be sent.

(b) The IPA’s written request for reconsideration shall include sufficient facts to rebut on a point for point basis each deficiency noted in the OSA’s letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide supplemental argument as to why the OSA’s determination should be modified or withdrawn. The IPA may be represented by an attorney licensed to practice law in the state of New Mexico.

(c) The IPA shall have forfeited its opportunity to request reconsideration of the restriction(s) if the OSA does not receive a written request for reconsideration within 15 calendar days of the date of the letter of restriction. The state auditor may grant, for good cause shown, an extension of the time an IPA has to submit a request for reconsideration.

(2) The OSA shall review an IPA’s request for reconsideration and shall make a determination on reconsideration within 15 calendar days of the IPA response letter unless the IPA has asked to present its request for reconsideration in person, in which case the OSA shall make a determination within 15 calendar days from the date of the personal meeting. The OSA may uphold, modify or withdraw its restriction pursuant to its review of the IPA’s request for

reconsideration, and shall notify the IPA of its final decision in writing which shall be sent to the IPA via email and certified mail, return receipt requested.

F. Procedures to obtain professional services from an IPA: Concurrent with publication of the list of approved firms, the OSA shall authorize agencies to select an IPA to perform their annual audit or AUP engagement. Agencies are prohibited from beginning the process of procuring IPA services for annual audits or AUPs pursuant to Section 12-6-3 NMSA 1978 until they receive the OSA authorization. Agencies that wish to begin the IPA procurement process for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 prior to receiving OSA authorization may request an exception, however any such exceptions granted by OSA are subject to changes in the final audit rule applicable to the annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 and changes in restrictions to, or disqualifications of, IPAs. The notification shall inform the agency that it shall consult its prospective IPA to determine whether the prospective IPA has been restricted by the OSA as to the type of engagement or number of contracts it is eligible to perform. Agencies that may be eligible for the tiered system shall complete the evaluation to determine the level of financial reporting described in Subsection B of 2.2.2.16 NMAC. Agencies that receive and expend federal awards shall follow the uniform guidance procurement requirements from 2 CFR 200.317 to 200.327 and 200.509, and shall also incorporate applicable guidance from the following requirements. Agencies shall comply with the following procedures to obtain professional services from an IPA for an audit or AUP engagement.

(1) Upon receipt of written authorization from the OSA to proceed, and at no time before then unless OSA has granted an exception, the agency shall identify all elements or services to be solicited pursuant to this rule and

conduct a procurement that includes each applicable element of the annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic audit or AUP engagement.

(2) Quotations or proposals for annual financial audits shall contain each of the following elements:

(a) financial statement audit;

(b) federal single audit (if applicable);

(c) financial statement preparation so long as the IPA has considered any threat to independence and mitigated it;

(d) other non-audit services (if applicable and allowed by current government auditing standards); and

(e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(3) **Auditor rotation rule:** An IPA may not provide services to an agency or LPB consecutively for more than eight years. After the eighth consecutive year, the agency or LPB must obtain a proposal for another IPA for at least two years before returning to the prior IPA.

(4) The agency is encouraged to request multiple year proposals for audit and AUP services, however the term of the contract shall be for one year only. The parties shall enter a new audit contract each year. The agency is responsible for procuring IPA services in accordance with all applicable laws and regulations which may include, but are not limited to, the State Procurement Code (Chapter 13, Article 1 NMSA 1978) or equivalent home rule procurement provisions; GSD Rule 1.4.1 NMAC, Procurement Code Regulations, if applicable; DFA Rule, 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services; Uniform Guidance; and Section 13-1-191.1 NMSA 1978 regarding

campaign contribution disclosure forms. If either of the parties to the contract elects not to contract for all of the years contemplated by a multiple year proposal, or the state auditor disapproves the contract, the agency shall use the procedures described above to procure services from a different IPA.

(5) If the agency is a component unit of a primary government, the agency's procurement for audit services shall include the AU-C 600 (group audits) requirements for the IPA to communicate and cooperate with the group engagement partner and team, and the primary government. This requirement applies to agencies and universities that are part of the statewide ACFR, other component units of the statewide ACFR and other component units of any primary government that use a different audit firm from the primary government's audit firm. Costs for the IPA to cooperate with the group engagement partner and team, and the primary government, caused by the requirements of AU-C 600 (group audit) may not be charged in addition to the cost of the engagement, as the OSA views this in the same manner as compliance with any other applicable standard.

(6) Agencies are encouraged to include representatives of the offices of separately elected officials such as county treasurers, and component units such as charter schools and housing authorities, in the IPA selection process. As part of their evaluation process, the OSA recommends that agencies consider the following when selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978:

(a) responsiveness to the request for proposal (the firm's integrity, record of past performance, financial and technical resources);

(b) relevant experience, availability of staff with professional qualifications and technical abilities;

(c) results of the firm's external peer and external quality control reviews; and

(d) weighting the price criteria less than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee.

Upon the OSA's request, the agency shall make accessible to the OSA all of the IPA procurement and selection documentation.

(7) After selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978, each agency shall enter the appropriate requested information online on the OSA-Connect website at osaconnect.osa.nm.gov. To do this, the agency shall register on OSA-Connect and obtain a user-specified password. The agency's user shall then use OSA-Connect to enter information necessary for the contract and for the OSA's evaluation of the IPA selection. After the agency enters the information, the OSA-Connect system generates a draft contract containing the information entered. The agency shall submit to the OSA for approval a copy of the unsigned draft contract by following the instructions on OSA-Connect.

(8) The OSA shall notify the agency as to the OSA's approval or rejection of the selected IPA and contract. The OSA's review of audit contracts does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies. After the agency receives notification of approval of the selected IPA and contract from the OSA, the agency is responsible for getting the contract signed and sent to any oversight agencies for approval (if applicable). The OSA shall not physically sign the contract. After the agency obtains all the required signatures and approvals of the contract, the agency shall, within three weeks of OSA's approval of the contract, submit a copy of the fully executed contract

in an electronic portable document format (PDF) by uploading it in OSA-Connect.

(9) The agency shall submit the unsigned contract generated by OSA-Connect to the OSA by the due date shown below; submission prior to the due date shown below is permissible. If the due date falls on a weekend or holiday, the due date shall be the next business day. If the unsigned contract is not submitted to the state auditor by these due dates, the IPA may, according to professional judgment, include a finding of non-compliance with Subsection F of 2.2.2.8 NMAC in the audit report or AUP report.

(a) RECs, cooperative educational services, independent housing authorities, hospitals and special hospital districts: April 15;

(b) school districts, counties, and higher education: May 1;

(c) incorporated counties (of which Los Alamos is the only one), local workforce investment boards and local public bodies with a June 30 year end that do not qualify for the tiered system: May 15;

(d) councils of governments, district courts, district attorneys, state agencies: June 1 and the state of New Mexico ACFR: July 31;

(e) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a June 30 fiscal year end: July 30;

(f) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a fiscal year end other than June 30 shall use a due date 30 days after the end of the fiscal year;

(g) agencies and local public bodies that do not qualify for the tiered system with a fiscal year end other than June 30 shall use a due date 30 days before the end of the fiscal year;

(h) component units that are being

separately audited: on the primary government’s due date;

(i) Charter schools that are chartered by the PED and agencies that are subject to oversight by the HED have the additional requirement of submitting their audit contract to PED or HED for approval (Section 12-6-14 NMSA 1978); and

(j) If the agency’s unsigned contract is submitted to the OSA, but is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a contract with a different IPA using OSA-Connect. This process shall continue until the state auditor approves an unsigned contract. During this process, whenever an unsigned contract is not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days after the date of the disapproval and shall include documentation in support of its IPA selection. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency’s circumstances.

(10) The agency shall retain all procurement documentation, including completed evaluation forms, for five years and in accordance with applicable public records laws.

(11) If the agency fails to submit an unsigned contract by the due date set forth in this rule, or, if no due date is applicable, within 60 days of notification from the state auditor to engage an IPA, the state auditor may conduct the audit or select the IPA for that agency. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA 1978.

(12) In selecting an IPA for an agency pursuant to Subsection F of 2.2.2.8 NMAC the state auditor shall at a minimum consider the following factors, but may consider other factors in the state auditor’s discretion that serve the best interest of the state of New Mexico and the agency:

(a) the IPA shall be drawn from the list of approved IPAs maintained by the state auditor;

(b) an IPA subject to restriction pursuant to Subsection D of 2.2.2.8 NMAC, is ineligible to be selected under this paragraph;

(c) whether the IPA has conducted one or more audits of similar government agencies;

(d) the physical proximity of the IPA to the government agency to be audited;

(e) whether the resources and expertise of the IPA are consistent with the audit requirements of the government agency to be audited;

(f) the IPA’s cost profile, including examination of the IPA’s fee schedule and blended rates;

(g) the state auditor shall not select an IPA in which a conflict of interest exists with the agency or that may be otherwise impaired, or that is not in the best interest of the state of New Mexico.

(13) The state auditor shall consider, at a minimum, the following factors when considering which agencies shall be subject to the state auditor’s selection of an IPA:

(a) whether the agency is demonstrating progress in its own efforts to select an IPA;

(b) whether the agency has funds to pay for the audit;

(c) whether the agency is on the state auditor’s “at risk” list;

(d) whether the agency is complying with the requirements imposed on it by virtue of being on the state auditor’s “at risk” list;

(e) whether the agency has failed to timely submit its e-mailed draft unsigned contract copy in accordance with the audit rule on one or more occasions;

(f) whether the agency has failed to timely submit its annual financial audit report in accordance with the audit rule due dates on one or more occasions.

(14) The state auditor may appoint a committee of the state auditor’s staff to make recommendations for the state auditor’s final determination as to which IPAs shall be selected for each government agency subject to the discretion of the state auditor.

(15) Upon selection of an IPA to audit a government agency subject to the discretion of the state auditor, the state auditor shall notify the agency in writing regarding the selection of an IPA to conduct its audit. The notification letter shall include, at a minimum, the following statements:

(a) the agency was notified by the state auditor to select an IPA to perform its audit or AUP engagement;

(b) 60 days or more have passed since such notification, or the applicable due date in this rule has passed, and the agency failed to deliver its draft contract in accordance with this subsection;

(c) pursuant to Subsection A of Section 12-6-14 NMSA 1978, the state auditor is selecting the IPA for the agency;

(d) delay in completion of the agency’s audit is contrary to the best interest of the state and the agency, and threatens the functioning of government and the preservation or protection of property;

(e) in accordance with Section 12-6-4 NMSA 1978, the reasonable costs of such an audit shall be borne by the

agency unless otherwise exempted; and

(f) selection of the IPA is final, and the agency shall immediately take appropriate measures to procure the services of the selected IPA.

G. State auditor approval/rejection of unsigned contract: The state auditor shall use discretion and may reject unsigned contracts as follows:

(1) An unsigned audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP professional services contract under 2.2.2.16 NMAC that does not serve the best interests of the public or the agency or local public body because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) failure to meet the auditor rotation requirements as follows: the IPA is prohibited from conducting the agency audit for a period of two years because the IPA already conducted those services for that agency for a period of eight consecutive years;

(c) lack of competence or staff availability;

(d) circumstances that may cause untimely delivery of the audit report or AUP report;

(e) unreasonably high or low cost to the agency or local public body;

(f) terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) lack of compliance with the procurement code, the audit act, or this rule;

(h) the agency giving too much consideration to the price of the IPA’s response to the request for bids or request for proposals in relation to other evaluation criteria;

(i) newness of the IPA to the state auditor’s list of approved firms;

(j) noncompliance with the requirements of Section 12-6-3 NMSA 1978 of the Audit Act by the agency for previous fiscal years; or

(k) any other reason determined by the state auditor to be in the best interest of the state of New Mexico.

(2) An audit contract, special audit contract, attestation engagement contract, performance audit contract, or forensic accounting engagement contract or AUP contract of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit or AUP report on time;

(c) failed to comply with state laws or regulations of the state auditor;

(d) performed non-audit services (including services related to fraud) for an agency or local public body it is performing an audit, special audit, attestation engagement, performance audit, forensic accounting engagement or an AUP for, without prior approval of the state auditor;

(e) performed non-audit services under a separate contract for services that may be disallowed by GAGAS independence standards;

(f) failed to respond, in a timely and acceptable manner, to an OSA audit, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract, AUP report review or working paper review;

(g) impaired independence during an engagement;

(h) failed to cooperate in providing prior-year working papers to successor IPAs;

(i) not adhered to external peer review

standards as defined by GAGAS and 2.2.2.14 NMAC;

(j) has a history of excessive errors or omissions in reports or working papers;

(k) released the audit report or AUP report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the AUP report was received from the OSA;

(l) failed to submit a completed signed contingency subcontractor form, if required;

(m) failed to submit a completed firm profile as required by Subsection A of 2.2.2.8 NMAC or failed to include all staff in the firm profile who would be working on the firm’s engagements;

(n) reached the limit of contracts to which the state auditor restricted the IPA;

(o) failed to respond to communications from the OSA or engagement clients within a reasonable amount of time; or

(p) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded a contract.

(3) An audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP contract for an IPA received by the OSA, which the state auditor decides to perform himself with or without the assistance of an IPA, and pursuant to Section 12-6-3 NMSA 1978, even if the agency or local public body was previously designated for audit or AUP to be performed by an IPA.

H. Audit contract requirements: The agency shall use OSA-Connect at osaconnect.osa.nm.gov to submit the appropriate audit or AUP engagement contract. The OSA may provide audit or AUP engagement contract forms to the agency via facsimile, e-mail, or U.S. mail if specifically requested by the

agency. Only contract templates generated through OSA-Connect shall be accepted and shall:

(1) be completed and submitted in its unsigned form by the due date indicated at Subsection F of 2.2.2.8 NMAC;

(2) for all agencies whose contracts are approved through the GSD’s contracts review bureau, have the IPA’s business tax identification number verified by the New Mexico taxation and revenue department after approval by the state auditor; and

(3) in the compensation section of the contract, include the dollar amount that applies to each element of the contracted procedures that shall be performed;

(4) in the “other” section of the contract additional services shall be related to the scope of work, but not included in previous categories in the compensation section. Such costs shall be fully detailed and sufficiently describe the required audit related work in the “other provisions” section of the contract.

I. Professional liability insurance: The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile. The amount maintained should be commensurate with the risk assumed. The IPA shall provide to the state auditor, prior to expiration, updated insurance information.

J. Breach of contract: A breach of any terms of the contract shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or AUP engagements of New Mexico governmental agencies.

K. Subcontractor requirements:

(1) Audit firms that have only one individual qualified to supervise a GAGAS audit and issue the related audit report pursuant to Section 61-28B-17 NMSA 1978 shall submit with the firm profile, a completed contingency subcontractor form that is dated to be effective until the date the next firm profile shall be submitted. The form shall indicate which IPA on the state auditor’s current list of approved IPAs shall complete the IPA’s audits if the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at osa.nm.gov. The OSA shall not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) If an IPA chooses to use a subcontractor to assist the IPA in working on a specific audit, then the IPA shall submit a subcontract with the reason for subcontracting a portion of the audit work to the OSA for approval. The IPA may subcontract only with IPAs on the approved IPA list. Subcontractors are subject to an independence analysis, which may include the auditor rotation rule requirements of Subsection F of 2.2.2.8 NMAC.

(3) “Technical review contracts” are considered subcontracting and are subject to the requirements of this section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.

L. IPA independence: IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of the current government auditing standards.

M. Progress Payments: The state auditor shall approve progress and final payments for the annual audit contract as follows:

(1) Subsection A of Section 12-6-14 NMSA 1978 (contract audits) provides that “payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section.”

(2) Subsection B of Section 12-6-14 NMSA 1978 (contract audits) provides that “based upon demonstration of work in progress, the state auditor may authorize progress payments to the independent auditor by the agency being audited under contract.” Such payments shall be made on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to seventy percent do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. If the report has been submitted, progress payments up to eighty-five percent do not require state auditor approval. The agency shall monitor audit progress and make progress payments only up to the percentage that the audit is completed. If requested by the state auditor, the agency or the IPA shall provide a copy of the approved invoices and progress billing(s). Progress payments between seventy percent and ninety-five percent if no report has been submitted, or eighty-five and ninety-five percent if a report has been submitted, require state auditor approval after being approved by the agency. When component unit audits are part of a primary government’s audit contract, requests for progress payments on the component unit audit(s) shall be included within the primary government’s request for progress payment approval. In this situation, the OSA shall not process separate progress payment approvals submitted by the component unit.

(4) The state auditor may limit progress payments allowed to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A

of 2.2.2.9 NMAC to only the first fifty percent of the total fee.

(5) Section 12-6-14 NMSA 1978 (contract audits) provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has determined, in writing, that the audit has been made in a competent manner in accordance with contract provisions and this rule. The state auditor’s determination with respect to final payment shall be communicated as follows:

(a) stated in the letter accompanying the release of the report to the agency; or

(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency.

In no circumstance may the total billed by the IPA under the audit contract exceed the total contract amount, as amended if applicable. Further, as the compensation section of the contract shall include the dollar amount that applies to each element of the contracted procedures that shall be performed, if certain procedures, such as a single audit, are determined to be unnecessary and are not performed, the IPA may not bill the agency for these services. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 NMSA 1978 and this rule and shall be reported as an audit finding in the audit report of the agency. If this statute is violated, the IPA may be removed from the state auditor’s list of approved auditors.

N. Contract amendment requirements:

(1) Contract amendments to contracts for audit services, AUP services, or non-attestation services shall be submitted to the OSA regarding executed contracts. Contracts may not be amended after they expire. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. The agency shall use OSA-Connect at osaconnect.osa.nm.gov to submit

the appropriate draft audit or AUP engagement contract amendment. The OSA’s review of audit contracts and amendments does not include an evaluation of compliance with the state procurement code or other applicable requirements. Although the parties may amend the delivery dates in a contract, audit report regulatory due dates cannot be modified by amendment. The OSA’s review of audit contract amendments does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations, or policies.

(2) Contract amendments submitted for state auditor approval shall include a detailed explanation of:

(a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment; and

(b) how the work to be performed relates to the scope of work outlined in the original contract.

(3) Because annual financial audit contracts are fixed-price contracts, contract amendments for fee increases shall only be approved if there is a significant change in the scope of an audit. For example, if an audit contract did not include a federal single audit, a contract amendment shall be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and the addition of special procedures required by this rule, a regulatory body or a local, state, or federal grantor. Contract amendments shall not be approved to perform additional procedures to achieve an unmodified opinion. The state auditor shall also consider the auditor independence requirements

of Subsection L of 2.2.2.8 NMAC when reviewing contract amendments for approval. The OSA shall review amendment requests and respond to the agency and the IPA within 30 calendar days of receipt.

(4) If a proposed contract amendment is rejected for lack of adequate information, the IPA and agency may submit a corrected version for reconsideration.

O. Termination of audit contract requirements:

(1) The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed, or for any other reason, and perform the audit entirely or partially with IPAs contracted by the OSA. The OSA shall provide written notice of the contract termination to the IPA and the agency or LPB.

(2) If the agency or IPA terminates the audit or AUP engagement contract pursuant to the termination paragraph of the contract, the OSA shall be notified of the termination immediately. The party sending out the termination notification letter shall simultaneously send a copy of the termination notification letter to the OSA with an appropriate cover letter, addressed to the state auditor.

(a) The agency is responsible for procuring the services of a new IPA in accordance with all applicable laws and regulations, and this rule.

(b) The unsigned contract for the newly procured IPA shall be submitted to the OSA within 30 calendar days of the date of the termination notification letter.

(c) As indicated in Subsection A of 2.2.2.9 NMAC, the state auditor shall not grant extensions of time to the established regulatory due dates.

(d) If the IPA does not expect to deliver the engagement report by the regulatory due date, the IPA shall submit a written notification letter to the state

auditor and oversight agency as required by Subsection A of 2.2.2.9 NMAC or Subsection H of 2.2.2.16 NMAC. [2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 4/21/2026]

2.2.2.9 REPORT DUE DATES:

A. Report due dates:
The IPA shall deliver the electronic draft annual financial audit report to the state auditor by 11:59 p.m. MT on the date specified in the audit contract and send it electronically by the due date. IPAs and agencies are encouraged to perform interim work as necessary and appropriate to meet the following due dates.

(1) The audit report due dates are as follows:
(a) RECs, cooperative educational services and independent housing authorities: September 30;
(b) hospitals and special hospital districts: October 15;

(c) higher education, state agencies not specifically named elsewhere in this subsection, district courts, district attorneys, the New Mexico finance authority, the New Mexico lottery authority, and other agencies with June 30 fiscal year-ends that are reported as component units in the state of New Mexico ACFR: November 1;

(d) school districts, New Mexico taxation and revenue department, New Mexico children youth and families department, New Mexico department of health, New Mexico department of transportation, New Mexico department of workforce solutions, HCA, GSD, New Mexico early childhood education and care department, state land office and New Mexico corrections department: November 15;

(e) PED, New Mexico department of homeland security and emergency management, the state investment council, PERA, ERB and RHCA: the Wednesday before Thanksgiving day;

(f) counties, incorporated counties (of which Los Alamos is the only one), workforce investment boards, councils of governments, the New Mexico mortgage finance authority, and the state of New Mexico component appropriation funds (state general fund): December 1;

(g) local public bodies and municipalities: December 15;
(h) the state of New Mexico ACFR: December 31;

(i) PERA, ERB and RHCA schedules of employer allocations reports and related employer guides required by Subsections Y and AA of 2.2.2.10 NMAC: June 15;

(j) agencies with a fiscal year-end other than June 30 shall submit the audit report no later than five months after the fiscal year-end;

(k) regarding component unit reports (e.g., housing authorities, charter schools, hospitals, foundations, etc.), all separate audit reports prepared by an auditor that is different from the primary government's auditor, are due fifteen days before the primary government's audit report is due, unless some other applicable due date requires the report to be submitted earlier;

(l) any agency that requires its report to be released by any specific date (e.g., due to board meeting, federal reporting, etc.): the earlier of its agency due date or one month prior to the requested release date; and

(m) late audit or AUP reports of any agency (not performed in the current reporting period): not more than six months after the date the contract was executed.

(2) If an audit report is not delivered on time to the state auditor, the auditor shall include this instance of non-compliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If

appropriate, the finding may also be reported as a significant deficiency or material weakness in the operation of the agency's internal controls over financial reporting pursuant to AU-C 265.

(3) An electronic copy of the report shall be submitted for review by the OSA with the following: copy of the signed management representation letter and a copy of the completed state auditor report review guide (available at osa.nm.gov). A report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. All separate reports prepared for component units shall also be submitted to the OSA for review, along with a copy of the management representation letter, and a completed report review guide for each separate audit report. A separate component unit report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the audit report is due the following business day by 11:59 p.m. MT.

(4) AU-C 700.43 requires that the auditor's report should be dated no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence on which to base the auditor's opinion on the financial statements, including evidence that all statements and disclosures that the financial statements comprise have been prepared and that management has asserted that it has taken responsibility for those financial statements. AU-C 580.20 requires that the management representation letter be dated the same date as the independent auditor's report.

(5) As soon as the auditor becomes aware that circumstances exist that will make an

agency's audit report be submitted after the applicable due date provided in Subsection A of 2.2.2.9 NMAC, the auditor shall notify the state auditor in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. The late audit notification letter is subject to the confidentiality requirements detailed at Subsection M of 2.2.2.10 NMAC. This does not prevent the state auditor from notifying the legislative finance committee or applicable oversight agency pursuant to Subsections F and G of Section 12-6-3 NMSA 1978. There shall be a separate notification for each late audit report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by a duly authorized representative of the agency. If the IPA is going to miss the expected report submission date, then the IPA shall send a revised notification letter. If the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the audit report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the due date, and then rejected by the OSA, making the report late when resubmitted. Reports resubmitted to the OSA with changes of the IPA's opinion after the report due date shall be considered late and a late audit finding shall be included in the audit report.

(6) The due date of any report not listed in Subsection A of 2.2.2.9 NMAC shall be the date specified in the contract.

B. Delivery and release of the audit report:

(1) The IPA shall deliver to the state auditor an editable electronic copy of the audit report for review by 11:59 p.m. MT on the day the report is due. Unfinished or excessively deficient reports shall not satisfy this requirement; such reports shall

be rejected and returned to the IPA and the OSA may take action in accordance with Subsection C of 2.2.2.13 NMAC. When the OSA rejects and returns a substandard audit report to the IPA, the OSA shall consider the audit report late if the corrected report is not resubmitted by the due date. The IPA shall also report a finding for the late audit report in the audit report. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year.

(2) Before initial submission, the IPA shall review the report using the appropriate report review guide available on the OSA's website. The report review guide shall reference applicable page numbers in the audit report. The audit manager or person with appropriate authority under the IPA's system of quality management shall either complete the report review guide or sign off as having reviewed it. All questions in the guide shall be answered, and the reviewer shall sign and date the last page of the guide. If the review guide is not accurately completed or incomplete, the report shall not be accepted.

(3) All reports prepared by IPAs shall be addressed to the state auditor, the agency executive and governing body (if applicable). Reports prepared by the OSA will be addressed to the agency executive and governing body (if applicable). The OSA will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to Subsection A of 2.2.2.13 NMAC, the OSA will issue an "OSA review notes" communication that lists any comments, corrections, or issues that are required to be addressed by the IPA prior to final submission to the OSA. Within five days of receipt of the "OSA review notes" communication, the IPA shall submit the corrected report with

the following items to the OSA:
 an electronic searchable version of the audit report labeled “final” in PDF format, a written response to any OSA comments, corrections, and issues, and an electronic excel version of the summary of findings report and any other required electronic schedule if applicable, and an electronic excel version of the schedule of asset management costs for investing agencies, if applicable (all available at osa.nm.gov). The OSA will not release the report until all comments, corrections, and issues have been addressed and the searchable electronic PDF version of the report and all required electronic excel schedules have been received. The electronic file containing the final audit report shall:

- (a) be created and saved as a PDF document in a single PDF file format (simply naming the file using a PDF extension .pdf does not by itself create a PDF file);
- (b) be version 5.0 or newer;
- (c) not exceed 10 megabytes (MB) per file submitted (contact the OSA to request an exception if necessary);
- (d) have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the OSA is not prevented from opening, viewing, or printing the file;
- (e) not contain any embedded scripts or executables, including sound or movie (multimedia) objects;
- (f) have a file name that ends with .pdf;
- (g) be free of worms, viruses or other malicious content (a file with such content shall be deleted by the OSA);
- (h) be “flattened” into a single layer file prior to submission;
- (i) not contain any active hypertext links, or any internal/external links (although it is permissible for the file to textually reference a URL as a disabled link);

(j) be saved at 300 dots per inch (DPI) (lower DPI makes the file hard to read and higher DPI makes the file too large);

(k) have a name that starts with the OSA agency number, followed by the agency name, the fiscal year, and “final”; and

(l) be searchable.

(4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a “release letter.”

(a) The audited agency may waive the five-day waiting period required by Section 12-6-5 NMSA 1978. To do so, the agency’s governing authority or the governing authority’s designee must provide written notification to the OSA of the waiver. The notification must be signed by the agency’s governing authority or the governing authority’s designee and be sent via letter, e-mail or fax to the attention of the state auditor. The OSA encourages agencies wishing to waive the five-day waiting period to provide the written notification *prior* to the submission of the final report to the OSA.

(b) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a “release letter”. Release of the audit report to the agency or the public prior to it being officially released by the state auditor shall result in an audit finding.

(5) After the release of a report, the OSA shall provide DFA and the legislative finance committee with notification that the report is available on the OSA website.

(6) If an audit report is reissued pursuant to AU-C 560, subsequent events and subsequently discovered facts, or AAG GAS 13.29-.31 for uniform

guidance compliance reports, the reissued audit report shall be submitted to the OSA with a cover letter addressed to the state auditor. The cover letter shall explain that:

(a) the attached report is a “reissued” report;

(b) the circumstances that caused the reissuance; and

(c) a summary of the changes that appear in the reissued report. The OSA shall subject the reissued report to the report review process and upon completion of that report review process, shall issue a “release letter.” The contents of the reissued audit report are subject to the confidentiality requirements described in Subsection M of 2.2.2.10 NMAC. Agency management and the IPA are responsible for ensuring that the latest version of the report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

(7) If changes to a released audit report are submitted to the OSA, and the changes do not rise to the level of requiring a reissued report, the IPA shall submit a cover letter addressed to the agency, with a copy to the state auditor, which includes the following minimum elements:

(a) a statement that the changes did not rise to the level of requiring a reissued report;

(b) a description of the circumstances that caused the resubmitted updated report; and

(c) a summary of the changes that appear in the resubmitted updated report compared to the prior released report. Agency management and the IPA are responsible for ensuring that the latest version of the resubmitted report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

C. Required status reports: For an agency that has failed to submit audit reports as required by this rule, and has therefore been designated as late, the state auditor requires the agency to submit written status reports to the OSA on each March 15, June 15, September 15, and December 15 unless and until the late audit report has been submitted. Status reports shall be signed by a member of the agency’s governing authority, a designee of the governing authority or a member of the agency’s top management. If the agency has a contract with an IPA to conduct the audit, the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken into account during the IPA firm profile evaluation process. At a minimum, the quarterly written status report shall include:

- (1) a detailed explanation of the agency’s efforts to complete and submit its audit;
- (2) the current status of any ongoing audit work;
- (3) any obstacles encountered by the agency in completing its audit; and
- (4) a projected completion date for the financial audit report.

[2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 4/21/2026]

2.2.2.10 GENERAL CRITERIA:

A. Annual financial and compliance audits:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and the component units of the primary government, if any. For any financial and compliance audit the agency should produce all documents necessary to conduct the engagement.

(a) The primary government shall determine whether an agency that

is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14, 39, 61, and 80 (as amended). The flowchart at GASBS 61.68 may be useful in making this determination. The primary government shall notify all other agencies determined to be component units by September 15 of the subsequent fiscal year. Failure to meet this due date results in a compliance finding. IPAs shall use GASB guidelines as found in relevant GASBS to determine the correct presentation of the component unit. All agencies that meet the criteria to be a component unit of the primary government shall be included with the audited financial statements of the primary government by discrete presentation or blended, as appropriate. Component units are reported using the government financial reporting format. Component units of component units are also subject to OSA review, and must be reported using the government financial reporting format. If a component unit does not qualify to be reported using the governmental format and is not statutorily required to be reported using the governmental format, that fact shall be explained in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If there was a change from the prior year’s method of presenting a component unit or change in component units reported, the notes to the financial statements shall disclose the reason(s) for the change.

(b) If a primary government has no component units, that fact shall be disclosed in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If the primary government has component units that are not included in the financial statements due to materiality, that fact shall also be disclosed in the notes.

(c) The state auditor requires component unit(s) to be audited by the same

audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement, and the statewide ACFR). For clarification, housing departments of a local government or a regional housing authority are not exempt from this requirement. Requests for exemption from this requirement shall be submitted in writing by the primary government to the state auditor. If the request to use a different auditor for the component unit is approved in writing by the state auditor, the following requirements shall be met:

- (i) the IPAs of the primary government and all component units shall consider and comply with the requirements of AU-C 600;
- (ii) the group engagement partner shall agree that the group engagement team will be able to obtain sufficient appropriate audit evidence through the use of the group engagement team’s work or use of the work of the component auditors (AU-C 600.15);
- (iii) the component unit auditor selected shall appear on the OSA list of approved IPAs;
- (iv) all bid and auditor selection processes shall comply with the requirements of this rule;
- (v) the OSA standard contract template shall be used by both the primary government and the component unit;
- (vi) the primary government, the primary engagement partner, management of the component unit, and the component unit auditor shall all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable due dates;
- (vii) all component unit findings shall be disclosed in the primary government’s audit report (except the statewide ACFR, which shall include only component unit findings that are significant to the state as a whole); and

(viii) any separately issued component unit financial statements and associated auditors' reports shall be submitted to the state auditor by the due date in Subsection A of 2.2.2.9 NMAC for the review process described in Subsection A of 2.2.2.13 NMAC.

(d) With the exception of the statewide ACFR, the following supplementary information (SI) pertaining to component units for which separately issued financial statements are not available shall be audited and opined on as illustrated in AAG SLV 17.103 example A-15: financial statements for each of the component unit's major funds, combining and individual fund financial statements for all of the component unit's non-major funds, and budgetary comparison statements for the component unit's general fund and major special revenue funds that have legally adopted annual budgets.

(2) Audits of agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:

(a) The level of planning materiality described at AAG SLV 4.169-4.184 and exhibit 4-2 shall be used. Planning materiality for component units is at the individual component unit level.

(b) The scope of the audit includes the following statements and disclosures which the auditor shall audit and give an opinion on. The basic financial statements (as defined by GASB and displayed in AAG SLV exhibit 4-2) consisting of:

(i) the governmental activities, the business-type activities, and the aggregate discretely presented component units;

(ii) each major fund and the aggregate remaining fund information;

(iii) The state auditor requires that every agency's audit report include budgetary comparisons as SI. The

budgetary comparisons shall be audited, and an auditor's opinion shall be rendered. An AU-C 725 opinion does meet this requirement. The associated explanation of significant variations between original and final budget amounts, and final budget amounts and actual results, shall be presented as RSI; and

(iv) the related notes to the financial statements.

(e) Budgetary comparison statements for the general fund and major special revenue funds may be presented as RSI, pursuant to GASB 103, on a fund, organization, or program structure basis upon the agency obtaining prior written approval from the OSA.

(d) The auditor shall apply procedures and report in the auditor's report on the following RSI (if applicable) pursuant to AU-C 730:

(i) management's discussion and analysis (GASBS 34.8-.11);

(ii) RSI data required by GASBS 67 and 68 for defined benefit pension plans;

(iii) RSI schedules required by GASBS 43 and 74 for postemployment benefit plans other than pension plans;

(iv) RSI schedules required by GASBS 45 and 75 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and

(v) infrastructure modified approach schedules derived from asset management systems (GASBS 34.132-133);

(vi) RSI shall include an explanation of significant variations between original and final budget amounts and final budget amounts and actual results.

(e) The audit engagement and audit contract compensation include an AU-C 725 opinion on the SI schedules presented in the audit report. The auditor shall subject the

information on the SI schedules to the procedures required by AU-C 725. The auditor shall report on the remaining SI in an other-matter paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725. Except for the statewide ACFR, the following SI schedules are required to be included in the AU-C 725 opinion if the schedules are applicable to the agency:

(i) primary government combining and individual fund financial statements for all non-major funds (GASBS 34.383);

(ii) the schedule of expenditures of federal awards required by uniform guidance;

(iii) the schedule of pledged collateral required by Subsection P of 2.2.2.10 NMAC;

(iv) the FDS of housing authorities pursuant to Subsection B of 2.2.2.12 NMAC;

(v) the school district schedule of cash reconciliation required by Subsection C of 2.2.2.12 NMAC. In addition, the school district schedule of cash reconciliation SI shall be subjected to audit procedures that ensure the cash per the schedule reconciles to the PED reports as required by Subsection C of 2.2.2.12 NMAC;

(vi) any other SI schedule required by this rule.

B. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

(1) the most recent revision of GAGAS issued by the United States government accountability office;

(2) U.S. auditing standards-AICPA (clarified);

(3) uniform administrative requirements, cost principles, and audit requirements for federal awards (uniform guidance);

(4) AICPA

audit and accounting guide, government auditing standards and single audits, (AAG GAS) latest edition;

(5) AICPA audit and accounting guide, state and local governments (AAG SLV) latest edition; and

(6) 2.2.2 NMAC, requirements for contracting and conducting audits of agencies, latest edition, as amended.

C. Financial statements and notes to the financial statements: The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America (USA). Governmental accounting principles are identified in the government accounting standards board (GASB) codification, latest edition. IPAs shall follow interpretations, technical bulletins, and concept statements issued by GASB, other applicable pronouncements, and GASB illustrations and trends for financial statements. In addition to the revenue classifications required by NCGAS 1.110, the OSA requires that the statement of revenues, expenditures, and changes in fund balance - governmental funds include classifications for intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

D. Requirements for preparation of financial statements:

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts rounded to the nearest dollar.

(2) The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally accepted in the USA, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date specified in Subsection A of 2.2.2.9 NMAC.

(3) If there are differences between the financial statements and the books, the IPA shall provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.

(4) If the IPA prepared the financial statements in their entirety from the client-provided trial balance or underlying accounting records the IPA should conclude significant threats to independence exist and shall document the threats and safeguards applied to mitigate the threats to an acceptable level. If the threats cannot be documented as mitigated the IPA may appropriately decide to decline to provide the service. IPAs should refer to the GAGAS conceptual framework to evaluate independence. The fact that the auditor prepared the financial statements from the client-provided trial balance or underlying records shall be disclosed on the exit conference page of the audit report.

E. Audit documentation requirements:

(1) The IPA's audit documentation shall be retained for a minimum of five-years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. Audit documentation, including working papers, are the property of the IPA or responsible certificate holder per Subsection A of Section 61-28B-25 NMSA 1978. Audit documentation includes all documents used to support any opinions or findings included in the report. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all the audit documentation shall be delivered to the state auditor by the due date specified in the request. State auditor review of audit documentation does not transfer the ownership of the documents. Ownership of the audit documentation is maintained by the IPA or responsible certificate holder.

(3) The audit documentation of a predecessor IPA shall be made available to a successor IPA in accordance with AU-C 510.07 and 510.A3 to 510.A11, and the predecessor auditor's contract. Any photocopy costs incurred shall be borne by the requestor. If the successor IPA finds that the predecessor IPA's audit documentation does not comply with applicable auditing standards and this rule, or does not support the financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the USA and related laws, rules and regulations, and this rule, any or all of the following actions may be taken:

(a) the state auditor may require the predecessor IPA firm to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) the state auditor may deny or limit the issuance of future audit contracts; or

(c) the state auditor may refer the predecessor IPA to the New Mexico public accountancy board for possible licensure action.

F. Auditor communication requirements:

(1) The IPA shall comply with the requirements for auditor communication with those charged with governance as set forth in AU-C 260 and GAGAS 6.06 and 6.07.

(2) After the agency and IPA have an approved audit contract in place, the IPA shall prepare a written and dated engagement letter during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a copy of the signed letter as part of the audit documentation. In addition to meeting the requirements

of the AICPA professional standards and the GAGAS requirements, the engagement letter shall state that the engagement shall be performed in accordance with 2.2.2 NMAC.

(3) The audit engagement letter shall not include any fee contingencies. The engagement letter shall not be interpreted as amending the contract. Nothing in the engagement letter can impact or change the amount of compensation for the audit services. Only a contract amendment submitted pursuant to Subsection N of 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

(4) A separate engagement letter and list of client prepared documents is required for each fiscal year audited. The IPA shall provide a copy of the engagement letter and list of client prepared documents immediately upon request from the state auditor.

(5) The IPA shall conduct an audit entrance conference with the agency with representatives of the agency's governing authority and top management, which may include representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference and any progress meetings. If such notification is received, the IPA and agency shall invite the state auditor or the auditor's designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(6) All communications with management and the agency's oversight officials during the audit, regarding any instances of non-compliance or internal control weaknesses, shall be made in writing. The auditor shall obtain and report the views of responsible officials of the audited agency concerning the audit findings, pursuant to GAGAS 6.57-6.60. Any violation of law or good accounting

practice, including instances of non-compliance or internal control weaknesses, shall be reported as audit findings per Section 12-6-5 NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

G. Reverting or non-reverting funds: Legislation can designate a fund as reverting or non-reverting. The IPA shall review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation shall be reverted and to whom. The law may also indicate the due date for the required reversion. Appropriate audit procedures shall be performed to evaluate compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes shall fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements shall disclose the specific legislation that makes a fund or appropriation non-reverting and any minimum balance required. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements shall disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of 2.2.2.12 NMAC and the DFA white papers "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis." The statewide ACFR is exempt from this requirement.

H. Referrals and risk advisories: The Audit Act (Section 12-6-1 *et seq.* NMSA 1978) states that "the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor." (Section 12-6-3 NMSA 1978). Further, audits of New Mexico governmental agencies "shall be conducted in accordance with

generally accepted auditing standards and rules issued by the state auditor." (Section 12-6-3 NMSA 1978).

(1) In an effort to ensure that the finances of state and local governments are thoroughly examined, OSA may provide IPAs with written communications to inform the IPA that OSA received information that may suggest elevated risk in specific areas relevant to a particular agency's annual financial and compliance audit. These communications shall be referred to as "referrals." Referrals are considered confidential audit documentation. Referrals may relate to any topic, including the scope of the annual financial and compliance audit. IPAs shall take the circumstances described in OSA referral communications into account in their risk assessment and perform such procedures as, in the IPA's professional judgment, are necessary to determine what further actions, if any, in the form of additional disclosures, findings, and recommendations are appropriate in connection with the annual audit of the agency. After the conclusion of fieldwork but at least 14 days prior to submitting the draft annual audit report to the OSA for review, IPAs shall provide written confirmation to the OSA that the IPA took appropriate action in response to the referral. This written confirmation shall be submitted separately from any draft report and addressed to the attention of the OSA's special investigations division. The written confirmation shall be submitted electronically to SIDreferrals@osa.nm.gov and shall respond to all aspects of the referral and list any findings associated with the subject matter of the referral. IPAs shall retain adequate documentation in the audit workpapers to support the written confirmation to OSA that the IPA took appropriate action in response to the referral. As described in 2.2.2.13 NMAC the OSA may review IPA workpapers associated with the annual audit of any agency. OSA workpaper review procedures shall include examining the IPA documentation associated with referrals. Insufficient

or inadequate documentation may result in deficiencies noted in the workpaper review letter and may negatively impact the IPA during the subsequent firm profile review process. In accordance with Subsection D of 2.2.2.8 NMAC, an IPA may be placed on restriction if an IPA refuses to comply with OSA referrals in a timely manner.

(2) OSA may issue written communications to inform agencies and IPAs that OSA received information that suggests elevated risk in specific areas relevant to the annual financial and compliance audits of some agencies. These communications shall be referred to as "risk advisories." Risk advisories shall be posted on the OSA website in the following location: osa.nm.gov/accountability-office/risk-advisories. Risk advisories may relate to any topic relevant to annual financial and compliance audits of New Mexico agencies. IPAs shall take the circumstances described in OSA risk advisories into account in their risk assessment and perform such procedures and testwork as, in the IPA's professional judgment, are necessary to determine what further action, if any, in the form of disclosure, findings and recommendations are appropriate in connection with the annual audit of the agency.

I. State auditor workpaper requirement: The state auditor requires that audit workpapers include a written audit program for fund balance and net position that includes tests for proper classification of fund balance pursuant to GASBS 54 and proper classification of net position pursuant to GASBS 34.32-.37 (as amended) and GASBS 46.4-.5 (as amended).

J. State compliance audit requirements: An IPA shall identify significant state statutes, rules, and regulations applicable to the agency under audit and perform tests of compliance. In designing tests of compliance, IPAs may reference AU-C 250 relating to consideration of laws and regulations in an audit of financial statements and AU-C

620 relating to using the work of an auditor's specialist. As discussed in AU-C 250.A23, in situations where management or those charged with governance of the agency, or the agency's in-house or external legal counsel, do not provide sufficient information to satisfy the IPA that the agency is in compliance with an applicable requirement, the IPA may consider it appropriate to consult the IPA's own legal counsel. AU-C 620.06 and 620.A1-A2 discuss the use of an auditor's specialist in situations where expertise in a field other than accounting or auditing is necessary to obtain sufficient, appropriate audit evidence, such as the interpretation of contracts, laws and regulations. In addition to the significant state statutes, rules and regulations identified by the IPA, compliance with the following shall be tested if applicable (with the exception of the statewide ACFR):

(1) Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency's chief procurement officer, pursuant to Section 13-1-95.2 NMSA 1978, and Procurement Code Regulations, 1.4.1 NMAC, or home rule equivalent. All agencies must retain support for procurement until the contract expires or the minimum time required for record retention is met, whichever is longer.

(2) Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, and Regulations Governing the Per Diem and Mileage Act, 2.42.2 NMAC.

(3) Public finances and public money, Sections 6-10-1 to 6-10-63 NMSA 1978, including the requirements that county and municipal treasurers deposit money in their respective counties, and that the agency receive a joint safe keeping receipt for pledged collateral. (In instances when another statute provides for a different timeline applicable to the agency, that statute shall control.)

(4) Public School Finance Act, Sections 22-8-1 to 22-8-49 NMSA 1978.

(5) Investment of public money, Sections 6-8-1 to 6-8-25 NMSA 1978.

(6) Public Employees Retirement Act, Sections 10-11-1 to 10-11-142 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to PERA. The IPA shall evaluate and test internal controls regarding employee eligibility for PERA and other benefits. IPAs shall evaluate risk associated with employees excluded from PERA and test that employees are properly excluded.

(7) Educational Retirement Act (ERA), Sections 22-11-1 to 22-11-55 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to ERB. The IPA shall evaluate and test internal controls regarding employee eligibility for ERA and other benefits. IPAs shall evaluate risk associated with employees excluded from the ERA and test that employees are properly excluded.

(8) Sale of public property, Sections 13-6-1 to 13-6-8 NMSA 1978.

(9) Anti-Donation Clause, Article IX, Section 14, New Mexico Constitution.

(10) Special, deficiency, and supplemental appropriations (appropriation laws applicable for the year under audit).

(11) State agency budget compliance with Sections 6-3-1 to 6-3-25 NMSA 1978, and local government compliance with Sections 6-6-1 to 6-6-20 NMSA 1978.

(12) Lease purchase agreements, Article IX, Sections 8 and 11, New Mexico Constitution; Sections 6-6-11 to 6-6-12 NMSA 1978; *Montano v. Gabaldon*, 108 NM 94, 766 P.2d 1328 (1989).

(13) Accounting and control of fixed assets of state government, 2.20.1.1 to 2.20.1.18 NMAC, (updated for GASBS 34 as applicable).

(14) Requirements for contracting and conducting audits of agencies, 2.2.2 NMAC.

(15) Article IX of the state constitution limits on indebtedness.

(16) Any law, regulation, directive or policy relating to an agency’s use of gasoline credit cards, telephone credit cards, procurement cards, and other agency-issued credit cards.

(17) Retiree Health Care Act, Sections 10-7C-1 to 10-7C-19 NMSA 1978. IPAs shall test to ensure eligible contributions are reported to RHCA. The IPA shall evaluate and test internal controls regarding employee eligibility for RHCA and other benefits. IPAs shall evaluate risk associated with employees excluded from RHCA and test that employees are properly excluded.

(18) Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978.

(19) School Personnel Act, Sections 22-10A-1 to 22-10A-40.1 NMSA 1978.

(20) School Athletics Equity Act, Sections 22-31-1 to 22-31-6 NMSA 1978. IPAs shall test whether the district has submitted the required school-district-level reports, but no auditing of the reports or the data therein is required.

(21) The New Mexico opioid allocation agreement.

K. Federal requirements: IPAs shall conduct their audits in accordance with the requirements of the following government pronouncements and shall test federal compliance audit requirements as applicable:

(1) generally accepted government auditing standards (GAGAS) issued by the United States government accountability office, most recent revision;

(2) uniform administrative requirements, cost principles, and audit requirements for federal awards;

(3) compliance supplement, latest edition; and

(4) internal revenue service (IRS) employee income tax requirements. IRS

Publication 15-B, employer’s tax guide to fringe benefits, available online, provides detailed information regarding the taxability of fringe benefits.

(5) In situations where expenditures reported in the schedule of expenditures of federal awards (SEFA) do not tie to federal revenues reported in the basic financial statements (due to outstanding loan balances, timing of grant awards, expenditures incurred in a prior period, etc.), a reconciliation shall be included in the notes to the SEFA.

L. Audit finding requirements:

(1) Communicating findings: IPAs shall communicate findings in accordance with generally accepted auditing standards and the requirements of GAGAS 6.17-6.30. All finding reference numbers shall follow a standard format with the four-digit audit year, a hyphen, and a three-digit sequence number (e.g. 20XX-001, 20XX-002, 20XX-999). All prior year findings shall include the finding numbers used when the finding was first reported under historical numbering systems in brackets, following the current year finding reference number (e.g., 2021-001 (2020-003)) to enable the report user to see what year the finding originated and how it was identified in previous years. Finding reference numbers for single audit findings reported on the data collection form shall match those reported in the schedule of findings and questioned costs and the applicable auditor’s report. Depending on the IPA’s classification of the finding, the finding reference number shall be followed by one of the following descriptions: “material weakness”; “significant deficiency”; “material non-compliance”; “other non-compliance”; or “other matters.”

(a) IPAs shall evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses in accordance with AU-C 265.

(b) Findings that meet the requirements described in AAG GAS 4.12 shall be included in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards. AAG GAS 13.35 and 13.36 table 13-2 provides guidance on whether a finding shall be included in the schedule of findings and questioned costs.

(c) Section 12-6-5 NMSA 1978 requires that “each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination.”

(i) When auditors detect violations of law or good accounting practices that shall be reported per Section 12-6-5 NMSA 1978, but that do not rise to the level of significant deficiencies or material weaknesses, such findings are considered to warrant the attention of those charged with governance due to the statutory reporting requirement. The auditor shall communicate such violations in the “compliance and other matters” paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards.

(ii) Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings labeled “Section 12-6-5 NMSA 1978 findings”. This schedule shall be placed in the back of the audit report following the financial statement audit and federal award findings. Per AAG GAS 13.39 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.

(d) Each audit finding (including current year and unresolved prior-year findings) shall specifically state and describe the following:

(i) condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified, and for repeat findings, management’s progress or lack of progress towards implementing the prior year planned corrective actions);

(ii) criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(iii) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(iv) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(v) recommendation addressing each condition and cause; and

(vi) agency response (the agency’s comments about the finding, including specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

(e) Uniform guidance regarding single audit findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The

corrective action plan and summary schedule of prior audit findings shall include findings relating to the financial statements which shall be reported in accordance with GAGAS. The summary schedule of prior year findings and the corrective action plan shall be included in the reporting package submitted to the federal audit clearinghouse (AAG GAS 13.39 fn 40). In addition to being included in the agency response to each audit finding, the corrective action plan shall be provided on the audited agency’s letterhead in a document separate from the auditor’s findings. (Council on financial assistance reform frequently asked questions on the office of management and budget’s uniform administrative requirements, cost principles, and audit requirements for federal awards at 2 CFR 200, Section 511-1).

(f) All audit reports shall include a summary of audit results preceding the presentation of audit findings (if any). The summary of audit results shall include the type of auditor report issued and whether the following categories of findings for internal control over financial reporting were identified: material weakness, significant deficiency, and material noncompliance. AUP reports completed pursuant to 2.2.2.16 NMAC are not required to include a summary of audit results.

(2) Prior year findings:

(a) IPAs shall comply with the requirements of the most recent version of GAGAS relating to findings and recommendations from previous audits and attestation engagements. In addition, IPAs shall report the status of *all* prior-year findings and *all* findings from special audits performed under the oversight of the state auditor in the current year audit report in a summary schedule of prior year audit findings. The summary schedule of prior year audit findings shall include the prior year finding number, the title, and whether the finding was resolved, repeated, or repeated and modified in the current

year. No other information shall be included in the summary schedule of prior year audit findings. All findings from special audits performed under the oversight of the state auditor shall be included in the findings of the annual financial and compliance audits of the related fiscal year. IPAs shall consider including findings from special audits in annual audit reports.

(b) Uniform guidance regarding single audit prior year findings (uniform guidance 200.511): The auditor shall follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the uniform guidance, and report, as a current-year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding (AAG GAS 13.54).

(3) Current-year audit findings: Written audit findings shall be prepared and submitted to management of the agency as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. The agency shall prepare “planned corrective actions” as required by GAGAS 6.57 and 6.58. The agency shall respond, in writing, to the IPA’s audit findings within 10 business days. Lack of agency responses within the 10 business days does not warrant a delay of the audit report. The agency’s responses to the audit findings and the “planned corrective actions” shall be included in the finding after the recommendation. If the IPA disagrees with the management’s comments in response to a finding, they may explain in the report their reasons for disagreement, after the agency’s response (GAGAS 6.59). Pursuant to GAGAS 6.60, “if the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited agency. In such

cases, the auditors should indicate in the report that the audited agency did not provide comments.”

(4)

If appropriate in the auditor’s professional judgment, failure to submit the completed audit contract to the OSA by the due date at Subsection F of 2.2.2.8 NMAC may be reported as a current year compliance finding.

(5) If

an agency has entered into any professional services contract with an IPA with a scope of work that relates to fraud, waste, or abuse, and the agency did not notify the OSA, the IPA shall report a finding of non-compliance with Paragraph (2) of Subsection C of 2.2.215 NMAC.

(6) If an

agency subject to the procurement code failed to meet the requirement to have a certified chief procurement officer during the fiscal year, the IPA shall report a finding of non-compliance with 1.4.1.94 NMAC.

(7)

Component unit audit findings shall be reported in the primary government’s financial audit report. This is not required for the statewide ACFR unless a finding of a legally separate component unit is significant to the state as a whole.

(8) Except

as discussed in Subsections A and E of 2.2.2.12 NMAC, release of any portion of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation of Section 12-6-5 NMSA 1978 and requires a compliance finding in the audit report.

(9) If an

agency response to a finding indicates in any way that the OSA is the cause of the finding, the OSA may require that a written response from the OSA be included in the report, below the other responses to that finding.

M. Exit conference and related confidentiality issues:

(1) The IPA

shall hold an exit conference with representatives of the agency’s governing authority and top management, which may include representatives of any component

units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences. If component unit representatives cannot attend the combined exit conference, a separate exit conference shall be held with the component unit’s governing authority and top management. The exit conference and presentation to governance shall occur in the forum agreed to by the agency and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person exit conference and presentation to the board. The date of the exit conference(s) and the names and titles of personnel attending shall be stated in the last page of the audit report.

(2) The IPA,

with the agency’s cooperation, shall provide to the agency for review a draft of the audit report (stamped “draft”), a list of the “passed audit adjustments,” and a copy of all the adjusting journal entries at or before the exit conference. The draft audit report shall include, at minimum, the following elements: independent auditor’s report, basic financial statements, audit findings, summary schedule of prior year audit findings, and the reports on internal control and compliance required by government auditing standards and uniform guidance.

(3) Agency

personnel and the agency’s IPA shall not release information to the public relating to the audit until the audit report is released by the OSA, and has become a public record. This does not preclude an agency from submitting financial statements and notes to the financial statements, clearly marked as “draft” or “unaudited” to federal or state oversight agencies or bond rating agencies. Any draft financial statements provided to federal or

state oversight agencies or to bond rating agencies shall exclude draft auditor opinions and findings, and any pages including references to auditor opinions or findings. This also does not preclude an IPA from complying with communication requirements, between component auditors and the group auditor, detailed in AU-C 600, *Special Considerations - Audits of Group Financial Statements*. State agency IPAs, constitutional institutes of higher education IPAs and state of New Mexico component unit IPAs are all component auditors for the New Mexico ACFR Group Audit.

(4) Once the

audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing as described in Subparagraph (a) of Paragraph (4) of Subsection B of 2.2.2.9 NMAC, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, within 60 calendar days. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.10 to 260.14.

(5) At all

times during the audit and after the audit report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the audit. Applicable standards include but are not limited to the AICPA Code of Conduct ET Section 1.700.001 and related interpretations and guidance, and GAGAS 6.53-6.55 and GAGAS 6.63-6.65. The OSA and the IPA shall not disclose audit documentation if such disclosure would undermine the effectiveness or integrity of the audit process. AU-C 230.A29.

N. Possible violations of criminal statutes in connection with financial affairs:

(1) IPAs shall comply with the requirements of GAGAS 6.19-6.24 relating to fraud, noncompliance with provisions of laws, regulations, contracts and grant agreements, waste, and abuse. Relating to contracts and grant agreements, IPAs shall extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements. Concerning abuse, if an IPA becomes aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, the IPA shall apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives.

(2) Pursuant to Section 12-6-6 NMSA 1978 (criminal violations), an agency, LPB, or IPA shall notify the state auditor immediately upon discovery of any apparent violation of a criminal statute in connection with financial affairs. If an agency or IPA has already made a report to law enforcement that fact shall be included in the notification. If not immediately known, a follow-up notification shall include an estimate of the dollar amount involved, if known or estimable, and a description of the apparent violation, including names of persons involved and any action taken or planned.

O. Special revenue funds authority: The authority for creation of special revenue funds and any minimum balance required shall be shown in the audit report (i.e., cite the statute number, code of federal regulation, executive order, resolution number, or other specific authority) on the divider page before the combining financial statements or in the notes to the financial statements. This requirement does not apply to the statewide ACFR.

P. Public monies:

(1) All monies coming into all agencies (i.e., vending machines, fees for photocopies, telephone charges, etc.) shall be considered public monies and be accounted for as such. For state agencies, all revenues generated shall be authorized by legislation (FCD's manual of model accounting practices (MAPs) FIN 11.4).

(2) If the agency has investments in securities and derivative instruments, the IPA shall comply with the requirements of AU-C 501.04-.06. If the IPA elects to use the work of an auditor's specialist to meet the requirements of AU-C 501, the requirements of AU-C 620 shall also be met.

(3) Pursuant to Section 12-6-5 NMSA 1978, each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council, etc.);

(b) account name;

(c) type of deposit or investment account (also required in separate component unit audit reports):

(i) types of deposit accounts include non-interest bearing checking, interest bearing checking, savings, money market accounts, certificates of deposit, etc.; and

(ii) types of investment accounts include state treasurer general fund investment pool (SGFIP), state treasurer local government investment pool (LGIP), U.S. treasury bills, securities of U.S. agencies such as Fannie Mae (FNMA), Freddie Mac (FHLMC), government national mortgage association (GNMA), Sallie Mae, small business administration (SBA), federal housing administration (FHA), etc.

(d) account balance of deposits and

investments as of the balance sheet date;

(e) reconciled balance of deposits and investments as of the balance sheet date as reported in the financial statements; and

(f) for state agencies only, SHARE fund number. In auditing the balance of a state agency's investment in the SGFIP, the IPA shall review the individual state agency's cash reconciliation procedures and determine whether those procedures would reduce the agency's risk of misstatement in the investment in SGFIP, and whether the agency is actually performing those procedures. The IPA shall also take into consideration the complexity of the types of cash transactions that the state agency enters into and whether the agency processes its deposits and payments through SHARE. The IPA shall use professional judgment to determine each state agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA.

(4) Pledged collateral:

(a) All audit reports shall disclose applicable collateral requirements in the notes to the financial statements. In addition, there shall be a SI schedule or note to the financial statements that discloses the collateral pledged by each depository for public funds. The SI schedule or note shall disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, committee on uniform security identification procedures number, fair market value and maturity date.

(b) Pursuant to Section 6-10-17 NMSA 1978, the pledged collateral for deposits in banks and savings and loan associations shall have an aggregate value equal to one-half of the amount of public money held by the depository. If this requirement is not met the audit report shall include a finding. No security is required

for the deposit of public money that is insured by the federal deposit insurance corporation (FDIC) or the national credit union administration (NCUA) in accordance with Section 6-10-16 NMSA 1978. Collateral requirements shall be calculated separately for each bank and disclosed in the notes.

(c)

All applicable GASB 40 disclosure requirements relating to deposit and investment risk shall be met. In accordance with GASBS 40.8, relating to custodial credit risk, the notes to the financial statements shall disclose the dollar amount of deposits subject to custodial credit risk, and the type of risk the deposits are exposed to. To determine compliance with the fifty percent pledged collateral requirement of Section 6-10-17 NMSA 1978, the disclosure shall include the dollar amount of each of the following for each financial institution: fifty percent pledged collateral requirement per statute, total pledged collateral, uninsured and uncollateralized.

(d)

Repurchase agreements shall be secured by pledged collateral having a market value of at least one hundred two percent of the contract per Subsection H of Section 6-10-10 NMSA 1978. To determine compliance with the one hundred two percent pledged collateral requirement of Section 6-10-10 NMSA 1978, the disclosure shall include the dollar amount of the following for each repurchase agreement: one hundred-two percent pledged collateral requirement per statute, and total pledged collateral.

(e)

Per Subsection A of Section 6-10-16 NMSA 1978, “deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten

by a member of the financial industry regulatory authority (known as FINRA), and are rated “BAA” or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank.”

(f)

Securities shall be accepted as security at market value pursuant to Subsection C of Section 6-10-16 NMSA 1978.

(g)

State agency investments in the state treasurer’s general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the notes to the financial statements shall refer the reader to the state treasurer’s separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments.

(h)

If an agency has other “authorized” bank accounts, pledged collateral information shall be obtained from the bank and disclosed in the notes to the financial statements. The state treasurer monitors pledged collateral related to most state agency bank accounts. State agencies should not request the pledged collateral information from the state treasurer. In the event pledged collateral information specific to the state agency is not available, the following note disclosure shall be made: detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, the state treasurer’s office (STO) collateral bureau monitors pledged collateral for all state funds held by state agencies in such “authorized” bank accounts.

(5) Agencies

that have investments in the state treasurer’s local government investment pool shall disclose the information required by GASBS 79 in the notes to their financial statements. Agencies with questions about the content of these required note disclosures may contact STO for assistance.

Q. Budgetary presentation:

(1) Prior year balance included in budget:

(a)

If the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of fund balance on the budgetary basis used to balance the budget.

(b) If

the agency prepares its budget on the cash basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of prior-year cash balance used to balance the budget (or fund balance on the cash basis).

(2)

The differences between the budgetary basis and GAAP basis revenues and expenditures shall be reconciled. If the required budgetary comparison information is included as SI₁, the reconciliation shall be included on the statement itself. If the required budgetary comparison is presented as RSI, the reconciliation to GAAP basis shall appear in either a separate schedule or in the notes to the RSI (AAG SLV 11.14). The notes to the financial statements shall disclose the legal level of budgetary control for the entity. The legal level of budgetary control for local governments is at the fund level. The legal level of budgetary control for school districts is at the function level. The legal level of budgetary control for state agencies is described in Subsection A of 2.2.2.12 NMAC. For additional information regarding the legal level of budgetary control the IPA may contact the applicable oversight agency (DFA, HED, or PED).

(3) Budgetary

comparisons shall show the original and final appropriated budget (same as final budget approved by DFA, HED, or PED), a column with variances between original and final budget amounts, and a column with the variance between the final budget and actual amounts.

R. Appropriations:
(1) Budget
related findings:

(a) If actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact shall be reported in a finding and disclosed in the notes to the financial statements.

(b) If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables used to balance the budget), that fact may be reported in a finding. This type of finding may be confirmed with the agency’s budget oversight entity (if applicable).

(2) Special, deficiency, specific, and capital outlay appropriations:

(a) Special, deficiency, specific, and capital outlay appropriations shall be disclosed in the notes to the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances, unencumbered balances, and amounts reverted shall be shown in a SI schedule or in a note to the financial statements. The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements. This is a special requirement of the state auditor, and it does not apply to the statewide ACFR audit.

(b) The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements regarding the special appropriations.

S. Consideration of internal control and risk assessment in a financial statement audit:

(1) Audits performed under this rule shall include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. IPAs and agencies are encouraged to reference the U.S. GAO’s *Standards for Internal*

Control in the Federal Government, known as the “*Green Book*”, which may be adopted by state, local, and quasi-governmental agencies as a framework for an internal control system.

(2) A SOC-2 audit report is a restricted use report, due to the confidential information contained in the report, and shall not be publicly released. A SOC-3 audit report is a general use report suitable for public release. Procedures performed in a SOC-3 audit are substantially the same as in a SOC-2 audit. A SOC-3 audit report includes an assertion about achievement of service commitments and system requirements (and what those are), system boundaries, and the service auditor’s opinion of management’s assertion. The detailed controls are not disclosed in the system description and there is no description of the service auditor’s tests of controls and results thereof.

(3) A SOC-2 audit shall include, at a minimum,
(a) user controls relevant to financial reporting for all modules used by the agency;
(b) information technology general controls, including user access management, change management, system operations, and data backup and recovery;

(c) application controls supporting payroll, accounts payable, general ledger, and other financial processes to include transaction entry, approval as well as reconciling inputs to outputs;

(d) controls addressing segregation of duties risks;

(e) identification of subservice organizations and complementary user entity controls;

(f) third party interface and upload controls.

(4) A SOC audit shall be conducted by IPA that:

(a) is approved and listed on the OSA’s approved auditor list;

(b) meets all independence requirements under GAGAS;

(c) has demonstrated experience performing SOC audits of comparable size and complexity.

(d) has a SOC engagement peer rating of “pass” to qualify for a SOC engagement.

(5) Any SOC audit contract must be approved by OSA on an OSA formatted contract pursuant to standard annual audit procedures.

(6) A draft SOC-2 audit report shall be submitted to OSA for review prior to finalization.

(7) OSA shall provide comment or required revisions within a reasonable timeframe.

(8) The SOC-2 audited agency and contracted IPA shall address OSA’s comments before issuing a final SOC-3 report.

(9) The SOC-2 or SOC-3 report shall not be distributed to other agency auditors until OSA has issued written approval.

(10) There shall be an annual SOC-2 audit of the department of finance and administration (DFA) service organization responsible for the operation and management of the statewide human resources, accounting, and management reporting system (“SHARE”). A SOC-2 and subsequently redacted SOC-3 reports shall be delivered to the state auditor by the dates specified in the audit contract.

(11) A SOC-2 and subsequent SOC-3 report of SHARE system shall also address controls of segregation of duties risk arising from DFA’s dual role as system operator and processor of statewide financial transactions.

(12) Upon OSA approval, the final SOC-2 report

shall be made available to all IPA’s conducting financial audits of state agencies that rely on SHARE for financial reporting.

(13) OSA reserves the right to select other agencies’ application systems of records for SOC audit.

(14) A SOC audit contract shall comply with all progress payment requirements pursuant to 2.2.2.8(M) NMAC.

T. Required auditor’s reports:

(1) The AICPA provides examples of independent auditor’s reports in the appendix to chapter 4 of AAG GAS and appendix A to chapter 17 of AAG SLV. Guidance is provided in footnote 4 to appendix A to chapter 17 of AAG SLV regarding wording used when opining on budgetary statements on the GAAP basis. IPAs conducting audits under this rule shall follow the AICPA report examples. All independent auditor’s reports shall include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America and with applicable government auditing standards per GAGAS 6.36. This statement shall be modified in accordance with GAGAS 2.17b if some GAGAS requirements were not followed. Reports for single audits shall reference Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 200, AAG GAS 4.92, Example 4-1).

(2) The AICPA provides examples of the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards in the appendix to chapter 4 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(a) The state auditor requires the report on internal control over financial

reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be dated the same date as the independent auditor’s report.

(b) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency shall be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Subsection F of 2.2.2.10 NMAC regarding this issue.

(3) The AICPA provides examples of the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance in the appendix to chapter 13 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(4) The state auditor requires the financial statements, RSI, SI, and other information required by this rule, and the following reports to be included under one report cover: the independent auditor’s report; the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards; and the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance. If applicable, the independent auditor’s report shall include the AU-C 725 opinion on SI, the schedule of expenditures of federal awards and the HUD FDS (required by HUD guidelines on reporting and attestation requirements of uniform financial reporting standards). The report shall also contain a table of contents and an official roster. The IPA may submit a written request for an exemption from the “one report cover” requirement, but shall receive prior written approval from the state auditor in order to present any of the above information under a separate cover.

U. Disposition of property: Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least 30 days prior to any disposition of property included on the agency inventory list, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action shall be sent to the state auditor. The disposition list shall include worn out, unusable or obsolete items, and may include trade-ins, and lost, stolen, or destroyed items, as applicable.

V. Joint powers agreements:

(1) Any joint powers agreement (JPA) shall be listed in a SI schedule in the audit report. The statewide ACFR schedule shall include JPAs that are significant to the state as a whole. The schedule shall include the following information for each JPA: participants; party responsible for operations; description; beginning and ending dates of the JPA; total estimated amount of project and portion applicable to the agency; amount the agency contributed in the current fiscal year; audit responsibility; fiscal agent if applicable; and name of the government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under a JPA, see the GASB Codification Sections J50.113 and C50.

W. Inventory certification:

(1) All agencies shall comply with the requirements of Section 12-6-10 NMSA 1978 and also maintain a capitalization policy that complies with the law. All agencies shall maintain an inventory listing of chattels and equipment that cost over five thousand dollars (\$5,000).

(2) Agencies shall conduct an annual physical inventory of chattels and equipment

on the inventory list at the end of each fiscal year in accordance with the requirements of Section 12-6-10 NMSA 1978. The agency shall certify the correctness of the inventory after the physical inventory. This certification shall be provided to the agency's auditors. The IPA shall audit the inventory listing for correctness and compliance with the requirements of the Audit Act.

X. Tax increment development districts: A tax increment development district (TIDD) created pursuant to the Tax Increment for Development Act (Chapter 5, Article 15 NMSA 1978) and its audit firm shall apply the criteria of GASBS 14, 39, 61, and 80 to determine whether the TIDD is a component unit of the municipality or county that approved it, or whether the TIDD is a related organization of the municipality or county that approved it. If the TIDD is determined to be a related organization per the GAAP requirements, then the TIDD shall contract separately for an audit separate from the audit of the municipality or county that approved it.

Y. GASBS 68, accounting and financial reporting for pensions:

(1) PERA and ERB shall each prepare schedules of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(a) Prior to distribution of the schedule of employer allocations, PERA and ERB shall obtain audits of their respective schedules. These audits shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(b) Pursuant to AU-C 805.16, the PERA and ERB auditors shall each issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial

statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(c) PERA and ERB shall include note disclosures in their respective schedule of employer allocations reports that detail each component of allocable pension expense at the fund level, excluding employer-specific pension expense for changes in proportion. Each plan shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred and inflows outflows of resources (excluding employer specific amounts), by year of deferral.

(d) The AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(e) As soon as the AU-C 805 reports become public record, PERA and ERB shall make the information available to their participant employers.

(f) PERA and ERB shall each prepare an employer guide that illustrates the use of their respective schedule of employer allocations report to create journal entries generally required by GASBS 68. The calculations

necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guides shall be made available to the participant employers by June 30 of the subsequent fiscal year. Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide ACFR for the state's net pension liability and other pension-related information.

(2) Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide ACFR for the state's net pension liability and other pension-related information.

Z. GASBS 77, tax abatement agreements: Unaudited, but final, GASBS 77 disclosure information shall be provided to any agency whose tax revenues are affected by the reporting agency's tax abatement agreements no later than September 15 of the subsequent fiscal year. This due date does not apply if the reporting agency does not have any tax abatement agreements that reduce the tax revenues of another agency. All tax abatement agreements entered into by an agency's component unit(s) shall be disclosed in the same manner as the tax abatement agreements of the primary government. If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for the determination.

AA. GASBS 75, accounting and financial reporting for postemployment benefits other than pensions: RHCA shall prepare a schedule of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(1) Prior to distribution of the schedule of employer allocations, RHCA shall obtain an audit of the schedule.

This audit shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(2) Pursuant to AU-C 805.16, the RHCA auditors shall issue a separate auditor’s report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency’s regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(3) RHCA shall include note disclosures in the schedule of employer allocations report that detail each component of allocable other post-employment benefits (OPEB) expense at the fund level, excluding employer-specific OPEB expense for changes in proportion. RHCA shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred outflows and inflows of resources (excluding employer specific amounts), by year of deferral.

(4) The AU-C 805 audit and resulting separate report on the RHCA schedule of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(5) As soon as the AU-C 805 reports become public record, RHCA shall make the information available to its participant employers.

(6) RHCA shall prepare an employer guide that illustrates the correct use of the schedule of employer allocations report by its participant employers. The guide shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guide shall be made available to the participant employers by June 30 of the subsequent fiscal year.

(7) Stand-alone state agency financial statements that exclude the proportionate share of the collective OPEB liability of the state of New Mexico, shall include note disclosure referring the reader to the statewide ACFR for the state’s net OPEB liability and other OPEB-related information.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 4/21/2026]

2.2.2.11 [RESERVED]

2.2.2.12 SPECIFIC

CRITERIA: The specific criteria described in this section shall be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, OSA recommends that IPAs review the NMSA and NMAC while planning governmental audits.

A. Pertaining to audits of state agencies:

(1) Due dates for agency audits: audit reports of agencies under the oversight of DFA FCD are due to OSA in accordance with the requirements of Subsection D of Section 12-6-3 NMSA 1978 and Subsection A of 2.2.2.9 NMAC.

(2) All the individual SHARE funds shall be

reported in the financial statements, either within the basic financial statements or as SI.

(3) Accounts payable at year-end and reversion calculation: If goods and services were received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable shall be reported for the respective amount due in both the government-wide financial statements and the fund financial statements. The “actual” expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of the current year budget. They are paid out of the budget of the following fiscal year. An agency’s reversions are calculated using the *budgetary basis expenditures* because the agency does not have the legal authority to obligate the state for liabilities once the appropriation period has lapsed. Thus, the agency cannot keep the cash related to accounts payable that were not paid timely. This results in a negative fund balance in the modified accrual basis financial statements of a reverting fund.

(4) Net position/fund balance:

(a) Pursuant to GASBS 63.8 the government-wide statement of net position and the proprietary fund statement of net position show net position as:

(i) net investment in capital assets as defined by GASBS 63.9;

(ii) restricted (distinguishing between major categories of restrictions) as defined by GASBS 63.10; and

(iii) unrestricted as defined by GASBS 63.11.

(b) Governmental fund financial statement fund balances shall be reported in accordance with GASBS 54.

(5) Book of record:

(a) The state maintains the centralized accounting system SHARE. The SHARE data and reports are the original book of record that the auditor is auditing. Each fiscal year, the agency shall record all audit adjusting journal entries in SHARE. The financial information in SHARE shall agree to the agency’s audited financial statements, except for accounts payable as described in Subsection A of 2.2.2.12 NMAC. If the agency maintains a separate accounting system, it shall be reconciled with the SHARE system and all applicable adjustments shall be recorded in SHARE in the month in which the transactions occurred. DFA FCD provides guidance to agencies, which IPAs shall review, regarding policy and procedure requirements. These documents are available on the DFA FCD website and include:

- (i) the manual of model accounting practices (MAPs);
- (ii) various white papers, yearly closing instructions; and
- (iii) various accounting guideline memos.

(b) The statement of revenues and expenditures in the audit report shall be presented in accordance with GAAP, by function or program classification and object code. However, the budgetary comparison statements shall be presented using the level of appropriation reflected in the final approved budget. The SHARE chart of accounts reflects the following appropriation unit levels:

Appropriation unit code/appropriation unit description	
200	personal services & employee benefits
300	contractual services
400	other
500	other financing uses
600	non-budgeted

(c) Revenue categories of appropriations to state agencies are listed below. The budgetary comparison statements for state agencies shall be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency’s final approved budget.

- (i) state general fund;
- (ii) other state funds;
- (iii) internal service funds/inter-agency transfers; or
- (iv) federal funds.

(d) For more detail about the SHARE chart of accounts see the DFA website.

(6) Reversions to state general fund:

(a) All reversions to the state general fund shall be identified in the financial statements or the notes to the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - FY 16). The gross amount of the appropriation and the gross amount of the reversion shall be shown separately.

(b) Subsection A of Section 6-5-10 NMSA 1978 states “all unreserved undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30 to the general fund. The division may adjust the reversion within 45 days of release of the audit report for that fiscal year.” Failure to

transfer reverting funds timely in compliance with the statute requires an audit finding.

(7) Non-reciprocal (not payments for materials or services rendered) interfund (internal) activity includes:

- (a) transfers; and
- (b) reimbursements (GASBS 34.410):
 - (i) intra-agency transfers between funds within the agency shall offset (i.e. balance). Reasons for intra-agency transfers shall be fully explained in the notes to the financial statements. In the separate audit reports of state agencies, transfers between their internal funds are shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements;
 - (ii) inter-agency transfers (between an agency’s internal funds and other funds of the state that are outside the agency such as state general fund appropriations, special appropriations, bond proceeds appropriations, reversions to the state general fund, and transfers to/from other state agencies) shall be segregated from intra-agency transfers and fully explained in the notes to the financial statements along with the agency number and SHARE fund number to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than in the notes, but agency and SHARE fund numbers shall be shown. The schedule shall be presented on the modified accrual basis. The IPA is responsible for performing audit procedures on all such inter-agency transfers.

(c) Regarding inter-agency transfers between legally separate component units and the primary government (the state of New Mexico):

- (i) if the inter-agency transfer is between a blended component unit of the state and other funds of the state,

then the component unit's separately issued financial statements report such activity between itself and the primary government as revenues and expenses. When the blended component unit is included in the primary government's financial statements, such inter-agency transfers are reclassified as transfers (GASBS 34.318);

(ii)

all resource flows between a discretely presented component unit of the state and other funds of the state shall be reported as external transactions - revenues and expenses - in the primary government's financial statements and the component unit's separately issued financial statements (GASBS 34.318);

(d)

All transfers to and from SHARE fund 853, the state general fund appropriation account, shall be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections;

(e)

Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements are not reported as inter-fund activity in the financial statements.

(8) GSD

capital projects: in general, GSD records the state of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency shall capitalize those assets based on actual amounts expended in accordance with GSD instructions issued in 2.20.1.10 NMAC.

(9) State-

owned motor vehicle inventory: successful management of state-owned vehicles pursuant to the Transportation Services Act (Sections 15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records

and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(10)

Independent auditor's report: The independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Sec. 11 shall include an emphasis of matter paragraph referencing the summary of significant accounting principles disclosure regarding the reporting agency. The emphasis of matter paragraph shall indicate that the financial statements are not intended to present the financial position and changes in financial position of the primary government, the state of New Mexico, but just the financial position and the changes in financial position of the department. The emphasis of matter paragraph shall follow the example provided in AAG SLV 17.103 ex. A-17.

(11) Budgetary

basis for state agencies: the state budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get accrued by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely or accrued by the statutory deadline shall be paid out of the next year's budget. If an agency needs to recognize additional accounts payable amounts that were not accrued by the statutory deadline, then the budgetary statements and the fund financial statements require a reconciliation of expenditures, as discussed at Subsection Q of 2.2.2.10 NMAC. All transactions are recorded in the state's book of record, SHARE, under the modified accrual basis of accounting except for accounts payable not meeting the statutory deadline; therefore, the "actual" expenditures in the budgetary comparison schedules equal the expenditures as recorded in

SHARE for the fund. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of 12 months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the related budgets also lapse and encumbrances can no longer be charged to those budgets. The legal level of budgetary control shall be disclosed in the notes to the financial statements. Per Subsection C of Section 9 of the General Appropriation Act of 2017, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other. Therefore, the legal level of budgetary control is the appropriation program level (A-Code, P-Code, and Z-Code). A-Codes pertain to capital outlay appropriations (general obligation/severance tax or state general fund). P-Codes pertain to program/operating funds. Z-Codes pertain to special appropriations. The IPA shall compare total expenditures for each program to the program's approved final budget to evaluate compliance.

(12) Budgetary

comparisons of state agencies shall show the original and final appropriated budget (same as final budget approved by DFA), a column with variances between original and final budget amounts, the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts. If a state agency presents budgetary comparisons by fund, the appropriation program code(s) (A-Code, P-Code, and Z-Code) shall be reported on the budgetary comparison schedule.

(13)

Accounting for special capital outlay appropriations financed by bond proceeds.

(14) Amounts

"due from other state agencies" and "due to other state agencies": if a state agency reports amounts "due from" or "due to" other state agencies the notes shall disclose the amount "due to" or

“due from” each agency, the name of each agency, the SHARE fund account numbers, and the purpose of the account balance.

(15)

Investments in the state general fund investment pool (SGFIP): these balances are presented as cash and cash equivalents in the statements of net position and the balance sheets of the participant agencies, with the exception of the component appropriation funds (state general fund). The notes to the financial statements of the component appropriation funds shall contain GASBS 40 disclosures for the SGFIP. This disclosure may refer the reader to the separate audit report for STO for additional information regarding the SGFIP.

(16)

Format for the statement of activities: state agencies that have more than one program or function shall use the financial statement format presented in GASBS 34, Illustrations B-1 through B-4. The simplified statement of activities (GASBS 34, Illustration B-5) may not be used for agencies that have multiple programs or functions. GASBS 34.41 requires governments to report direct expenses for each function.

B. Pertaining to audits of housing authorities:

(1)

Housing authorities within the state of New Mexico consist of regional housing authorities, component units or departments of local governments, component units of housing authorities, and housing authorities created by intergovernmental agreements between cities and counties that are authorized to exercise all powers under the Municipal Housing Law, Section 3-45-1 *et seq.*, NMSA 1978.

(2)

The financial statements of a housing authority that is a department, program or component unit of a primary government shall be included in the financial audit report of the primary government. IPAs shall use GASB guidelines as found in relevant GASBS to determine the correct presentation of the component unit.

(3)

Audits of public housing authorities (PHAs) that are departments of a local government shall be conducted by the same IPA that performs the audit of the local government. Separate audit contracts shall not be approved.

(a)

Local governments are encouraged to include representatives from PHAs that are departments of the local government in the IPA selection process.

(b)

The IPA shall include the housing authority’s governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold separate entrance and exit conferences with housing authority’s management and a member of the governing board. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences no later than 72 hours before the proposed conference.

(4)

The following information relates to housing authorities that are component units of a local government.

(a)

The housing authority shall account for financial activity in proprietary funds.

(b)

At the PHA’s discretion, the agency may “be audited separately from the audit of its local primary government entity, other than a housing department of a local government or a regional housing authority. If a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity” (Subsection E of Section 12-6-3 NMSA 1978). The Audit Act

further stipulates in Subsection A of Section 12-6-4 NMSA 1978 that “a public housing authority other than a regional housing authority shall not bear the cost of an audit conducted solely at the request of its local primary government entity.”

(c)

Audit reports of separate audits of component unit housing authorities shall be released by the state auditor separately from the primary government’s report under a separate release letter to the housing authority.

(5)

Public housing authorities and their IPAs shall follow the requirements of *Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards* (UFRS), which is available on the U.S. department of housing and urban development’s website under a search for UFRS. Additional administrative issues related to audits of public housing authorities follow.

(a)

Housing authority audit contracts include the cost of the audit firm’s AU-C 725 opinion on the FDS. The preparation and submission cost for this HUD requirement shall be included in the audit contract. The public housing authority shall electronically submit a final approved FDS based on the audited financial statements no later than nine months after the public housing authority’s fiscal year end. The IPA shall:

(i)

electronically report on the comparison of the electronic FDS submission in the real estate assessment center staging database through the use of an identification (ID) and password;

(ii)

include an electronic version of the FDS in the audit report;

(iii)

render an AU-C 725 opinion on the FDS; and

(iv)

explain in the notes any material differences between the FDS and the financial statements.

(b)

The IPA shall consider whether any

fee accountant used by the housing authority is a service organization and, if applicable, follow the requirements of AU-C 402 regarding service organizations.

(c)

The IPA shall provide the housing authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the housing authority.

(6) Single

audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority's schedule of expenditures of federal awards, the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation, the housing authority's federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards. See AAG GAS 6.15 for more information.

C. Pertaining to audits of school districts:

(1) If a state-

chartered charter school subject to oversight by PED is not subject to the requirement to use the same auditor as PED, the charter school shall submit their audit contract to PED for approval. Charter schools shall ensure that sufficient time is allowed for PED review. See Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) REC

audits:

(a)

A separate financial and compliance audit is required on activities of RECs. The IPA shall provide copies of the REC report to the participating school districts and PED once the report has been released by the state auditor.

(b)

Audits of RECs shall include tests for compliance with 6.23.3 NMAC.

(c)

Any 'on-behalf' payments for fringe benefits and salaries made by RECs

for employees of school districts shall be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with GASB Cod. Sec. N50.131.

(d)

The audit report of each REC shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule shall account for cash in the same categories used by the REC in its monthly cash reports to the PED. If there are differences in cash per the REC financial statements and cash per the REC accounting records, the IPA shall provide the adjusting entries to the REC to reconcile cash per the financial statements to cash per the REC accounting records. If cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report, the IPA shall issue a finding which explains that the PED reports do not reconcile to the REC accounting records.

(3) School

district audits shall address the following issues:

(a)

Audits of school districts shall include tests for compliance with 6.20.2 NMAC and PED's manual of procedures for public schools accounting and budgeting (PSAB), with specific emphasis on supplement 7, cash controls.

(b)

The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule is also required for each charter school chartered by a school district and each charter school chartered by PED. This schedule shall account for cash in the same categories used by the district in its monthly cash reports to PED. Subsection D of 6.20.2.13 NMAC states that school districts shall use the "cash basis of accounting

for budgeting and reporting". The financial statements are prepared on the accrual basis of accounting. Subsection E of 6.20.2.13 NMAC states that "if there are differences between the financial statements, school district records and department records, the IPA should provide the adjusting entries to the school district to reconcile the report to the school district records." If there are differences between the school district records and the PED report amounts, other than those explained by the adjusting entries, the IPA shall issue a finding which explains that the PED reports do not reconcile to the school district records.

(c)

Any joint ventures or other Agencies created by a school district are agencies subject to the Audit Act.

(d)

Student activity funds: Risk should be assessed, and an appropriate sample tested regarding controls over student activity funds.

(e)

Relating to capital expenditures by the New Mexico public school facilities authority (PSFA), school districts shall review capital expenditures made by PSFA for repairs and building construction projects of the school district. School districts shall also determine the amount of capital expenditures that shall be added to the capital assets of the school district and account for those additions properly. The IPA shall test the school district capital asset additions for proper inclusion of these expenditures.

(f)

Sub-funds of the general fund: school district audit reports shall include individual fund financial statements for the following sub-funds of the general fund: operational, transportation, instructional materials and teacherage (if applicable).

(4) Pertaining

to charter schools:

(a) A

charter school is a conversion school or start-up school within a school district authorized by the local school board or PED to operate as a charter school. A charter school is considered

a public school, accredited by the state board of public education and accountable to the school district's local school board, or PED, for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b)

Certain GASBS 14 criteria (as amended by GASBS 39, 61, and 80) shall be applied to determine whether a charter school is a component unit of the chartering entity (the district or PED). The chartering agency (primary government) shall make the determination whether the charter school is a component unit of the primary government.

(c)

No charter school that has been determined to be a component unit may be omitted from the financial statements of the primary government based on materiality. All charter schools that are component units shall be included in the basic financial statements using one of the presentation methods described in GASBS 34.126, as amended.

D. Pertaining

to audits of counties: Tax roll reconciliation county governments: Audit reports for counties shall include two SI schedules.

(1)

The first one is a "tax roll reconciliation of changes in the county treasurer's property taxes receivable" showing the June 30 receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Subsection C of Section 7-38-81 NMSA 1978, property taxes that have been delinquent for more than 10 years, together with any penalties and interest, are presumed to have been paid.

(2)

The second schedule titled "county treasurer's property tax schedule" shall show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current

year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, the IPA shall issue a finding.

E. Pertaining to audits of educational institutions:

(1)

Educational institutions are reminded that audit contracts shall be submitted to HED for approval. Refer to Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Budgetary

comparisons: the legal level of budgetary control per 5.3.4.10 NMAC shall be disclosed in the notes to the financial statements. The state auditor requires that every educational institution's audit report include budgetary comparisons as SI. The budgetary comparisons shall be audited and an auditor's opinion shall be rendered. An AU-C 725 opinion does not meet this requirement. The budgetary comparisons shall show columns for: the original budget; the revised budget; variances between the original budget and the revised budget, actual amounts on the budgetary basis; and variances between the revised budget and actual amounts. The IPA shall confirm the final adjusted and approved budget with HED. The IPA shall compare the financial statement budget comparison to the related September 15 budget submission to HED. The only differences that should exist between the HED budget submission and the financial statement budgetary comparisons are adjustments made by the institution after September 15 and audit adjustments. If the HED budget submission does not tie to the financial statement budgetary comparison, taking into account only those differences, then the

IPA shall write a related finding. A reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements shall be disclosed at the bottom of the budgetary comparisons or in the notes to the financial statements. The reconciliation is required only at the "rolled up" level of "unrestricted and restricted - all operations" and shall include revenues and expenses. HED approved the following categories which shall be used for the budgetary comparisons.

(a)

Unrestricted and restricted - All operations (schedule 1): beginning fund balance/net position; unrestricted and restricted revenues; state general fund appropriations; federal revenue sources; tuition and fees; land and permanent fund; endowments and private gifts; other; total unrestricted & restricted revenues; unrestricted and restricted expenditures; instruction; academic support; student services; institutional support; operation and maintenance of plant; student social & cultural activities; research; public service; internal services; student aid, grants & stipends; auxiliary services; intercollegiate athletics; independent operations; capital outlay; renewal & replacement; retirement of indebtedness; total unrestricted & restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(b)

Unrestricted instruction & general (schedule 2): beginning fund balance/net position; unrestricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total unrestricted revenues; unrestricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant;

total unrestricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(c)

Restricted instruction & general (schedule 3): beginning fund balance/net position; restricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total restricted revenues; restricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(3)

Educational institutions shall present their financial statements using the business type activities model.

(4)

Compensated absence liability is reported as follows: the statement of net position reflects the current portion of compensated absences under current liabilities and the long-term portion of compensated absences under noncurrent liabilities.

(5)

Component unit issues: educational institutions shall comply with the requirements of Subsection A of 2.2.2.10 NMAC. Additionally:

(a)

individual component unit budgetary comparisons are required if the component unit has a “legally adopted budget.” A component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law; and

(b)

there is no level of materiality for reporting findings of component units that do not receive public funds. All

component unit findings shall be disclosed in the primary government’s audit report.

(6) Required

supplementary information (RSI):

The RSI of educational institutions shall include analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results. The analysis shall include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity.

(7)

Educational institutions established by Section 11 of Article XII of the New Mexico state constitution shall provide the department of finance and administration’s financial control division with a draft copy of their financial statements excluding opinions and findings, pursuant to Subsection A of 2.2.2.12 NMAC.

F. Pertaining to audits of investing agencies:

Investing agencies, which are defined as STO, PERA, ERB, and the state investment council, shall prepare schedules of asset management costs which include management fee information by investment class.

(1) For all

asset classes except private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a)

relating to consultants: the name of the firm or individual, the location of the consultant (in-state or out-of-state), a brief description of investments subject to the agreement, and fees;

(b)

relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): the name of the firm or individual, the location of the marketer (in-state or out-of-state), a brief description of investments subject to the agreement, and any fees, commissions or retainers;

(c)

relating to traditional asset classes: name of the investment, asset

class, value of the investment, and fees (including both “direct” and “embedded” costs).

(2) For

private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a)

relating to consultants: the aggregate fees by asset class and consultant location (in-state or out-of-state), and a brief description of investments included in each asset class;

(b)

relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): aggregate fees, commissions and retainers by asset class and third-party marketer location (in-state or out-of-state), and a brief description of investments included in each asset class;

(c)

relating to alternative asset classes: the total fees by asset class (including both “direct” and “embedded” costs), and a brief description of the investments included in each asset class.

(3) These

schedules shall be included as unaudited other information in the audit report.

G. Pertaining to audits of local public bodies; budgetary comparisons:

Auditors shall test local public body budgets for compliance with required reserves and disclose those reserves on the face of the financial statements and in notes financial statements (if applicable).

[2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 4/21/2026]

2.2.2.13 REVIEW OF AUDIT REPORTS AND AUDIT DOCUMENTATION:

A. Statutory requirement to review audit reports:

Subsection B of Section 12-6-14 NMSA 1978 requires the state auditor or personnel of the office designated by the state auditor to examine all reports of audits of agencies made pursuant to contract. All audits performed under contracts

approved by the state auditor are subject to review. The OSA shall review all reports submitted by the IPA to determine if the reports are presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards. The OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. As discussed in Subsection B of 2.2.2.9 NMAC, audit reports reissued by the agency and IPA, pursuant to AU-C 560, are also subject to OSA review procedures.

B. Comprehensive reviews: Released audit reports are subject to a comprehensive report and audit documentation review by the state auditor. The IPA's audit documentation shall be assembled in one complete file or one complete set of files in one location, whether the documentation is hardcopy or electronic. The documentation shall be either all hardcopy or all electronic. OSA reviews of audit and AUP working papers include inspection of firm documentation related to compliance with governmental auditing, accounting and financial reporting standards, rules and other requirements issued by GASB, AICPA, GAO, and the OSA.

C. Consequences of deficiencies: If during the course of its review of an audit report or the related audit documentation, the OSA finds significant deficiencies that warrant a determination that the audit was not made in accordance with the provisions of the contract or applicable standards and requirements, any or all of the following action(s) may be taken;

(1) the IPA may be required by OSA to correct the deficiencies in the report or audit documentation, and reissue the audit report to the agency and any others receiving copies;

(2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of 2.2.2.8 NMAC;

(3) for future audit reports, for some or all audit contracts, the IPA may be required to submit working papers with the audit reports for review by the OSA prior to the release of the report; or

(4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

D. Results of work paper reviews: After the review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond in writing to all review comments when directed. If the firm disagrees with any comments, the firm shall provide references to professional standards supporting the firm's disagreement. Failure to respond shall be noted during the firm profile review process. Results of work paper reviews are confidential audit documentation.

[2.2.2.13 NMAC - Rp, 2 2.2.13 NMAC, xx/xx/2026]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing professional education: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall ensure that all members of their staff comply with the CPE requirements of the most recent revision of GAGAS.

B. Peer review requirements: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall comply with the requirements of the most recent revision of GAGAS relating to quality management, engagement quality reviews and external peer review.

(1) An audit firm's due date for its initial peer review is 18 months from the date the firm enrolled in the peer review program or should have enrolled, whichever is earlier. A firm's subsequent peer review is due three years and six months from the previous peer review year end.

(2) The IPA firm profile submission to the state auditor shall include copies of the following peer review documentation:

(a) the peer review report for the auditor's firm;

(b) if applicable, detailed descriptions of the findings, conclusions and recommendations related to deficiencies or significant deficiencies required by GAGAS 5.91;

(c) if applicable, the auditor's response to deficiencies or significant deficiencies; and

(d) the letter of acceptance from the peer review program in which the firm is enrolled.

(3) A peer review rating of "failed" on the auditor's peer review may disqualify the IPA from performing New Mexico governmental audits.

(4) During the procurement process IPAs shall provide a copy of their most recent external peer review report to the agency with their bid proposal or offer. Any subsequent peer review reports received during the period of the contract shall also be provided to the agency.

(5) The peer review shall meet the requirements of GAGAS 5.60 to 5.95.

C. State auditor engagement quality reviews: The state auditor may perform its own engagement quality review of IPA audit reports and working papers. An IPA that is included on the state auditor's list of approved firms for the first time may be subject to an OSA engagement quality review of the IPA's working papers. This review may be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date). During the work paper review process, the state auditor shall take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems,

while the state auditor reviews are engagement-specific reviews.
[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 4/21/2026]

2.2.2.15 SPECIAL AUDITS AND EXAMINATIONS:

A. Fraud, waste or abuse in government reported by agencies, IPAs or members of the public:

(1) Reports of fraud, waste & abuse: Pursuant to the authority set forth Subsection C of Section 12-6-3 NMSA 1978, the OSA may initiate special investigation or examination procedures in connection with reports of financial fraud, waste and abuse in government. Reports received or created by the OSA are confidential audit information and audit documentation in connection with the state auditor’s statutory duty to examine and audit the financial affairs of every agency, or in connection with the state auditor’s statutory discretion to audit the financial affairs and transactions of an agency in whole or in part.

(2) Confidentiality of sources: The identity of a person making a report to the OSA alleging financial fraud, waste, or abuse in government is confidential audit information and may not be disclosed, except as required by Section 12-6-6 NMSA 1978.

(3) Confidentiality of files: A report alleging financial fraud, waste, or abuse in government that is made to the OSA and any resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attestation engagement files are confidential audit documentation and may not be disclosed by the OSA or the agency, except to an independent auditor, performance audit team or forensic accounting team in connection with a special audit, performance audit, attestation engagement, forensic accounting engagement, non-attestation engagement, or other existing or potential engagement regarding the financial affairs or transactions of an agency.

(a) Any records that result in, or are part of, any subsequent or resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attestation engagement will be audit workpapers and therefore confidential. Records that result from, or are part of OSA, special investigations that do not result in a subsequent special audit, performance audit, attestation engagement or forensic accounting or other non-attestation engagement may be disclosed, with personal identifier information redacted, once the examination or investigation is closed.

(b) Any information related to a report alleging financial fraud, waste, or abuse in government provided to an independent auditor, performance audit team or forensic accounting team, is considered to be confidential audit or engagement documentation and is subject to confidentiality requirements, including but not limited to requirements under Subsections E and M of 2.2.2.10 NMAC, the Public Accountancy Act, and the AICPA Code of Professional Conduct.

(4) If the OSA makes inquiries of agencies as part of the investigation process, agencies shall respond to the OSA inquiries within 15 calendar days of receipt or as soon as practicable under the circumstances with written notice to the OSA stating the basis for any delay. IPAs shall test compliance with this requirement and report noncompliance as a finding in the annual financial and compliance audit report.

B. Special audit or examination process:

(1) Designation: Pursuant to Section 12-6-3 NMSA 1978, in addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. Accordingly, the state auditor may designate an agency for special audit, attestation engagement, performance audit, forensic

accounting engagement, or non-attestation engagement regarding the financial affairs and transactions of an agency or local public body based on information or a report received from an agency, IPA or member of the public. For purposes of this rule “special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attestation engagement” includes, without limitation, AUP, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste, or abuse in government. It also includes non-attestation engagements performed under the forensic services standards issued by the AICPA and engagements performed following the Code of Professional Standards issued by the Association of Certified Fraud Examiners (ACFE). The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the subject matter, the scope and any procedures required, the AICPA or other professional standards that apply, and for a performance audit, performance aspects to be included and the potential findings and reporting elements that the auditors expect to develop. Pursuant to Section 200.503 of Uniform Guidance, if a single audit was previously performed, the special audit, attestation engagement, performance audit or forensic accounting engagement shall be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors. The attestation and performance audit engagements may be conducted pursuant to government auditing standards if so specified by the OSA.

(2) Costs: All reasonable costs of special audits, attestation engagements, forensic accounting engagements, non-attestation engagements, or single-entity performance audits conducted pursuant to this Section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. The

state auditor, in its sole discretion, may apportion among the agencies audited some or all of the reasonable costs of a multi-entity performance audit.

(3) Who performs the engagement: The state auditor may perform the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attestation engagement alone or with other professionals selected by the state auditor. Alternatively, the state auditor may require the engagement to be performed by an IPA or a team that may be comprised of any of the following: independent public accountants; individuals with masters degrees or doctorates in a relevant field such as business, public administration, public policy, finance, or economics; individuals with a juris doctorate; CFE-certified fraud examiners; CFF-certified forensic auditors; CIA-certified internal auditors; or other specialists. If the state auditor designates an agency for an engagement to be conducted by an IPA or professional team, the agency shall:

(a) upon receipt of notification to proceed from the state auditor, identify all elements or services to be solicited, obtain the state auditor's written approval of the proposed scope of work, and request quotations or proposals for each applicable element of the engagement;

(b) follow all applicable procurement requirements which may include, but are not limited to, Uniform Guidance, Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978), or equivalent home rule procurement provisions when selecting an IPA or team to perform the engagement;

(c) submit the following information to the state auditor by the due date specified by the state auditor:

(i) a completed template for special audits, attestation engagements, performance audits or forensic accounting engagements, provided at

www.osanm.org, which the agency shall print on agency letterhead; and

(ii) a completed contract form including the contract fee, start and completion date, and the specific scope of services to be performed in the format prescribed by the OSA, provided at www.osanm.org, with all required signatures on the contract.

(d) If the agency fails to select an IPA and submit the signed contract to OSA by the due date specified by the state auditor, or, if none within 60 days of notification of designation from the state auditor, the state auditor may conduct the engagement or select the IPA for that agency in accordance with the process described at Subsection F of 2.2.2.8 NMAC.

(4) Errors: Contracts that are submitted to the OSA with errors or omissions shall be rejected by the state auditor. The state auditor shall return the rejected contract to the agency indicating the reason(s) for the rejection.

(5) Recommendation rejections: If the agency's recommendation is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for rejection, to the agency, at which time the agency shall promptly submit a different recommendation. This process shall continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(6) Contract amendments: Any proposed contract

amendments shall be processed in accordance with Subsection N of 2.2.2.8 NMAC.

(7) Access to records and documents: For any special audit, attestation engagement, performance audit or forensic accounting engagement, or non-attestation engagement, the state auditor and any engaged professionals shall have available to them all documents necessary to conduct the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attestation engagement. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attestation engagement the state auditor may apply to the district court of Santa Fe county for issuance of a subpoena to compel the attendance of witnesses and the production of books and records.

(8) Entrance, progress and exit conferences: The IPA or other professional shall hold an entrance conference and an exit conference with the agency, unless the IPA or other professional has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption. The OSA has the authority to notify the agency or IPA or other professional that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA or other professional and the agency shall invite the state auditor or the auditor's designee to attend all such conferences no later than 72 hours before the proposed conference or meeting. The state auditor may also require the IPA or other professional to submit its audit plan to the state auditor for review and approval. The date of the exit conference(s) and the names and titles of personnel attending shall be stated on the last page of the special audit report.

(9) Required reporting: All reports for special audits, attestation engagements, performance audits, forensic accounting engagements, or non-attestation engagements related to financial fraud, waste or abuse in government undertaken pursuant to 2.2.2.15 NMAC (regardless of whether they are conducted pursuant to AICPA standards for consulting services, forensic services or for attestation engagements, non-attestation engagements, or other professional standards) shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, pursuant to Section 12-6-5 NMSA 1978. Each finding shall comply with the requirements of Subsection L of 2.2.2.10 NMAC for audit and attestation engagements or Subsection D of 2.2.2.15 NMAC for non-attestation engagements.

(10) Report review: As required by Section 12-6-14 NMSA 1978, the state auditor shall review reports of any special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attestation engagement made pursuant to this section for compliance with the professional services contract and this rule. Upon completion of the report, the IPA or other professional shall deliver the electronic report to the state auditor with a copy of any signed management representation letter, if applicable. Unfinished or excessively deficient reports shall be rejected by the state auditor. If the report is rejected the firm shall submit an electronic version of the corrected rejected report for state auditor review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The IPA or other professional shall respond to all review comments as directed by the state auditor.

(11) Report release: After OSA's review of the report for compliance with the professional services contract and this rule, the state auditor shall authorize the IPA to print and submit the final

report. An electronic version of the report, in the PDF format described at Subsection B of 2.2.2.9 NMAC, shall be delivered to the state auditor within five business days. The state auditor shall not release the report until all the required documents are received by the state auditor. The state auditor shall provide the agency with a letter authorizing the release of the report pursuant to Section 12-6-5 NMSA 1978. Agency and local public body personnel shall not release information to the public relating to the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attestation engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. Except for the exception under Subsection A of 2.2.2.15 NMAC, at all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall not disclose to the public confidential information about the auditee or about the engagement. Confidential information is information that is not generally known to the public through common means of providing public information like the news media and internet.

(12) Disclosure by professionals: The IPA or other professional shall not disclose information identified as confidential information provided to them by the state auditor unless otherwise specified by the state auditor. Disclosure of confidential information by the IPA or other professional may result in legal action by the state auditor, or in the case of an IPA, restriction pursuant to Subsection D of 2.2.2.8 NMAC.

(13) Payment: Progress payments up to (but not including) ninety-five percent of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final

payments over ninety-five percent may be made by the agency pursuant to either of the following:

- (a)** stated in the letter accompanying the release of the report to the agency, or
- (b)** in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency.

C. Agency-initiated special audits or examinations:

(1) Applicability: With the exception of agencies that are authorized by statute to conduct performance audits and forensic accounting engagements, this section applies to all special audits and examinations in which an agency enters into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attestation engagement relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the engagement pursuant to this rule. For purposes of this rule, "special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attestation engagement" includes, without limitation, AUP, consulting, forensic services and contract close-out (results-based award) engagements that address financial fraud, waste or abuse in government.

(2) Any agency, local public body, IPA or other professional that enters into a professional services contract for a special audit or examination of the financial affairs and transactions of an agency or local public body that was not designated by the state auditor for the engagement must notify the OSA and provide a copy of any resulting report or any resulting findings of violations of law or good accounting practices to the OSA. Findings shall be reported as described in Subsection D of 2.2.2.15 NMAC. All findings relating to any violation of a criminal statute in connection with financial affairs must be reported immediately to the OSA pursuant to Section 12-6-6, NMSA 1978.

D. Finding requirements for special audits or examinations: Communicating findings: All finding reference numbers shall follow a consistent format. Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings and placed at the end of the report.

(1) Section 12-6-5 NMSA 1978 requires that for every special audit and examination made “each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination.”

(2) Each finding shall specifically state and describe the following:

(a) condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified);

(b) criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(c) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(d) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(e) recommendation addressing each condition and cause; and

(f) agency response (the agency’s response shall include specific planned corrective actions with a

timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 4/21/2026]

2.2.2.16 ANNUAL FINANCIAL PROCEDURES REQUIRED FOR LOCAL PUBLIC BODIES WITH ANNUAL REVENUES LESS THAN FIVE HUNDRED THOUSAND DOLLARS (\$500,000) (TIERED SYSTEM):

A. Annual revenue and state funded capital outlay expenditures determine type of financial reporting: All local public bodies shall comply with the requirements of Section 6-6-3 NMSA 1978. Pursuant to Section 12-6-3 NMSA 1978, the annual revenue of a local public body determines the type of financial reporting a local public body shall submit to the OSA. Local public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts.

(1) The annual revenue of a local public body shall be calculated on a cash basis as follows:

(a) Revenue shall exclude capital outlay funds. OSA defines capital outlay funds as funds expended pursuant to the Property Control Act definition of a capital outlay project. Per section 15-3B-2 NMSA 1978 “capital outlay project” means the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including land, buildings, machinery, furniture and equipment. A “capital outlay project” includes all proposed expenditures related to the entire undertaking.

(b) Revenue shall exclude federal or private grants. For the purpose of 2.2.2.16 NMAC “private grant” means funding provided by a non-governmental entity.

(2) For the purposes of 2.2.2.16 NMAC “state

funded capital outlay expenditures” are expenditures made pursuant to any funding provided by the New Mexico legislature for a capital outlay project as defined in the Property Control Act, Section 15-3B-2 NMSA 1978, either received directly by the local public body or disbursed through an administering agency.

B. Determination of revenue and services: Annually, following the procedures described in Subsection F of 2.2.2.8 NMAC, the state auditor shall provide local public bodies written authorization to obtain services to conduct a financial audit or other procedures. Upon receipt of the authorization, a local public body shall determine its annual revenue in accordance with Subsection A of 2.2.2.16 NMAC. The following requirements for financial reporting apply to the following annual revenue amounts (tiers):

(1) if a local public body’s annual revenue is less than ten thousand dollars (\$10,000) and the local public body did not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC (tier one);

(2) if a local public body’s annual revenue is ten thousand dollars (\$10,000) or more but less than fifty thousand dollars (\$50,000), then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC (tier two);

(3) if a local public body’s annual revenue is less than fifty thousand dollars (\$50,000), and the local public body expended at least fifty percent of, or more of, a single capital outlay award during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier three AUP engagement in accordance with the audit contract for a tier three AUP engagement;

(4) if a local public body's annual revenue is greater than fifty thousand dollars (\$50,000) but less than two hundred-fifty thousand dollars (\$250,000), then the local public body shall procure the services of an IPA for the performance of a tier four AUP engagement in accordance with the audit contract for a tier four AUP engagement;

(5) if a local public body's annual revenue is greater than fifty thousand dollars (\$50,000) but less than two hundred-fifty thousand dollars (\$250,000), and the local public body expended any capital outlay funds during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier five AUP engagement in accordance with the audit contract for a tier five AUP engagement;

(6) if a local public body's annual revenue is two hundred-fifty thousand dollars (\$250,000) or greater, but less than five hundred thousand dollars (\$500,000), the local public body shall procure services of an IPA for the performance of a tier six AUP engagement in accordance with the audit contract for a tier six AUP engagement; the report shall include at a minimum, a compilation of financial statements and a financial report consistent with the agreed-upon procedures;

(7) if a local public body's annual revenue is five hundred thousand dollars (\$500,000) or more, this section shall not apply and the local public body shall procure services of an IPA for the performance of a financial and compliance audit in accordance with other provisions of this rule;

(8) notwithstanding the annual revenue of a local public body, if the local public body expended seven hundred-fifty thousand dollars (\$750,000) or more of federal funds subject to a federal single audit during the fiscal year then the local public body shall procure a single audit.

C. Exemption from financial reporting: A local public

body that is exempt from financial reporting to the state auditor pursuant to Subsection B of 2.2.2.16 NMAC shall submit written certification to LGD and the state auditor. The certification shall be provided on the form made by the state auditor, available through OSA-Connect. The local public body shall certify, at a minimum:

(1) the local public body's annual revenue for the fiscal year; and

(2) that the local public body did not expend fifty percent of or the remainder of a single capital outlay award during the fiscal year.

(3) The OSA will not accept the certification of exemption from financial reporting for the current year until the prior year certifications or AUP reports (whichever is appropriate) have been submitted.

D. Procurement of IPA services: A local public body required to obtain an AUP engagement shall procure the services of an IPA in accordance with Subsection F of 2.2.2.8 NMAC.

E. Access to Records and Documents: For any AUP the agency should produce all documents necessary to conduct the engagement.

F. Requirements of the IPA selected to perform the AUP:

(1) The IPA shall provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. See Subsection F of 2.2.2.10 NMAC for applicable restrictions on the engagement letter.

(2) The IPA may not subcontract any portion of the services to be performed under the contract with the local public body except for the activation of a contingency subcontractor form in the event the IPA is unable to complete the engagement.

(3) The IPA shall hold an entrance conference and an exit conference with the local public body. The entrance and exit

conference shall occur in the forum agreed to by the local public body and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person entrance or exit conference. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(4) The IPA shall submit the report to the OSA for review in accordance with the procedures described at Subsection B of 2.2.2.9 NMAC. Before submitting the report to OSA for review, the IPA shall review the report using the AUP report review guide available on the OSA's website at osa.nm.gov. The report shall be submitted to the OSA for review with the completed AUP report review guide. Once the AUP report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the AUP report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.10 to 260.14.

G. Progress payments:

(1) Progress payments up to ninety-five percent of the contract amount do not require state auditor approval and may be made by the local public body if the local public body ensures that progress payments made do not exceed the percentage of work

completed by the IPA. If requested by the state auditor, the local public body shall provide the OSA a copy of the approved progress billing(s).

(2) Final payments from ninety-five percent to one hundred percent may be made by the local public body pursuant to either of the following:

(a) stated in the letter accompanying the release of the report to the agency, or
(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency. In this situation a letter releasing the report to the agency will be issued when it is appropriate to release the report.

H. Report due dates, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end that qualify for the tiered system, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 shall submit the AUP report or certification no later than five months after the fiscal year-end. Late AUP reports (not the current reporting period) are due not more than six months after the date the contract was executed. An electronic copy of the report shall be submitted to the OSA. AUP reports submitted via fax or email shall not be accepted. A copy of the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the report is due the following business day by 11:59 p.m. MT. If the report is mailed to the state auditor, it shall be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report shall be postmarked by the following business day.

(2) As soon as the IPA becomes aware that circumstances exist that will make the local public body's AUP report

be submitted after the applicable due date, the auditor shall notify the state auditor of the situation in writing.

This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. The late AUP notification letter is subject to the confidentiality requirements detailed at Subsection M of 2.2.2.10 NMAC. This does not prevent the state auditor from notifying the legislative finance committee or applicable oversight agency pursuant to Subsections F and G of Section 12-6-3 NMSA 1978. There shall be a separate notification for each late AUP report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the local public body. If the IPA will not meet the expected report submission date, then the IPA shall send a revised notification letter. If the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the AUP report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the deadline, and then rejected by the OSA, making the report late when resubmitted.

(3) Local public body personnel shall not release information to the public relating to the AUP engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At all times during the engagement and after the AUP report becomes a public record, the IPA shall follow applicable professional standards and 2.2.2 NMAC regarding the release of any information relating to the AUP engagement.

I. Findings: All AUP engagements shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings shall include the required content

listed at Subparagraph (d) of Paragraph (1) of Subsection L of 2.2.2.10 NMAC.

J. Review of AUP reports and related workpapers: AUP shall be reviewed by the OSA for compliance with professional standards and the professional services contract. Noncompliant reports shall be rejected and not considered received. Such reports shall be returned to the firm and a copy of the rejection letter shall be sent to the local public body. If the OSA rejects and returns an AUP report to the IPA, the report shall be corrected and resubmitted to the OSA by the due date, or the IPA shall include a finding for non-compliance with the due date. The IPA shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The OSA encourages early submission of reports to avoid findings for late reports. After its review of the AUP report for compliance with professional standards and the professional services contract, the OSA shall authorize the IPA to print and submit the final report. An electronic version of the AUP report, in PDF format, as described at Subsection B of 2.2.2.9 NMAC, shall all be delivered to the OSA within five business days. The OSA shall not release the AUP report until the electronic version of the report is received by the OSA. The OSA shall provide the local public body with a letter authorizing the release of the report after the required five-day waiting period. Released reports may be selected by the OSA for comprehensive report and workpaper reviews. After such a comprehensive report and workpaper review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond to all review comments as directed. If during the course of its review, the OSA finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with

provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

(1) the IPA may be required to correct the deficiencies in the report or audit documentation, and reissue the AUP report to the agency and any others receiving copies;

(2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of 2.2.2.8 NMAC;

(3) for future reports, for some or all contracts, the IPA may be required to submit working papers with the reports for review by the OSA prior to the release of the report; or

(4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

K. IPA independence:

IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of the current government auditing standards.

[2.2.2.16 NMAC - Rp, 2.2.2.16 NMAC, 4/21/2026]

HISTORY of 2.2.2 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5/14/1971; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5/27/1971; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the State of New Mexico, filed 6/1/1972; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6/1/1972; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations,

filed 2/28/1974; SA Rule No. 74-2, Rotation of Assignments, filed 2/28/1974; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11/3/1978; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5/28/1980; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12/17/1982; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4/10/1984; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1/28/1985; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgements and Compensated Absences, filed 4/16/1980; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6/12/1985; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6/17/1985; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6/17/1985; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1/20/1986; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3/20/1986; SA Rule No. 86-3, Professional Services Contracts, filed 7/9/1986; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/13/1987; SA Rule 87-2, Approval of Audit Contracts, filed 4/2/1987; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8/14/1987; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/10/1988; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/10/1989; SA Rule 90-1, Regulations

Governing the Audits of Agencies of the State of New Mexico, filed 3/1/1990; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5/7/1990; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/13/1991; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/6/1992; SA Rule 93-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/25/1993; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/25/1994; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5/16/1994; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/16/1995; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4/2/1996.

History of Repealed Material:

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/30/2001. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/29/2002. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 4/30/2003. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/31/2004. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 5/13/2005. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/16/2006. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 4/16/2007. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 4/15/2008. 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 2/27/2009.

Contracting and Conducting Audits of Agencies, effective 3/28/2023.
 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies, filed 3/15/2023, is replaced by 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies, effective 4/21/2026.

**ECONOMIC DEVELOPMENT DEPARTMENT
 ECONOMIC DEVELOPMENT DIVISION**

**TITLE 2 PUBLIC FINANCE
 CHAPTER 95 STRATEGIC ECONOMIC DEVELOPMENT SITE READINESS ACT
 PART 1 GENERAL PROVISIONS**

2.95.1.1 ISSUING AGENCY: Economic Development Department.
 [2.95.1.1 NMAC - N, 04/21/2026]

2.95.1.2 SCOPE: All public partners and private partners applying for Strategic Economic Development Site Readiness Act funds through the economic development department.
 [2.95.1.2 NMAC - N, 04/21/2026]

2.95.1.3 STATUTORY AUTHORITY: Section 6-25B-5, NMSA 1978.
 [2.95.1.3 NMAC - N, 04/21/2026]

2.95.1.4 DURATION: Permanent.
 [2.95.1.4 NMAC - N, 04/21/2026]

2.95.1.5 EFFECTIVE DATE: April 21, 2026, unless a later date is cited at the end of a section.
 [2.95.1.5 NMAC - N, 04/21/2026]

2.95.1.6 OBJECTIVE:

the suitability of such sites for certification as a strategic economic development site.

B. Section 6-25B-4, NMSA 1978, creates the strategic economic development site advisory committee and provides that the department shall provide necessary administrative services to the committee.

C. Section 6-25B-5, NMSA 1978, provides that the committee is granted authority to recommend approval or disapproval of applications for grants or loans from the site readiness fund, or to make recommendations for funding from the public project revolving fund or other potential funding sources to public and private partners to assist in the evaluation of proposals for site characterization studies or proposed economic development sites to assess the suitability of a proposed strategic economic development site for development by a public partner or private partner, and to promulgate rules necessary to carry out the provisions of the act.

D. Section 6-25B-7, NMSA 1978, provides that the department shall administer the site readiness fund and recover from the fund the costs of administering the fund.
 [2.95.1.6 NMAC - N, 04/21/2026]

2.95.1.7 DEFINITIONS:

A. "Act" means the Strategic Economic Development Site Readiness Act, Sections 6-25B-1 through 6-25B-8, NMSA 1978, as the same may be amended and supplemented.

B. "Application" means a written document made publicly available by the department and filed with the department for the purpose of evaluating a public partner's or private partner's application for grants and loans from the site readiness fund, the public project revolving fund and other potential funding sources.

C. "Committee" means the strategic economic development site advisory committee created to recommend approval or

disapproval of applications for grants and loans from the site readiness fund, the public project revolving fund and other potential funding sources.

D. "Economic development site" means a site for proposed economic development that promotes economic activity and job creation based on criteria developed by the department, but excludes general housing development, affordable housing, lands with known environmental contaminations, and other criteria as may be determined by the department that do not provide economic base job development opportunities.

E. "Public project revolving fund" means the fund created in and administered by the New Mexico finance authority pursuant to Section 6-21-6, NMSA 1978, as the same may be amended and supplemented.

F. "Site characterization study" means the study of proposed economic development sites conducted pursuant to the provisions of Subsection C of Section 6-25B-3, NMSA 1978, to determine the suitability of such sites for certification as a strategic economic development site.

G. "Site pre-development project" means a designated strategic economic development site project that will enhance the readiness of the strategic economic development site, and may include: (1) surveying, engineering, planning and architectural work required in advance of construction on site development and building construction; (2) environmental assessments and remediation; (3) public infrastructure improvements necessary prior to the start of site development and building construction, including roads and utilities; (4) site preparation, including landscaping and drainage improvements; and (5) government permitting.

H. "Site readiness fund" means the fund created in the state treasury by Section 6-25B-7, NMSA 1978 and consists of appropriations, gifts, grants,

donations, income from investment of the fund, payments of principal and interest on loans made from the fund and any other money distributed or otherwise allocation to the fund.

I. “Strategic economic development site” means a site designated as a strategic economic development site by the secretary, upon the review and recommendation of a site characterization study by the strategic economic development site advisory committee.

[2.95.1.7 NMAC - N, 04/21/2026]

2.95.1.8 PRE-APPLICATION AND APPLICATION PROCESS:

A. Prior to initiating the preparation of an application, a public or private partner is encouraged to schedule a “pre-application conference” to discuss the proposed site with department staff, the secretary, and, as well as consultants or professionals that the department may propose. The secretary may require a pre-application conference as needed, at their sole discretion. The purpose of this conference is to allow the applicant and department staff to discuss areas of strength and opportunities of the application in order to optimize the application review process.

B. Applications must be submitted at least eight business days prior to the committee’s upcoming meeting to be considered during the upcoming meeting.

C. The application review process commences when an applicant files a completed application with the department. The committee shall endeavor to review and evaluate each completed application within 90 days of receipt to allow the committee, department staff, and the secretary to perform a thorough review. The chair may call a special meeting of the committee to expedite an application as needed, or at the department’s request.

[2.95.1.8 NMAC - N, 04/21/2026]

2.95.1.9 REVIEW AND APPROVAL PROCESS:

A. The committee shall review applications for site characterization studies and for grants or loans from the site readiness fund, and make recommendations to the secretary.

B. Upon the recommendation of the committee, the secretary shall:

(1) determine whether further information is needed to make a final decision; or

(2) determine whether the recommendation of the committee should be accepted.

C. All determinations by the secretary shall be considered final.

[12.13.1.9 NMAC - N, 04/21/2026]

2.95.1.10 ELIGIBILITY AND PRIORITIZATION FOR STRATEGIC ECONOMIC DEVELOPMENT SITE PROPOSALS:

The committee will develop and consider a variety of factors in reviewing and evaluating strategic economic development site proposals to determine which proposals to recommend to the secretary as a strategic economic development site qualified to receive a grant or loan from the site readiness fund or whether to recommend funding from the public project revolving fund or other available funding source. The committee shall establish policies for prioritization of strategic economic development sites.

[2.95.1.10 NMAC - N, 04/21/2026]

2.95.1.11 SITE CHARACTERIZATION STUDIES OF PROPOSED STRATEGIC ECONOMIC DEVELOPMENT SITES, CONTRACTS:

A. The secretary will accept for consideration proposals for site characterization studies of proposed strategic economic development sites to determine the suitability of such sites for certification as a strategic economic development site.

B. If the secretary determines that a proposed site is appropriate for a site characterization study, the department and a public

partner or a private partner may enter into a contract to determine the suitability of proposed economic development sites for certification as a strategic economic development site. The contract to determine suitability of a proposed economic development site shall define the roles and responsibilities of the department and the public partner or private partner, provide clawback or recapture provisions determined by the department, if applicable, that protect the public investment in the event of a default on the contract; and assess the suitability of a proposed economic development site for development by a public partner or private partner, taking into consideration those characteristics set forth in policies approved by the department and consistent with the act.

C. The department will monitor the terms of the contract and enforce or cause to be enforced all terms and conditions thereof. In the event of default under a contract to determine suitability of proposed economic development sites, the department may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

D. The department shall review contracts to determine suitability of proposed economic development sites from time to time and determine whether the use of site readiness funds is a prudent expenditure of public funds and report to the legislature annually on that determination.

[2.95.1.11 NMAC - N, 04/21/2026]

2.95.1.12 SITE CHARACTERIZATION STUDIES OF PROPOSED STRATEGIC ECONOMIC DEVELOPMENT SITES, REVIEW AND APPROVAL PROCESS:

A. The committee shall review site characterization studies and recommend the designation of proposed strategic economic development sites for consideration by the department.

B. The committee will complete an initial evaluation

of the site characterization study promptly upon receipt. The committee may rely on the advice of other state agencies and county and local governments on technical issues relevant to the committee's consideration of proposed strategic economic development sites and applications for grants and loans from the site readiness fund. The committee will make a recommendation to the department on each site characterization study.

C. Upon the recommendation of the committee, the secretary shall:

- (1) determine whether there needs to be further study of the characteristics of proposed economic development sites; or
- (2) determine whether the proposed economic development site should be designated as a strategic economic development site.

[2.95.1.12 NMAC - N, 04/21/2026]

2.95.1.13 STRATEGIC ECONOMIC DEVELOPMENT SITE PRE-DEVELOPMENT PROJECTS, REVIEW, PRIORITIZATION AND APPROVAL PROCESS:

A. Upon designation as a strategic economic development site, the secretary may solicit proposals from public partners and private partners for site pre-development projects that will enhance the readiness of the strategic economic development site. Site pre-development projects may include:

- (1) surveying, engineering, planning and architectural work required in advance of construction on site development and building construction;
- (2) environmental assessments and remediation;
- (3) public infrastructure improvements necessary prior to the start of site development and building constructions, including roads and utilities;

(4) site preparation, including landscaping and drainage improvements; and

(5) governmental permitting.

B. The committee shall review each complete and compliant pre-development project application from a public or private partner associated with a strategic economic development site and provide a recommendation to the secretary regarding potential funding through the site readiness fund or whether the application should be recommended for funding from the public project revolving fund or other available funding sources.

C. Following the committee review, the secretary shall determine which proposed site pre-development projects will receive funding from the site readiness fund, at what amount, and for what purposes.

[2.95.1.13 NMAC - N, 04/21/2026]

2.95.1.14 ADMINISTRATION OF THE SITE READINESS FUND:

A. Pursuant to Section 6-25B-7, NMSA 1978, the site readiness fund is created in the state treasury and shall be administered by the department to provide grants and loans for financing site pre-development projects.

B. Money from repayments of loans made by the department shall be deposited in the site readiness fund. The site readiness fund shall also consist of any other money appropriated, distributed or otherwise allocated to the site readiness fund for the purposes of the act.

C. Money in the fund shall be used for the purpose of carrying out the provisions of the act, including site characterization studies of proposed economic development sites and site preparations of designated strategic economic development sites.

D. Disbursements from the site readiness fund shall be made by warrant of the secretary of

finance and administration pursuant to vouchers signed by the secretary of the department or the secretary's authorized representative.

E. The department may establish procedures to administer the site readiness fund and to recover from the site readiness fund administrative and reimbursable costs incurred by the department for originating grants and loans, subject to the legislative appropriation process.

[2.95.1.14 NMAC - N, 04/21/2026]

2.95.1.15 REPORTING:

Beginning October 1, 2026, and each October 1 thereafter, the secretary shall provide a report to the governor, the legislative finance committee and the appropriate interim legislative committees regarding:

A. The number and location of proposed economic development sites that have been approved for site characterization studies;

B. The number and location of strategic economic development sites that have been approved by the secretary;

C. The number and location of site pre-development projects that have been approved by the secretary, including those that have been approved for funding, in whole or in part, through grants and loans from the site readiness fund, the public project revolving fund or other funding resources;

D. The status of the site readiness fund; and

E. Recommended changes to the act.

[2.95.1.15 NMAC - N, 04/21/2026]

2.95.1.16 AMENDMENT OF RULES:

This rule may be amended or repealed at any time by the department.

[2.95.1.16 NMAC - N, 04/21/2026]

HISTORY OF 2.95.1 NMAC: [RESERVED]

**HEALTH CARE
AUTHORITY
INCOME SUPPORT DIVISION**

This is an amendment to 8.100.130 NMAC, Sections 26 and 28 effective 5/1/2026.

**8.100.130.26 DEDUCTIONS/
ALLOWANCES VERIFICATION
STANDARDS - SHELTER:**

A. [The applicant/ recipient's statement is acceptable for verification of shelter expenses, if the information given is not questionable. If information is questionable or inconsistent, ISD must clearly document why the household's statement was unacceptable and what information requires additional verification. When further information or verification is requested the following items shall be acceptable] The applicant/recipient is required to provide verification to determine if the household can claim the shelter expense:

(1) [An obligation to pay for shelter is considered a deduction for SNAP. If the expense is questionable and verification of a shelter expense is requested and not provided, SNAP benefits will be determined without allowing a deduction for shelter expenses. When further verification is requested, documents which may be used to verify an obligation to pay for shelter include:] An obligation to pay for monthly shelter expenses is considered a deduction for SNAP. If verification of a shelter expense is requested and not provided, the SNAP benefits will be determined without allowing a deduction for shelter expenses. Documents which may be used to verify the obligation to pay for shelter include:

- (a) mortgage payment book;
- (b) written statement from the bank or other financial institution;
- (c) rent receipt;
- (d) written statement from the landlord;

- (e) lease agreement;
- (f) copies of bills for property taxes or house insurance;
- (g) correspondence with the taxing authority or insurance agency; or
- (h) additional items as listed on ISD 135 "proof checklist".

(2) [If documentary evidence is not readily available or is questionable, a collateral contact may be selected to verify the obligation to pay shelter or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.] If documentary evidence is not readily available, a collateral contact may be selected to verify the obligation to pay for shelter or the use of other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

B. Utilities: [The applicant/recipient's statement is acceptable for verification of utility expenses, if the information given is not questionable. If information is questionable or inconsistent, ISD must clearly document why the household's statement was unacceptable and what information requires additional verification. Documents which may be used to verify an obligation to pay for utilities include:] An obligation to pay for the utility expense is considered a deduction for SNAP. If verification of a utility expense is requested and not provided, the SNAP benefits will be determined without allowing a deduction for the utility expenses. Documents which may be used to verify the obligation to pay for the utility expense include:

- (1) utility bills;
- (2) rent receipt, lease agreement, or written statement from the landlord showing the household is responsible for payment of utilities;
- (3) written statement from a utility provider;
- (4) additional items as listed on ISD 135 "proof checklist"; or

(5) [if documentary evidence is questionable, a collateral contact with the landlord or the utility provider may be selected to verify the obligation to pay for utilities or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.] if documentary evidence is not readily available, a collateral contact may be selected to verify the obligation to pay for utilities or the use of other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

[8.100.130.26 NMAC - Rp 8.100.130.26 NMAC, 7/1/2024; A, 5/1/2026]

**8.100.130.28 DEDUCTIONS/
ALLOWANCES VERIFICATION
STANDARDS - DEPENDENT
CARE:**

A. [The applicant/ recipient's statement is acceptable for verification of dependent care expenses, if the information given is not questionable. If information is questionable or inconsistent, ISD must clearly document why the household's statement was unacceptable and why information requires additional verification.] An obligation to pay for the dependent care expense is considered a deduction for SNAP. If verification of a dependent care expense is requested and not provided, the SNAP benefits will be determined without allowing a deduction for the dependent care expenses. Documents which may be used to verify the obligation to pay for the dependent care expense include:

- B. Documents which may be used to verify dependent care costs:
- (1) current bill;
 - (2) written statement from the provider;
 - (3) additional items as listed in ISD 135 "proof checklist"; or

(4) [if documentary evidence is not readily available, or is questionable a collateral contact with the care provider may be used as verification

of dependent care costs or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.] if documentary evidence is not readily available, a collateral contact may be selected as verification of dependent care cost or the use of other acceptable methods of verification as set forth in 8.100.130.9 NMAC. [8.100.130.28 NMAC - Rp 8.100.130.28 NMAC, 7/1/2024; A, 5/1/2026]

**HEALTH CARE
AUTHORITY
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.410 NMAC, Section 9 and 14 effective 5/1/2026.

8.139.410.9 CITIZENSHIP AND IMMIGRATION STATUS FOR ELIGIBILITY:

Participation in SNAP is limited to individuals who live in the United States and who are U.S. citizens or are otherwise eligible per the criteria below. [The department will determine eligibility for non-citizens in accordance with 7 CFR 273.2 and 7 CFR 273.4. No individual is eligible to participate in SNAP unless that individual is otherwise eligible and is:

- A.** A U.S. citizen;
- B.** A U.S. non-citizen national;
- C.** An individual who is:
 - (1)** a member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; (including a spouse, surviving spouse, or child of tribe member) who are lawfully present in the U.S.;
 - (2)** an American Indian born in Canada who possesses at least fifty percent of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act apply; or a member of an Indian tribe as defined at section 4(c) of 25 U.S.C. 450b(e) which is recognized as eligible for the special programs and services provided by the U.S.

to Indians because of their status as Indians; or

- (3)** a victim of human trafficking and their derivative beneficiaries, in accordance with 7 CFR 273.4(a)(5); or
- D.** A qualified immigrant meeting the criteria in Subsection D, Paragraph (2) below:
 - (1)** A qualified immigrant is a:
 - (a)** lawful permanent resident;
 - (b)** refugee;
 - (c)** asylee;
 - (d)** person granted withholding of deportation or removal;
 - (e)** conditional entrants, (in effect prior to April 1, 1980);
 - (f)** person paroled into the U.S. for at least one year;
 - (g)** Cuban/Haitian entrants;
 - (h)** battered spouses and children with a pending or approved self-petition for an immigrant visa and whose need for benefits has a substantial connection to the battery or cruelty (including qualified parents, spouses, and children of same), or battered spouses and children with an application for cancellation of removal or suspension of deportation, and whose need for benefits has a substantial connection to the battery or cruelty (including qualified parents, spouses, and children of same).
 - (2)** Qualified immigrants are eligible only if they:
 - (a)** were 65 or older and were lawfully residing in the U.S. on August 22, 1996, or
 - (b)** are under age 18, or
 - (c)** have been in "qualified" immigrant status for at least five years, or
 - (d)** are lawful permanent residents who have worked or can be credited with 40 qualifying quarters of employment, or

- (e)** were granted refugee or asylum status or withholding of deportation/ removal; or
- (f)** are a Cuban/Haitian entrant, or Amerasian immigrant, or
- (g)** are receiving blindness or disability-related assistance or
- (h)** are a veteran, active duty military; or the spouse, or the surviving spouse who has not married, or the child;
- (i)** are in Iraqi or Afghan special immigrant status.
- E.** Lawfully present and exempt from five-year bar: Effective December 27, 2020, per section 208 of the Consolidated Appropriations Act, 2021 individuals who are considered compact of free association migrants (COFA) are also referred to as compact citizens. COFA is an agreement between the United States and the three Pacific Island sovereign states of federated states of Micronesia, the republic of the Marshall Islands, and the republic of Palau known as freely associated states.] The authority will determine eligibility for non-citizens:
 - A.** a resident of the United States; and
 - B.** one of the following:
 - (1)** a citizen or national of the United States; or
 - (2)** an individual who lawfully resides in the United States in accordance with compacts of free association (COFA) citizens referred to in section 402(b)(2)(G) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; or
 - (3)** a non-citizen who has been granted the status of Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422); or
 - (4)** a non-citizen lawfully admitted for permanent residence (LPR) as an immigrant as defined by sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act,

excluding, among others, visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country must meet one of the following requirements:

- (a) Have resided in the United States with a qualified non-citizen status for a period of five years or more beginning on the date of their entry into the United States; or
- (b) Exempt from the five-year waiting period by meeting one of the following below:
 - (i) under 18 years of age; or
 - (ii) individual with 40 qualifying quarters; or
 - (iii) lawfully residing in the U.S. and 65 or older on August 22, 1996; or
 - (iv) individuals with a military connection including veterans, active duty personnel, and their spouses and dependents the spouse or unmarried dependent child of an individual; or
 - (v) Hmong or Highland Laotian tribal members; or
 - (vi) blind or disabled; or
 - (vii) certain American Indians born abroad; or
 - (viii) a non-citizen admitted as a refugee under section 207 of INA; or
 - (ix) a non-citizen granted asylum under section 208 INA; or
 - (x) a non-citizen's deportation is withheld under section 243(h) INA or section 241(b)(3) INA; or
 - (xi) a non-citizen admitted to the United States as an Amerasian; or
 - (xii) a non-citizen admitted to the United States as an Iraqi or Afghan special immigrant (SIV-Special Immigrant Visa); or

(xiii) a non-citizen is a victim of human trafficking; or

(xiv) certain Afghan Nationals granted parole between July 31, 2021, and September 30, 2023; or

(xv) certain Ukrainian Nationals granted parole between February 24, 2022, and September 30, 2024.

[F:] C. Verification of immigrant status is determined in accordance with 7 CFR 273.2(f) and reasonable opportunity is provided pursuant to 7 CFR 273.2(f)(1)(c).

[G:] D. Reporting undocumented [~~aliens~~] non-citizens:

(1) [HSD] HCA shall inform the local DHS office only when an official determination is made that any individual who is applying for or receives benefits is present in the U.S. in violation of the INA. An official determination that an undocumented immigrant is in the U.S. in violation of the INA is only made when:

(a) the undocumented [~~aliens~~] non-citizens unlawful presence is a finding of fact or conclusion of law that is made by [HSD] HCA as part of a formal determination about the individual's eligibility; and

(b) [HSD] HCA finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the US, such as a final order of deportation.

(2) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

(3) Undocumented immigrant status is considered reported when ISD enters the information about the non-citizen into the household's computer file.

(4) When a household indicates inability

or unwillingness to provide documentation of immigrant status for any household member, [HSD] HCA must classify that member as an ineligible immigrant. [When a person indicates inability or unwillingness to provide documentation of immigrant status, [HSD] HCA must classify that person as an ineligible immigrant.] In such cases [HSD] HCA must not continue efforts to obtain that documentation.

[8.139.410.9 NMAC - Rp, 8.139.410.9 NMAC, 11/1/2023; A, 6/1/2025; A/E, 1/1/2026; A, 5/1/2026]

8.139.410.14 REQUIREMENTS FOR ABLE BODIED ADULTS:

ISD will administer this program in accordance with 7 Code of Federal Regulation (CFR) 273.24. This program is referred to as the time limit rule or the able bodied adults without dependents ("ABAWD") program. The program is mandatory at all times unless there is a federally approved statewide waiver in place in accordance with 7 CFR 273.24(f). A statewide waiver makes the program non-mandatory for all ABAWDs who would otherwise be subject to the three month time limit requirement. When a statewide waiver is not in place, ABAWDs are mandatory for all requirements as detailed below. ISD will inform all potential ABAWD households of the ABAWD time limit prior to the expiration of a statewide waiver. ISD will use a fixed 36 month period for measurement and tracking purposes beginning June 1, 2017 through May 31, 2020, and every subsequent fixed three year period.

Continued Next Page

A. The age limit standards for individuals who are subject to the ABAWD work requirement are ages 18-64.

[Age Limit	Date ends
18-49	September 5th 2023
18-50	September 30th 2023
18-52	September 30th 2024
18-54	September 30th 2025]

B. Able bodied adults can comply by: working 20 hours per week, averaged monthly; for purposes of this provision, 20 hours per week averaged monthly means 80 hours per month; work is defined as:

- (1) work in exchange for money;
- (2) work in exchange for goods or services (“in kind” work); or
- (3) unpaid work, which includes work without compensation that gives a person experience in a job or industry, tests a person’s job skills, or involves volunteer time and effort to a not-for-profit organization.

C. Good cause: As determined by ISD, if an individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirement if the absence from work is temporary. Good cause shall include circumstances beyond the individual’s control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation.

D. Waived from the time limit requirements: Upon approval from united states department of agriculture (USDA) food and nutrition service (FNS), ISD will waive the three-month time limit [requirement for the following individuals] in accordance with 7 CFR 273.24(f).
 [_____ (1) _____ any individual residing in or relocating to a county that has an unemployment rate twenty over ten percent above the national average as defined by ISD;

_____ (2) _____ any individual residing in or relocating to pueblos, tribes, and nations, with an estimated employment to population ratio as a measure for insufficient job availability as determined by ISD.]

E. Able bodied adults who are determined to be ineligible for SNAP benefits because of non-compliance with the time limit requirements can regain eligibility in accordance with 7 CFR 273.24(d)(i), (d)(ii), (d)(iii), or (d)(v).

F. Exceptions to the three month time limit: The time limit does not apply to an individual if they are:

(1) [Exceptions to the three month time limit required participation are found at 7 CFR 273.24(e).] Under 18 or 65 years of age or older.

(2) Physical and mental unfitness for the three month time limit requirements exception is defined as an individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves.

(a) unfitness can be obvious to ISD and documented in the case file; or

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

(c) applying for or receiving disability benefits such as supplemental security

income (SSI) or general assistance (GA) disability..

[_____ (3) _____ Individuals who are homeless as outlined at Subsection A of 8.139.100.7 NMAC.

_____ (4) _____ Individuals who are Veterans.

_____ (5) _____ Individuals 24 years of age or younger who were in foster care under the responsibility of the state through the maximum age permitted by the state.]

(3) a parent or other member of a household with responsibility for a dependent child under the age of 14 or an incapacitated person;

(4) otherwise exempt from the SNAP general work rules under 7 U.S.C. 2015(d)(2) which includes a person who is:

(a) currently subject to and complying with a work registration requirement under title IV of the Social Security Act or the Federal-State unemployment compensation system; or

(b) a student enrolled at least half time in any recognized school, training program, or institution of higher education unless ineligible; or

(c) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; or

(d) employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206 (a) (1)), multiplied by thirty hours; or

(e) a person between the ages of 16 and 18 who is not a head of a household

or who is attending school, or enrolled in an employment training program, on at least a half-time basis.

(5) Indians, also referred to as Native Americans, Alaska Natives, Indigenous Peoples, and Tribal Members:

(a) a member of a federally recognized tribe, or
(b) an “Indian” as defined in 25 U.S.C 1603 (13); or

(c) an “Urban Indian” as defined in 25 U.S.C 1603 (18); or

(d) an “California Indian” as defined in 25 U.S.C 1679 (a).

(6) a pregnant woman.

G. ISD will administer the eight percent discretionary exemptions, as allowed by [~~the food and nutrition service~~] FNS and as determined by ISD, in accordance with 7 CFR 273.24(g). [8.139.410.13 NMAC - Rp, 8.139.410.13 NMAC, 11/1/2023; A/E, 1/1/2026; A, 5/1/2026]

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

The New Mexico Board of Dental Health Care reviewed at its 2/20/2026 hearing, to repeal its rule 16.5.3 NMAC, Mandatory Reporting Requirements (filed 3/16/2006) and replace it with 16.5.3 NMAC, Mandatory Reporting Requirements, adopted 4/8/2026 and effective 4/21/2026.

The New Mexico Board of Dental Health Care reviewed at its 2/20/2026 hearing, to repeal its rule 16.5.7 NMAC, Dentists, Temporary or Public Service Licensure (filed 12/1/2000) and replace it with 16.5.7 NMAC, Dentists, Temporary or Public Service Licensure, adopted 4/8/2026 and effective 4/21/2026.

The New Mexico Board of Dental Health Care reviewed at its 2/20/2026 hearing, to repeal its rule 16.5.11 NMAC - Dentists, License Expiration and Renewal (filed 3/16/2006) and replace it with 16.5.11 NMAC - Dentists, License Expiration and Renewal adopted 4/8/2026 and effective 4/21/2026.

The New Mexico Board of Dental Health Care reviewed at its 2/20/2026 hearing, to repeal its rule 16.5.23 NMAC - Dental Hygienists, Continuing Education Requirements (filed 3/16/2006) and replace it with 16.5.23 NMAC - Dental Hygienists, Continuing Education Requirements adopted 4/8/2026 and effective 4/21/2026.

The New Mexico Board of Dental Health Care reviewed at its 2/20/2026 hearing, to repeal its rule 16.5.24 NMAC - Dental Hygienists, License Expiration and Renewal (filed 3/16/2006) and replace it with 16.5.24 NMAC - Dental Hygienists, License Expiration and Renewal adopted 4/8/2026 and effective 4/21/2026.

The New Mexico Board of Dental Health Care reviewed at its 2/20/2026 hearing, to repeal its rule 16.5.32 NMAC - Dental Assistants, Fees (filed 3/16/2006) and replace it with 16.5.32 NMAC - Dental Assistants, Fees adopted 4/8/2026 and effective 4/21/2026.

The New Mexico Board of Dental Health Care reviewed at its 2/20/2026 hearing, to repeal its rule 16.5.36 NMAC - Dental Assistants, Continuing Education Requirements (filed 3/16/2006) and replace it with 16.5.36 NMAC - Dental Assistants, Continuing Education Requirements adopted 4/8/2026 and effective 4/21/2026.

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL
HYGIENISTS, ETC.)
PART 3 MANDATORY
REPORTING REQUIREMENTS**

16.5.3.1 ISSUING
AGENCY: New Mexico board of dental health care.
[16.5.3.1 NMAC - Rp, 16.5.3.1 NMAC, 4/21/2026]

16.5.3.2 SCOPE: The provisions of Part 3 of Chapter 5 apply to all dentists, dental therapists, non-dentist owners and dental hygienists licensed to practice in New Mexico.
[16.5.3.2 NMAC - Rp, 16.5.3.2 NMAC, 4/21/2026]

16.5.3.3 STATUTORY
AUTHORITY: Sections 61-5A-21 and 61-5A-23 NMSA 1978 (1996 Repl. Pamp.).
[16.5.3.3 NMAC - Rp, 16.5.3.3 NMAC, 4/21/2026]

16.5.3.4 DURATION:
Permanent.
[16.5.3.4 NMAC - Rp, 16.5.3.4 NMAC, 4/21/2026]

16.5.3.5 EFFECTIVE
DATE: April 21, 2026, unless a later date is cited at the end of a section.
[16.5.3.5 NMAC - Rp, 16.5.3.5 NMAC, 4/21/2026]

16.5.3.6 OBJECTIVE:
To establish mandatory reporting requirements for adverse events and incidents against licensed dentists, dental therapists, non-dentist owners and dental hygienists.
[16.5.3.6 NMAC - Rp, 16.5.3.6 NMAC, 4/21/2026]

16.5.3.7 DEFINITIONS:
[RESERVED]
[16.5.3.7 NMAC - Rp, 16.5.3.7 NMAC, 4/21/2026]

**16.5.3.8 ADVERSE
EVENTS AND INCIDENTS**

WHICH MUST BE REPORTED

BY THE LICENSEE: As a condition of licensure, any licensee who seeks or holds an active license, or temporary or public service license in New Mexico, or a retired licensee who seeks to reactivate their license within three years after retirement, must report the following adverse events and incidents in a written report to the board office within thirty days of that event or incident:

- A. conviction of a felony or misdemeanor, other than a traffic violation;
- B. any payment in settlement of a claim, or satisfaction of judgment, in a dental malpractice action personally or by a third party;
- C. any professional review action in which membership status in a health care facility is revoked or suspended; or
- D. discipline by any other state licensing authority or compact commissions;
- E. any known morbidity or mortality arising as a direct result of examination, prescription, diagnosis or treatment by a licensee which results in hospitalization or treatment of the patient by emergency personnel. [16.5.3.8 NMAC - Rp, 16.5.3.8 NMAC, 4/21/2026]

16.5.3.9 DISPOSITION OF REPORTS: The reporting of the incidents or events listed in section 8 of this part shall be maintained in a separate file and shall not be disclosed except as provided by law. Information contained in this report may be used by the board, or its investigators, to establish to the satisfaction of the board that the licensees is competent, is of good moral character, and continues to practice in a professional manner to the standards of care expected of its licensees. [16.5.3.9 NMAC - Rp, 16.5.3.9 NMAC, 4/21/2026]

16.5.3.10 USE OF REPORTS: The board at its discretion may further evaluate, or

investigate circumstances leading to the incident or event, and for good cause, or for the proper protection of the public initiate disciplinary action against the licensee in accordance with procedures contained in the Uniform Licensing Act, or evaluate the licensee’s ability to practice with reasonable skill and safety to patients in accordance with procedures contained in the Impaired Dentists and Hygienists Act.

[16.5.3.10 NMAC - Rp, 16.5.3.10 NMAC, 4/21/2026]
16.5.3.11 VIOLATIONS: Violations of the provisions of Part 3 of Chapter 5 may result in suspension or revocation of the license to practice as a dentist, dental therapist, non-dentist owner or dental hygienist in accordance with 61-5A-21 NMSA 1978. [16.5.3.11 NMAC - Rp, 16.5.3.11 NMAC, 4/21/2026]

HISTORY OF 16.5.3 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:
 BOD Rule 16, Mandatory Reporting of Adverse Events and Incidents, filed 2/14/1994.
 BODHC Rule DS 10-95, Dentists, Mandatory Reporting, filed 5/5/1995.

History of Repealed Material:
 16.5.3 NMAC, Mandatory Reporting Requirements filed 3/16/2006
 Repealed effective 4/21/2026.

Other History:
 BODHC Rule DS 10-95, Dentists, Mandatory Reporting (filed 5/5/1995) was renumbered, reformatted, amended and replaced by 16 NMAC 5.3, Mandatory Reporting Requirements, effective 9/30/1996.
 16 NMAC 5.3, Mandatory Reporting Requirements (filed 9/17/1996) renumbered, reformatted, amended and replaced by 16.5.3 NMAC, Mandatory Reporting Requirements, effective 4/17/2006.
 16.5.3 NMAC, Mandatory Reporting Requirements filed 3/16/2006
 Replaced by 16.5.3 NMAC,

Mandatory Reporting Requirements effective 4/21/2026.

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 7 DENTISTS, TEMPORARY OR PUBLIC SERVICE LICENSURE

16.5.7.1 ISSUING AGENCY: New Mexico board of dental health care. [16.5.7.1 NMAC - Rp, 16.5.7.1 NMAC, 4/21/2026]

16.5.7.2 SCOPE: The provisions of 16.5.7 NMAC apply to all dentists applying for a temporary or a public service license to practice in New Mexico. [16.5.7.2 NMAC - Rp, 16.5.7.2 NMAC, 4/21/2026]

16.5.7.3 STATUTORY AUTHORITY: 16.5.7 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-14 NMSA 1978. [16.5.7.3 NMAC - Rp, 16.5.7.3 NMAC, 4/21/2026]

16.5.7.4 DURATION: Permanent. [16.5.7.4 NMAC - Rp, 16.5.7.4 NMAC, 4/21/2026]

16.5.7.5 EFFECTIVE DATE: April 21, 2026, unless a different date is cited at the end of a section. [16.5.7.5 NMAC - Rp, 16.5.7.5 NMAC, 4/21/2026]

16.5.7.6 OBJECTIVE: To establish the requirements for application for temporary or public service licensure as a dentist.

[16.5.7.6 NMAC - Rp, 16.5.7.6 NMAC, 4/21/2026]

16.5.7.7 DEFINITIONS:

A. "Entity" means a dental or dental hygiene organization, foundation or officially recognized study club, which has a constitution, bylaws and whose officers or board of trustees are dentists or dental hygienists licensed in good standing in the state.

B. "Good standing" means having an active dental license in a jurisdiction for a period of at least three consecutive years immediately preceding the date of application, and a minimum of five years of dental licensure. The board shall consider stipulations, disciplinary, or administrative actions taken against a licensee by the issuing agency, within the previous five years, when determining whether a license is in good standing.

C. "In the state" or "in this state" means that a program has a physical presence in New Mexico in the form of a facility and a permanent faculty.

[16.5.7.7 NMAC - Rp, 16.5.7.7 NMAC, 4/21/2026]

16.5.7.8 CATEGORIES OF TEMPORARY OR PUBLIC SERVICE LICENSES:

Applications for a temporary or a public service New Mexico dental license may be issued in the following categories for specific purposes if education and experience requirements are met.

A. Clinical educator. Dentists, not currently licensed in New Mexico, who provide clinical education or training that includes demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for 48 hours; if the course lasts longer than two days, additional 48 hour licenses may be requested upon payment of the applicable fees; a temporary license may not be issued for less than 48 hours.

B. A student who is enrolled in a commission of dental accreditation (CODA) dental

specialty program or a commission of dental accreditation (CODA) general practice dental residency program, or an advanced education in general dentistry program, who holds a current, valid license in good standing in another US jurisdiction, may be granted a temporary 48 hour license for the purpose of observing or assisting a licensed New Mexico practitioner in cases for educational purposes.

C. A resident or student enrolled in a commission of dental accreditation (CODA) accredited program in the state of New Mexico may be granted a public service license for up to 12 months. This public service license shall be automatically renewed annually only for the purpose of completing the education program and shall not be valid once the residency or educational program is completed or the applicant is no longer enrolled, provided:

(1) the program in this state is accredited by the commission on dental accreditation (CODA);

(2) the residency program maintains a physical presence in New Mexico, including:

(a) a faculty and staff full time in New Mexico who holds a license in New Mexico in good standing in accordance with the degree they hold; and

(b) a facility in the state where residency students may attend lectures, seminars and receive clinical instruction;

(3) public service license for a dental resident or student may not be converted to any other public service license or license by credentials;

(4) the applicant must practice under the sponsorship of or be associated with a dentist holding a current license in good standing in this state;

(5) upon application by a resident or student, the participating residency or education program must supply

documentation to the board of its accreditation status, faculty and facilities in New Mexico; and

(6) successful completion of a clinical board examination is not a requirement for a public service license to be granted to a student or resident under this section.

D. Clinical practice in underserved area or state institutions. A dentist may be granted temporary licensure to practice in a state institution, a program approved or maintained by the New Mexico department of health (NMDOH), or a program or clinic designated by the New Mexico department of health (NMDOH), as dental care underserved area (DCUA). The New Mexico department of health (NMDOH) may recommend to the New Mexico board of dental health care, counties, communities, county census divisions, or in the case of urban areas, neighborhoods, zip codes, and census tracts to be considered as dental care underserved areas (DCUA's). Areas recommended as DCUA's may reflect those areas designated by the federal government as dental health professional shortage areas (DHPSA). The New Mexico board of dental health care will request annually from NMDOH a written report of which areas are recommended as DCUA's and will update the listing throughout the year as appropriate. The New Mexico board of dental health care may designate DCUA's based upon these recommendations:

(1) the temporary license holder is restricted to work exclusively in the institution or program named on the application or the temporary license certificate;

(2) a temporary license for clinical practice in an underserved area or state institution is valid for 12 months and shall expire at the end of that period; the board may re-issue the temporary license for three additional 12 month periods; each license reissue must be approved by the board; the licensee must contact the board office three months prior to the expiration date to begin the re-issue process;

(3) the New Mexico board of dental health care shall rely upon the listing of recommended practices in underserved areas or state institutions, and the listing of recommended DCUA's provided by NMDOH in its review of applications for clinical practice in underserved areas; temporary licenses will be reissued only for sites and DCUA's that remain on the recommended listings by the New Mexico department of health;

(4) the applicant shall provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist in good standing, and bearing the signature of both; and

(5) the applicant shall provide an affidavit from the New Mexico department of health specifying supervision will be by a licensed New Mexico dentist in good standing and bearing the signature of both;

(6) a temporary license to practice in an underserved area may be converted to a license by credentials provided the applicant:

(a) meets all requisite requirements listed in 16.5.8 NMAC and provides all documentation as required in 16.5.8.10 NMAC of these rules, with exception of the requirement to have a license in good standing for five years;

(b) practices for at least 1000 hours per year under a temporary license in an underserved area for three consecutive years; one year of credit will be granted for;

(i) a commission on dental accreditation residency (CODA) or ADA recognized specialty program; or

(ii) private practice of 1000 or more hours per year; and

(c) has no complaints under board

investigation, actions pending or actions taken against the applicant's temporary license;

(d) has renewed the temporary license yearly, and has paid the required license fees;

(e) has maintained the same continuing education requirements of regularly licensed dentists as set forth in 16.5.10 NMAC of these rules; the annual continuing education requirements are to be based upon 1/3 prorated share of those required of a licensee applying for license renewal on a triennial basis; and

(f) applies for conversion of a temporary license to a license by credentials pursuant to 16.5.7.15 NMAC of these rules.

E. Emergency practitioner. Out of state specialists needed for emergency care in a hospital may be granted a temporary license:

(1) the information normally given in official documentation may be given in written or verbal form because of the emergency nature of the license;

(2) this category will be given a 48 hour temporary license but it may be extended in 48 hour increments until the dentist can leave the patient to the care of others; and

(3) the New Mexico licensed dentist acting as the sponsor for the temporary licensee must be responsible for the validity of the following credentials:

(a) the license number in the state in which the applicant resides and practices, and the current status of the license;

(b) proof of liability insurance; and

(c) verification of status of hospital credentials in state of residence or practice.

F. Replacement practitioner. A dentist may be granted temporary licensure for six or 12 months to work exclusively

with patients in the practice of a New Mexico licensed dentist who is unable to practice dentistry because of physical or mental illness, injury, pregnancy, impairment, physical absence, or other condition approved by the board:

(1) the temporary license holder is restricted to work exclusively in the practice named on the application; and

(2) a temporary license as a replacement practitioner is valid for no longer than 12 months, and may not be re-issued.

G. Presumptive public service licensure for a charitable dental project. A dentist not holding a license in the state may be granted a presumptive public service license for up to 72 hours to participate in a board approved charitable project. Except as noted in this section the dentist shall otherwise be subject to the provisions of the dental practice act and the rules and regulations of the board. The presumptive public service license is valid only when:

(1) the charitable project is approved by the board at least 45 days prior to the scheduled event;

(2) the dentist receives no compensation for participating in the project;

(3) the project is sponsored by an entity as defined in 16.5.7.7 NMAC and that entity has been approved by the board to undertake the charitable project;

(4) the dentist holds a license in good standing in another jurisdiction and the license is verified by the sponsoring entity;

(5) the dentist has graduated from and holds a diploma from a dental school accredited by the commission on dental accreditation and a copy of the diploma is on file with the sponsoring entity;

(6) upon request the out-of-state dentist shall produce copies of their diploma and license in another jurisdiction;

(7) the dental care provided is within the scope and limits of the license the dentist holds in the other jurisdiction;

(8) the out-of-state dentist works under the indirect supervision of a dentist licensed in good standing in this state who is present at the charitable project;

(9) patients who receive dental care during the charitable project will be given a list of dentists whom they can contact if post-operative care is needed;

(10) a charitable public service license is not eligible for conversion to any other public service, regular license; or license by credentials; and

(11) no fee shall be required by the board for the presumptive public service license for a charitable project.

[16.5.7.8 NMAC - Rp, 16.5.7.8 NMAC, 4/21/2026]

16.5.7.9 PREREQUISITE REQUIREMENTS FOR TEMPORARY AND PUBLIC SERVICE LICENSURE:

Presumptive public service practitioners as defined in Subsection G of 16.5.7.8 NMAC are not required to comply with Subsection D, E and F of this section. Residents or students as defined in Subsection C of 16.5.7.8 NMAC are not required to comply with Subsection C, E and F of this section. All other applicants for temporary or public service licensure must possess each of the following qualifications:

A. graduated and received a diploma from an accredited dental school or college as defined in Subsection A of Section 61-5A-12 NMSA 1978

B. if the temporary or public service license is for a practice specialty, the applicant must have obtained a postgraduate degree or certificate from an accredited dental college, school of dentistry or other residency program that is accredited by the commission on dental accreditation;

C. hold a valid license in good standing from another state or territory of the United States;

D. applicants requesting a six or 12 month temporary or public service license

must pass the jurisprudence exam with a score of at least a seventy five percent;

E. for those applying for an initial temporary or public service license in public health dentistry or as a replacement practitioner, the board requires a level III background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fee directly to a board designated professional background service to initiate this service; the license may be provisionally issued while awaiting the report from a board designated professional background service; and

F. must have successfully passed clinical examination through WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board; the results of the clinical examination must be sent directly to the board office.

[16.5.7.9 NMAC - Rp, 16.5.7.9 NMAC, 4/21/2026]

16.5.7.10 DOCUMENTATION REQUIREMENTS:

Except as otherwise required by Subsection F of 16.5.7.8 NMAC, presumptive public service practitioners do not need to comply with the following for temporary or public service licensure. Residents or students as defined in Subsection C of 16.5.7.8 NMAC shall provide only documents described in Subsection F of this section. All other applicants for temporary or public service licensure shall submit the required fees and following documentation:

A. completed application; applications are valid for one year from the date of receipt;

B. verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification shall be sent directly to the office from the other state(s) board, must attest to the status, issue date, expiration date, license number, and other information contained on the form;

C. an affidavit from the New Mexico licensed dentist who is sponsoring the applicant attesting to the qualifications of the applicant and the activities the applicant will perform; applicants for temporary licensure in underserved areas and state institutions shall:

(1) provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist, and bearing the signature of both;

(2) provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist, and bearing the signature of both;

(3) report any changes in supervision or oversight of the temporary licensee to the board within 30 days of the change; and

(4) provide proof of acceptable liability insurance coverage;

D. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

E. in addition, applicants requesting temporary licensure in public health dentistry or as a replacement practitioner shall submit the following:

(1) official transcripts verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

(2) national board examination certificate or score card;

(3) board-approved clinical examination score card or certificate from the accepted examining agent;

(4) applicant shall authorize the drug enforcement administration (DEA) and American association of dental examiners clearinghouse to send verification of status directly to the board office;

(5) applicant shall authorize the drug enforcement administration (DEA) and American association of dental examiners clearinghouse to send verification of status directly to the board office;

(6) a status report from a board designated professional background service must be received by the board office directly from a designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

(7) proof of having taken a course in infection control technique and sterilization procedures as defined in 16.5.1.16 NMAC within the past 12 months;

(8) in addition to the documentation required above, an applicant for temporary licensure in a specialty area shall request official transcripts from the residency program or postgraduate training program to be sent directly to the board office from the accredited program.

F. Residents or students as defined in Subsection C of 16.5.7.8 NMAC shall submit the required fees and following documentation:

(1) completed application; applications are valid for one year from the date of receipt;

(2) official transcripts; in the event that official transcripts are not available at the time of application, a letter from the dean of the dental school or college, on official letterhead, verifying the applicant's successful completion of all required courses, may be submitted but must be supplemented with final graduation documentation no later than 45 days from the start of the residency program.

(3) official national board examination certificate or score card;

(4) proof of having taken a course in infection control technique and sterilization procedures as defined in 16.5.1.16 NMAC within the past 12 months;

(5) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association (AHA), the American red cross (ARC), or the American safety and health institute/ health and safety institute (ASHI/ HSI); cannot be a self-study course;

(6) pass the jurisprudence exam with a score of at least seventy five percent;

(7) if resident or student has or holds a license to practice dentistry or other health care profession they shall submit verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall attest to the status, issue date, license number, expiration date and other information contained on the form; and

(8) issue date of the license will correspond with the first date of the residency start date. [16.5.7.10 NMAC - Rp, 16.5.7.10 NMAC, 4/21/2026]

16.5.7.11 RE-EXAMINATION PROCEDURE: An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as defined in Subsection D of 16.5.5 NMAC to retake the exam. [16.5.7.11 NMAC - Rp, 16.5.7.11 NMAC, 4/21/2026]

16.5.7.12 LICENSURE PROCEDURES: Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

A. Emergency Practitioner: Upon receipt of the necessary credentials from the practitioner and the verification from the sponsoring dentist, a professional member of the board or board administrator may declare the practitioner a temporary licensee of record and submit such information to the practitioner, sponsoring dentist, or the hospital.

B. Any application which cannot be approved by the delegate of the board will be reviewed by the entire board at the next scheduled meeting. [16.5.7.12 NMAC - Rp, 16.5.7.12 NMAC, 4/21/2026]

16.5.7.13 RE-ISSUE PROCEDURES: To remain eligible for temporary or public service licensure; temporary or public service license holders who are eligible for re-issue per 16.5.7.8 NMAC must contact the board office three months prior to the expiration date to begin the re-issue process. All requirements regarding re-issue are the same as the initial application as defined in 16.5.7.10 NMAC. The form, application and fee and proof of 20 hours of continuing education must be post-marked on or before the expiration date. [16.5.7.13 NMAC - Rp, 16.5.7.13 NMAC, 4/21/2026]

16.5.7.14 LIMITATION ON PRACTICE: Temporary or public service licensees shall engage in only those activities specified on the temporary or public service license for the time period designated.

A. Temporary or public service licensees shall only practice under the sponsorship or in association with a licensed New Mexico dentist or dental hygienist.

B. Temporary or public service licensees and the approved sponsor or associate are responsible for compliance with the act and these rules. [16.5.7.14 NMAC - Rp, 16.5.7.14 NMAC, 4/21/2026]

16.5.7.15 CONVERSION OF TEMPORARY LICENSE TO LICENSE BY CREDENTIALS:

A. Following the completion of the requirements listed in 16.5.7.8 NMAC of these rules, the temporary licensee may complete an application for licensure by credentials.

B. Any additional licenses acquired during the time practicing under a temporary license must be reported on the application for licensure by credentials.

C. Any actions taken against the applicant's license in any other jurisdiction while licensed in New Mexico under a temporary license must be reported on the application for licensure by credentials.

D. Upon receipt of a complete application the board shall issue a New Mexico license by credentials unless there is any action pending against the temporary license. Then at the discretion of the board or its agent, the temporary license may be extended until pending action is settled. If action is taken against the temporary license, conversion to a license by credentials will be halted and the temporary license will no longer be renewed.

E. Conversion of a temporary license to practice dentistry does not allow conversion of a temporary anesthesia permit into one lasting more than the initial 12 months. After the 12 month period, an additional permit requires successful completion of an additional anesthesia exam and a facilities inspection. See Subsection C of 16.5.15.15 NMAC.
[16.5.7.15 NMAC - Rp, 16.5.7.15 NMAC, 4/21/2026]

HISTORY OF 16.5.7 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

BDE 69-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 8/14/1969;
BDE 70-1, Rules and Regulations of the New Mexico Board of Dental

Examiners, filed 9/12/1970;
BDE 73-1, Rules and Regulations of the New Mexico Board of The New Mexico Board of Dentistry, filed 2/12/1973;
Article IV, Licensing of Dentist, filed 3/11/1981;
Article IV, Licensing of Dentist, filed 1/12/1982;
Article IV, Licensing of Dentist, filed 3/30/1982;
BOD Rule 4, Licensing of Dentists, filed 2/9/1989 (portion of);
BODHC Rule DS 3-95, Dentistry, Temporary Licensure, filed 5/5/1995.

History of Repealed Material:

Article XIV, Repeals BDE 73-1, Rules and Regulations of the New Mexico Board of Dentistry, filed 2/12/1973.
16.5.15 NMAC, Dentists, Temporary Licensure filed 5/18/2023 Repealed effective 4/21/2026.

Other History:

16 NMAC 5.7, General Provisions, filed 9/17/1996;
16 NMAC 5.1, General Provisions, filed 9/17/1996- renumbered, reformatted and amended to 16.5.7 NMAC, Dentists, Temporary Licensure, effective 12/14/2000.
16.5.15 NMAC, Dentists, Temporary Licensure filed 5/18/2023 Replaced by 16.5.15 NMAC, Dentists, Temporary Licensure effective 4/21/2026.

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL
HYGIENISTS, ETC.)
PART 11 DENTISTS,
LICENSE EXPIRATION AND
RENEWAL**

**16.5.11.1 ISSUING
AGENCY:** New Mexico board of

dental health care.
[16.5.11.1 NMAC - Rp, 16.5.11.1 NMAC, 4/21/2026]

16.5.11.2 SCOPE: The provisions of Part 11 of Chapter 5 apply to all dentists with a license to practice in New Mexico.
[16.5.11.2 NMAC - Rp, 16.5.11.2 NMAC, 4/21/2026]

16.5.11.3 STATUTORY AUTHORITY: Part 11 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).
[16.5.11.3 NMAC - Rp, 16.5.11.3 NMAC, 4/21/2026]

16.5.11.4 DURATION: Permanent.
[16.5.11.4 NMAC - Rp, 16.5.11.4 NMAC, 4/21/2026]

16.5.11.5 EFFECTIVE DATE: April 21, 2026, unless a different date is cited at the end of a section.
[16.5.11.5 NMAC - Rp, 16.5.11.5 NMAC, 4/21/2026]

16.5.11.6 OBJECTIVE: To establish procedures for license issuance, expiration and renewal.
[16.5.11.6 NMAC - Rp, 16.5.11.6 NMAC, 4/21/2026]

16.5.11.7 DEFINITIONS: [RESERVED]
[16.5.11.7 NMAC - Rp, 16.5.11.7 NMAC, 4/21/2026]

16.5.11.8 LICENSE EXPIRATION: Initial licenses expire on July 1, in the third year of licensure. No license will be issued for longer than 36 months or less than 25 months.
[16.5.11.8 NMAC - Rp, 16.5.11.8 NMAC, 4/21/2026]

16.5.11.9 RENEWAL PERIOD AND EXPIRATION: After the initial license period, dental licenses expire every three years on June 30. Dental licenses not renewed by July 1, are considered expired.
[16.5.11.9 NMAC - Rp, 16.5.11.9 NMAC, 4/21/2026]

16.5.11.10 RENEWAL PROCESS: A completed renewal application, accompanied by the required fees as set forth in 16.5.5.8 NMAC and 16.5.5.10 NMAC, along with the required proof of completion of 60 hours of continuing education as set forth in 16.5.1.15 NMAC. The completed renewal application must be submitted on or before July 1, of the renewal year.
[16.5.11.10 NMAC - Rp, 16.5.11.10 NMAC, 4/21/2026]

16.5.11.11 LICENSEE RESPONSIBILITY: The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received 30 days prior to license expiration. Incomplete renewal applications shall be returned to the licensee for completion, and may result in the assessment of a late renewal fee as set forth in 16.5.5.8 NMAC.
[16.5.11.11 NMAC - Rp, 16.5.11.11 NMAC, 4/21/2026]

16.5.11.12 RENEWAL AFTER JUNE 30: Renewal applications submitted after July 1, and prior to August 1, of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 60 hours of continuing education as set forth in 16.5.10.8 NMAC, along with the triennial renewal fee, impairment fee and the late fee as set forth in 16.5.5.8 NMAC.
[16.5.11.12 NMAC - Rp, 16.5.11.12 NMAC, 4/21/2026]

16.5.11.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1: Renewal applications submitted on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 60 hours of continuing education as set forth in 16.5.10.8 NMAC, along with the triennial renewal fee, impairment fee,

late fee and the cumulative late fee as set forth in 16.5.5.8 NMAC.
[16.5.11.13 NMAC - Rp, 16.5.11.13 NMAC, 4/21/2026]

16.5.11.14 RENEWAL APPLICATION UNDELIVERABLE: If the notice of renewal is returned to the board office and the licensee has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.
[16.5.11.14 NMAC - Rp, 16.5.11.14 NMAC, 4/21/2026]

HISTORY OF 16.5.11 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
Article IV, Licensing of Dentist, filed 3/11/1981.
Article IV, Licensing of Dentist, filed 1/12/1982.
Article IV, Licensing of Dentist, filed 3/30/1982.
BOD Rule 4, Licensing of Dentist, filed 2/9/1989.
BODHC Rule DS 4-95, Dentistry, License Renewal, filed 5/5/1995.

History of Repealed Material:
16.5.11 NMAC, Dentists, License Expiration and Renewal filed 3/16/2006 Repealed effective 4/21/2026.

Other History:
BODHC Rule DS 4-95, Dentistry, License Renewal (filed 5/5/1995) was renumbered, reformatted, amended and replaced by 16 NMAC 5.11, Dentists, License Expiration and Renewal, effective 9/30/1996.
16 NMAC 5.11, Dentists, License Expiration and Renewal (filed 9/17/1996) renumbered, reformatted, amended and replaced by 16.5.11 NMAC, Dentists, License Expiration and Renewal, effective 4/17/2006.
16.5.11 NMAC, Dentists, License Expiration and Renewal filed 3/16/2006 Replaced by 16.5.11 NMAC, Dentists, License Expiration and Renewal effective 4/21/2026.

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 23 DENTAL HYGIENISTS, CONTINUING EDUCATION REQUIREMENTS

16.5.23.1 ISSUING AGENCY: New Mexico board of dental health care.
[16.5.23.1 NMAC - Rp, 16.5.23.1 NMAC, 4/21/2026]

16.5.23.2 SCOPE: The provisions of Part 23 of Chapter 5 apply to all licensed dental hygienists who are applying to renew their license.
[16.5.23.2 NMAC - Rp, 16.5.23.2 NMAC, 4/21/2026]

16.5.23.3 STATUTORY AUTHORITY: Part 23 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-10 NMSA 1978 (1996 Repl. Pam.).
[16.5.23.3 NMAC - Rp, 16.5.23.3 NMAC, 4/21/2026]

16.5.23.4 DURATION: Permanent.
[16.5.23.4 NMAC - Rp, 16.5.23.4 NMAC, 4/21/2026]

16.5.23.5 EFFECTIVE DATE: April 21, 2026 unless a later date is cited at the end of a section.
[16.5.23.5 NMAC - Rp, 16.5.23.5 NMAC, 4/21/2026]

16.5.23.6 OBJECTIVE: To establish criteria for continuing education for dental hygienists licensed in New Mexico.
[16.5.23.6 NMAC - Rp, 16.5.23.6 NMAC, 4/21/2026]

16.5.23.7 DEFINITIONS:
[RESERVED]

[16.5.23.7 NMAC - Rp, 16.5.23.7 NMAC, 4/21/2026]

16.5.23.8 HOURS

REQUIRED: Forty five hours of continuing education are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 15 hours per year for individuals licensed for less than three years. Initial licenses issued for less than a full year require 15 hours of continuing education for the first renewal.

[16.5.23.8 NMAC - Rp, 16.5.23.8 NMAC, 4/21/2026]

16.5.23.9 COURSES

REQUIRED: Continuing education coursework must contribute directly to the practice of dental hygiene and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal:

A. Proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American heart association (AHA), the American red cross (ARC), or the American safety and health institute/health and safety institute (ASHI/HSI); cannot be a self-study course.

B. infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.

C. Ethics and jurisprudence. Proof of completion of a course in ethics or jurisprudence that includes topics related to the New Mexico dental health care act and board rules. [16.5.23.9 NMAC - Rp, 16.5.23.9 NMAC, 4/21/2026]

16.5.23.10 VERIFICATION OF CONTINUING EDUCATION:

The committee will select renewal

applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the committee at any time. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for four years.

[16.5.23.10 NMAC - Rp, 16.5.23.10 NMAC, 4/21/2026]

16.5.23.11 EMERGENCY DEFERRAL:

A. A licensee unable to fulfill the continuing education requirements may apply to the committee for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the committee.

B. A licensee practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The committee must be notified prior to license expiration that the licensee will be outside the US, including the period of the absence.

(2) Upon return to the US, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

[16.5.23.11 NMAC - Rp, 16.5.23.11 NMAC, 4/21/2026]

HISTORY OF 16.5.23 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

Article XIII, Disciplinary Proceedings, filed 3/12/1981.

Article XIII, Disciplinary Proceedings, filed 1/12/1982.

Article XIII, Disciplinary Proceedings, filed 3/30/1982. That applicable portion of Article XIII, Disciplinary Proceedings replaced by BOD Rule 12, Continuing Education Requirements, filed 2/9/1989.

That applicable portion of BOD Rule 12, Continuing Education Requirements replaced by BODHC Rule DH 5-95, Dental Hygienists, Continuing Education Requirements, filed 5/5/1995.

History of Repealed Material:

16.5.23 NMAC, Dental Hygienists, Continuing Education Requirements (filed 3/16/2006) Repealed effective 4/21/2026.

Other History:

BODHC Rule DH 5-95, Dental Hygienists, Continuing Education Requirements (filed 5/5/1995) was renumbered, reformatted, amended and replaced by 16 NMAC 5.23, Dental Hygienists, Continuing Education Requirements, effective 9/30/1996.

16 NMAC 5.23, Dental Hygienists, Continuing Education Requirements (filed 9/17/1996) renumbered, reformatted, amended and replaced by 16.5.23 NMAC, Dental Hygienists, Continuing Education Requirements effective 4/17/2006.

16.5.23 NMAC, Dental Hygienists, Continuing Education Requirements (filed 3/16/2006) Replaced by 16.5.23 NMAC, Dental Hygienists, Continuing Education Requirements effective 4/21/2026.

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL
HYGIENISTS, ETC.)**

**PART 24 DENTAL
HYGIENISTS, LICENSE
EXPIRATION AND RENEWAL**

16.5.24.1 ISSUING

AGENCY: New Mexico board of dental health care.

[16.5.24.1 NMAC - Rp, 16.5.24.1 NMAC, 4/21/2026]

16.5.24.2 SCOPE: The provisions of Part 24 of Chapter 5 apply to all dental hygienists with a license to practice in New Mexico.
[16.5.24.2 NMAC - Rp, 16.5.24.2 NMAC, 4/21/2026]

16.5.24.3 STATUTORY AUTHORITY: Part 24 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).
[16.5.24.3 NMAC - Rp, 16.5.24.3 NMAC, 4/21/2026]

16.5.24.4 DURATION: Permanent.
[16.5.24.4 NMAC - Rp, 16.5.24.4 NMAC, 4/21/2026]

16.5.24.5 EFFECTIVE DATE: April 21, 2026 unless a later date is cited at the end of a section.
[16.5.24.5 NMAC - Rp, 16.5.24.5 NMAC, 4/21/2026]

16.5.24.6 OBJECTIVE: To establish procedures for license issuance, expiration and renewal.
[16.5.24.6 NMAC - Rp, 16.5.24.6 NMAC, 4/21/2026]

16.5.24.7 DEFINITIONS: [RESERVED]
[16.5.24.7 NMAC - Rp, 16.5.24.7 NMAC, 4/21/2026]

16.5.24.8 LICENSE EXPIRATION: Initial licenses expire on July 1 in the third year of licensure. No license will be issued for longer than 36 months or less than 25 months.
[16.5.24.8 NMAC - Rp, 16.5.24.8 NMAC, 4/21/2026]

16.5.24.9 RENEWAL PERIOD AND EXPIRATION:

After the initial license period, dental hygiene licenses expire every three years on June 30. Dental hygiene licenses not renewed by July 1 are considered expired.

[16.5.24.9 NMAC - Rp, 16.5.24.9 NMAC, 4/21/2026]

16.5.24.10 RENEWAL PROCESS: Each applicant for license renewal must submit the required fee as set forth in 16.5.18.8 NMAC, along with the required proof of completion of 45 hours of continuing education as set forth in 16.5.1.15 NMAC and 16.5.23 NMAC. The completed renewal application must be submitted on or before July 1, of the renewal year.
[16.5.24.10 NMAC - Rp, 16.5.24.10 NMAC, 4/21/2026]

16.5.24.11 LICENSEE RESPONSIBILITY: The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration. Incomplete renewal applications shall be returned to the licensee for completion and may result in the assessment of a late renewal fee as set forth in 16.5.18.8 NMAC.
[16.5.24.11 NMAC - Rp, 16.5.24.11 NMAC, 4/21/2026]

16.5.24.12 RENEWAL AFTER JUNE 30: Renewal applications submitted after July 1, and prior to August 1, of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 45 hours of continuing education as set forth in 16.5.23.8 NMAC, along with the triennial renewal fee, impairment fee and the late fee as set forth in 16.5.18.8 NMAC.
[16.5.24.12 NMAC - Rp, 16.5.24.12 NMAC, 4/21/2026]

16.5.24.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1: Renewal applications submitted on or after

August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 45 hours of continuing education as set forth in 16.5.23.8 NMAC, along with the triennial renewal fee, impairment fee, late fee and the cumulative late fee as set forth in 16.5.18.8 NMAC.
[16.5.24.13 NMAC - Rp, 16.5.24.13 NMAC, 4/21/2026]

16.5.24.14 RENEWAL APPLICATION UNDELIVERABLE: If the notice of renewal is returned to the office and the licensee has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.
[16.5.24.14 NMAC - Rp, 16.5.24.14 NMAC, 4/21/2026]

HISTORY OF 16.5.24 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:
Article VIII, Licensing of Dental Hygienists, filed 3/12/1981.
Article VIII, Licensing of Dental Hygienists, filed 1/12/1982.
Article VIII, Licensing of Dental Hygienists, filed 3/30/1982.
BOD Rule 7, Licensing of Dental Hygienists, filed 2/9/1989.
BODHC Rule DH 4-95, Dental Hygienists, Initial Licensing Period, Renewal, filed 5/5/1995.

History of Repealed Material: 16.5.24 NMAC, Dental Hygienists, License Expiration and Renewal (filed 3/16/2006) Repealed effective 4/21/2026.

Other History: BODHC Rule DH 4-95, Dental Hygienists, Initial Licensing Period, Renewal (filed 5/5/1995) was renumbered, reformatted, amended and replaced by 16 NMAC 5.24, Dental Hygienists, License Expiration and Renewal, effective 9/30/1996.
16 NMAC 5.24, Dental Hygienists,

License Expiration and Renewal (filed 9/17/1996) renumbered, reformatted, amended and replaced by 16.5.24 NMAC, Dental Hygienists, License Expiration and Renewal, effective 4/17/2006.

16.5.24 NMAC, Dental Hygienists, License Expiration and Renewal (filed 3/16/2006) Replaced by 16.5.24 NMAC, Dental Hygienists, License Expiration and Renewal effective 4/21/2026.

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL
HYGIENISTS, ETC.)
PART 32 DENTAL
ASSISTANTS, FEES**

16.5.32.1 ISSUING

AGENCY: New Mexico board of dental health care.

[16.5.32.1 NMAC - Rp, 16.5.32.1 NMAC, 4/21/2026]

16.5.32.2 SCOPE: The provisions of Part 32 of Chapter 5 apply to all applicants for certification; to active, expired and suspended certificate holders; and to anyone who requests a list of certified dental assistants or other public records.

[16.5.32.2 NMAC - Rp, 16.5.32.2 NMAC, 4/21/2026]

16.5.32.3 STATUTORY

AUTHORITY: Part 32 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-20 NMSA 1978 (1996 Repl. Pamp.).

[16.5.32.3 NMAC - Rp, 16.5.32.3 NMAC, 4/21/2026]

16.5.32.4 DURATION:

Permanent.

[16.5.32.4 NMAC - Rp, 16.5.32.4 NMAC, 4/21/2026]

16.5.32.5 EFFECTIVE

DATE: April 21, 2026, unless a later date is cited at the end of a section.

[16.5.32.5 NMAC - Rp, 16.5.32.5 NMAC, 4/21/2026]

16.5.32.6 OBJECTIVE: To

establish fees to generate revenue to support the cost of program administration.

[16.5.32.6 NMAC - Rp, 16.5.32.6 NMAC, 4/21/2026]

16.5.32.7 DEFINITIONS:

[RESERVED]

[16.5.32.7 NMAC - Rp, 16.5.32.7 NMAC, 4/21/2026]

16.5.32.8 FEES:

A. all fees are non-refundable;
B. application fee: \$50;
C. examination fee not to exceed \$100 per exam;

D. triennial renewal fee: \$50;

E. late penalty fee: \$25.00;

F. duplicate certificate fee: \$10.00;

G. list of current certificate holders: \$300; an annual list of current certificate holders is available to the professional association upon request at no cost;

H. reinstatement fee: \$15.00;

I. electronic processing fee, initial and renewal, per year is \$10;

J. return payment fee is \$35.

[16.5.32.8 NMAC - Rp, 16.5.32.8 NMAC, 4/21/2026]

HISTORY OF 16.5.32 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

Article XII, Dental Assistants, filed 3/12/1981.

Article XII, Dental Assistants, filed 1/12/1982.

Article XII, Dental Assistants, filed 8/8/1984.

Article XII, Dental Assistants, filed

2/5/1988.

BOD Rule 10, Dental Assistants, filed 2/9/1989.

BODHC Rule DA 1-95, Dental Assistant, Practice and Certification, filed 5/5/1995.

BODHC Rule DA 2-95, Dental Assistants, Renewal of Certificates, filed 5/5/1995.

History of Repealed Material:

16.5.32 NMAC, Dental Assistants Fees filed 12/1/2000 Repealed effective 4/21/2026.

Other History:

That applicable portion of BODHC Rule DA 1-95, Dental Assistant, Practice and Certification, filed 5/5/1995 and that applicable portion of BODHC Rule DA 2-95, Dental Assistants, Renewal of Certificates (filed 5/5/1995) were renumbered, reformatted, amended and replaced by 16 NMAC 5.32, Dental Assistants, Fees, effective 9/30/1996.

16 NMAC 5.32, Dental Assistants, Fees (filed 9/17/1996) renumbered, reformatted, amended and replaced by 16.5.32 NMAC, Dental Assistants, Fees, effective 4/17/2006.

16.5.32 NMAC, Dental Assistants Fees filed 12/1/2000 Replaced by 16.5.32 NMAC, Dental Assistants Fees effective 4/21/2026.

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL
HYGIENISTS, ETC.)
PART 36 DENTAL
ASSISTANTS, CONTINUING
EDUCATION REQUIREMENTS**

16.5.36.1 ISSUING

AGENCY: New Mexico board of dental health care.

[16.5.36.1 NMAC - Rp, 16.5.36.1 NMAC, 4/21/2026]

16.5.36.2 SCOPE: The provisions of Part 36 of Chapter 5 apply to all dental assistants with current expanded function certification who are applying to renew their certificate.
[16.5.36.2 NMAC - Rp, 16.5.36.2 NMAC, 4/21/2026]

16.5.36.3 STATUTORY AUTHORITY: Part 36 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-10 NMSA 1978 (1996 Repl. Pamp.).
[16.5.36.3 NMAC - Rp, 16.5.36.3 NMAC, 4/21/2026]

16.5.36.4 DURATION: Permanent.
[16.5.36.4 NMAC - Rp, 16.5.36.4 NMAC, 4/21/2026]

16.5.36.5 EFFECTIVE DATE: April 21, 2026, unless a later date is cited at the end of a section.
[16.5.36.5 NMAC - Rp, 16.5.36.5 NMAC, 4/21/2026]

16.5.36.6 OBJECTIVE: To establish the requirements for the renewal of expanded function certificates for dental assistants.
[16.5.36.6 NMAC - Rp, 16.5.36.6 NMAC, 4/21/2026]

16.5.36.7 DEFINITIONS:
[RESERVED]
[16.5.36.7 NMAC - Rp, 16.5.36.7 NMAC, 4/21/2026]

16.5.36.8 HOURS REQUIRED: Thirty hours of continuing education are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 10 hours per year for individuals certified for less than three years. Initial certifications issued for less than a full year require 10 hours of continuing education for the first renewal.
[16.5.36.8 NMAC - Rp, 16.5.36.8 NMAC, 4/21/2026]

16.5.36.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of dental assisting. The following courses are required for license renewal:

- A.** three hours of radiographic technique or safety and protection;
 - B.** as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and
 - C.** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American heart association (AHA), the American red cross (ARC), or the American safety and health institute/health and safety institute (ASHI/HSI); cannot be a self-study course.
- [16.5.36.9 NMAC - Rp, 16.5.36.9 NMAC, 4/21/2026]

16.5.36.10 VERIFICATION OF CONTINUING EDUCATION: The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for four years.
[16.5.36.10 NMAC - Rp, 16.5.36.10 NMAC, 4/21/2026]

16.5.36.11 EMERGENCY DEFERRAL: A certificate holder who is unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.
[16.5.36.11 NMAC - Rp, 16.5.36.11 NMAC, 4/21/2026]

HISTORY OF 16.5.36 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:
Article XII, Dental Assistants, filed 3/12/1981.
Article XII, Dental Assistants, filed 1/12/1982.
Article XII, Dental Assistants, filed 8/8/1984.
Article XII, Dental Assistants, filed 2/5/1988.
BOD Rule 10, Dental Assistants, filed 2/9/1989.
That applicable portion of BOD Rule 10 replaced by BODHC Rule DA 2-95, Dental Assistants, Renewal of Certificates, filed 5/5/1995.

History of Repealed Material:
16.5.36 NMAC, Dental Assistants, Continuing Education Requirements filed 3/16/2006 Repealed effective 4/21/2026.

Other History:
BODHC Rule DA 2-95, Dental Assistants, Renewal of Certificates (filed 5/5/95) was renumbered, reformatted, amended and replaced by 16 NMAC 5.36, Dental Assistants, Continuing Education Requirements, effective 9/30/1996.
16 NMAC 5.36, Dental Assistants, Continuing Education Requirements (filed 9/17/1996) renumbered, reformatted, amended and replaced by 16.5.36 NMAC, Dental Assistants, Continuing Education Requirements, effective 4/17/2006.
16.5.36 NMAC, Dental Assistants, Continuing Education Requirements filed 3/16/2006 Replaced by 16.5.36 NMAC, Dental Assistants, Continuing Education Requirements effective 4/21/2026.

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.1 NMAC, Sections 7, 9, 11, 15, 24, 25 and 29, effective 4/21/2026.

16.5.1.7 DEFINITIONS:

A. Definitions

beginning with the letter "A":

(1) "Act"

means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

(2) "ADEX"

means the American board of dental examiners; a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

~~(2)~~ **(3)**

"Assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment.

~~(3)~~ **(4)**

"Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, dental therapist, community dental health coordinator, expanded function dental auxiliary, or dental student to provide specific tests, treatments or regimes of care.

B. Definitions

beginning with the letter "B":

[RESERVED]

C. Definitions

beginning with the letter "C":

(1)

"CDCA/WREB/CITA" means the commission of dental competency assessments, the western regional examining board and the council of interstate testing agencies; a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

(2) "CITA"

means the council of interstate testing agencies, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

(3) "Close

personal supervision" means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of New Mexico licensed or certified employees or staff.

(4)

"Consulting dentists" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee.

(5) "CRDTS"

means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

(6) "Current

patients of record" means the New Mexico licensed dentist has seen the patient in the practice in the last 12 months.

D. Definitions

beginning with the letter "D":

(1) "Dental

hygiene-focused assessment" means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

(2)

"Dental record" means electronic, photographic, radiographic or manually written records.

(3)

"Diagnosis" means the identification

or determination of the nature or cause of disease or condition.

(4) "Direct

supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(a)

is physically present throughout the performance of the act;

(b)

orders, controls and accepts full professional responsibility for the act performed;

(c)

evaluates and approves the procedure performed before the patient departs the care setting; and

(d) is

capable of responding immediately if any emergency should arise.

(5)

"Disqualifying criminal conviction" means a conviction for a crime that is job-related for the position in question and consistent with business necessity.

E. Definitions

beginning with the letter "E":

(1)

"Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(2)

"Extenuating circumstances" are defined as a serious, physician-verified illness or death in immediate family, or military service. The extenuating circumstances must be presented for the board's consideration on a case-by-case basis.

F. Definitions

beginning with the letter "F":

[RESERVED]

G. Definitions

beginning with the letter "G":

"General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, dental therapist, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis

and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

H. Definitions beginning with the letter “H”:
[RESERVED]

I. Definitions beginning with the letter “I”:
(1) **“Impaired Act”** means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11 NMSA 1978.

(2) **“Indirect supervision”** means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant, dental therapist, or dental student as defined in 61-5A-3 NMSA 1978.

J. Definitions beginning with the letter “J”:
“Jurisprudence exam” means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene, dental therapy and dental assisting in the state of New Mexico.

K. Definitions beginning with the letter “K”:
[RESERVED]

L. Definitions beginning with the letter “L”:
“Licensee” means an individual who holds a valid license to practice dentistry, dental therapy or dental hygiene in New Mexico. This also includes non-dentist owners who are licensed in New Mexico.

M. Definitions beginning with the letter “M”:
“Mobile dental facility” means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

N. Definitions beginning with the letter “N”:
(1) “NCRDSCB” means the national commission on recognition of dental specialties and certifying boards that has been formally recognized by the board and the American dental association’s as meeting the specified

requirements for recognition of dental specialists.

(+) (2) **“NERB/CDCA”** means the former north east regional board of dental examiners, now called the commission of dental competency assessments, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

(2) (3) **“Non-dentist owner”** means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in Subsection G of Section 61-5A-5 NMSA 1978.

O. Definitions beginning with the letter “O”:
[RESERVED]

P. Definitions beginning with the letter “P”:
(1) **“Palliative procedures”** means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

(2) **“Portable dental unit”** means a non-facility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

(3) **“Professional background service”** means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

(4) **“Protective patient stabilization”** means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely.

(5) **“Provider”** means a provider of dental health care services, including but not limited to dentists, dental hygienists, dental therapists, community dental health coordinators and dental assistants, including expanded function dental auxiliaries.

Q. Definitions beginning with the letter “Q”:
[RESERVED]

R. Definitions beginning with the letter “R”:
[RESERVED]

S. Definitions beginning with the letter “S”:
(1) **“Specialist”** means a specialty is an area of dentistry that has been formally recognized by the board and the ~~[American dental association as meeting the specified requirements for recognition of dental specialists.]~~ American dental association’s national commission on recognition of dental specialties and certifying boards (NCRDSCB) as meeting the specified requirements for recognition of dental specialists.

(2) **“SRTA”** means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

(3) **“Supervising dentist”** means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

(4) **“Supervision”** means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and

clinical individuals that the dentist supervises.

T. Definitions

beginning with the letter “T”:

(1)

“**Teledentistry**” means a dentist’s, dental hygienist’s or dental therapist’s use of electronic information, imaging and communication technologies, including interactive audio, video and data communications as well as store-and-forward technologies, to provide and support dental health care delivery, diagnosis, consultation, treatment, transfer of dental data and education.”

(2) “**Third**

Party payer” means an organization other than the patient (1st party) or the health care provider (2nd party) involved in the financing of personal health services.

U. Definitions

beginning with the letter “U”:
[RESERVED]

V. Definitions

beginning with the letter “V”:
[RESERVED]

W. Definitions

beginning with the letter “W”:

(1) “**WREB**”

means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

(2) “**Written**

authorization” means a signed and dated prescription from a supervising dentist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

X. Definitions

beginning with the letter “X”:
[RESERVED]

Y. Definitions

beginning with the letter “Y”:
[RESERVED]

Z. Definitions

beginning with the letter “Z”:
[RESERVED]

[16.5.1.7 NMAC - Rp, 16.5.1.7 NMAC, 5/31/2023; A, 4/21/2026]

16.5.1.9 RESPONSIBILITY OF LICENSEE OR CERTIFICATE HOLDER:

A. It is the responsibility of the licensee or certificate holder to keep the board informed of a current mailing address [~~All correspondence, including renewal forms, will be mailed to the last address on file. The board assumes no responsibility for renewal applications or other correspondence not received because of a change of address.~~] and email address. All correspondence will be sent to the last address on file. The board assumes no responsibility for correspondence not received because of a change of address.

B. The board must be informed of current practice address(s) for all licensees or certificate holders. Any change in practice address(s) must be reported to the board in writing within 30 days of the change.

[16.5.1.9 NMAC - Rp, 16.5.1.9 NMAC, 5/31/2023; A, 4/21/2026]

16.5.1.11 TELEPHONE CONFERENCES:

As authorized by Subsection C of Section 10-15-1 NMSA 1978 of the Open Meetings Act, NMSA 1978, when it is difficult or impossible for a member of the board or committee to attend a meeting in person, the member may participate through a conference telephone [~~Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board or committee who speaks during the meeting.~~] or virtual meeting platform. Each member participating by conference telephone or virtually must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board or committee who speaks during the meeting.

[16.5.1.11 NMAC - Rp, 16.5.1.11 NMAC, 5/31/2023; A, 4/21/2026]

16.5.1.15 GUIDELINES FOR APPROVED CONTINUING EDUCATION:

A. Continuing education is defined as dental related education that contributes to the existing knowledge base of a licensee or certificate holder, which would include but not limited to; treatment modalities, advances in science, patient health, safety, and management; practice and workplace management for the practice of dentistry, dental therapy, dental hygiene and dental assisting.

B. Credit hours:

(1) one hour of credit will be granted for every hour of contact instruction;

(2) eight hours shall be the maximum number of continuing education credits granted in a single day;

C. Approved providers and sponsors: The following providers are approved for delivering continuing education.

(1) local, state, regional, national, or international dental, dental hygiene, dental assisting or medical related professional associations or organizations; and affiliate organization using their approved CE program designations;

(2) institutions accredited by the United States department of education;

(3) [~~Federal and State Government~~] federal and state government agencies such as military dental division or the [~~Veterans Administration~~] veterans administration;

(4) hospitals and medical clinics;

(5) board approved study clubs as further defined in Subsection H of 16.5.1.15 NMAC;

D. Approved methods for acquiring continuing education:

(1) attendance at scientific meetings or sessions;

(2) live virtual webinars. (i.e., courses conducted live, in real-time with the ability to interact with the speaker;

(3) self-study. A method of instruction that is self-paced such as those offered through magazines, articles, pre-recorded audio or video recordings which are viewed or listened to at a later date:

(a) a post instruction examination must be successfully completed for all self-study methods;

(b) ~~[a licensee is allowed a maximum of 30 hours in the category of self-study per triennial renewal period.] the maximum number of self-study hours allowed for any license or certificate holder cannot exceed fifty percent of any stated requirement for any application category, including initial, renewal, reactivation, or reinstatement.~~

(4) medical education courses that are accredited by the American council for continuing medical education (ACCME) shall be limited to eight hours per triennial period;

(5) courses not sponsored by a recognized provider as indicated in Subsection C of 16.5.1.15 NMAC may be approved for credit by the secretary-treasurer or delegate of the board; the application for approval must include the course outline, date, location, hours, names and qualifications of presenters.

E. Basic life support (BLS) or cardiopulmonary resuscitation (CPR) ~~[A licensee is eligible to receive hour for hour credit for course taken to acquire this certification.],~~ obtained through the American heart association (AHA), the American red cross (ARC), or the American safety and health institute/ health and safety institute (ASHI/ HSI).

(1) certification must be acquired through a live hands-on course or through a hybrid method where demonstration of skills is still required;

(2) certification acquired through a self-study only course, is not allowed;

(3) a licensee is eligible to receive hour for hour

credit for course taken to acquire this certification:

(4) a licensee shall be allowed a maximum of three hours each triennial period.

F. Additional approved activities eligible for continuing education credit:

(1) presenting. An original presentation by a licensee is eligible to receive hour for hour credit for preparation and delivery of such presentation. A licensee shall be allowed a maximum of eight hours each triennial period. The licensee shall retain as proof of such presentation an outline, date, place and sponsor of the presentation.

(2) clinical examiners for regional boards. A licensee participating in the training and calibration sessions of a regional board examination shall be allowed a maximum of 24 hours each triennial period.

(3) volunteer for the board or committee. A non-board or non-committee licensee volunteering for the board of committee may receive up to 10 hours of continuing education for board approved activities; including serving as a hearing officer, investigator, mentor, or monitor.

(4) approved charitable events. A licensee participating in a board or dental hygiene committee approved charitable event shall be allowed a maximum of eight hours each triennial period.

(5) graduate or post-graduate. Courses taken by a licensee at institutions of higher education for the purpose of receiving a dental related degree, advanced degree or certificate are eligible for continuing education credit. A licensee shall be allowed 10 hours per semester credit hour, as assigned in the course catalogue of the educational institution.

(6) professional training programs. Such as those taken for acquiring expanded certifications or education. Examples include but not limited to, trainings for local anesthesia and expanded

function dental auxiliary certification. When given by an approved provider as defined in Subsection C of 16.5.1.15 NMAC.

(7) academic Teaching. A licensee who instructs as a full, part, or adjunct faculty, at a dental related program is allowed a maximum of [5] ~~five~~ continuing education hours per semester credit hour that is taught at an institution of higher education. Not to exceed a maximum of 10 credit hours per triannual renewal.

(8) jurisprudence exam. A licensee or certificate holder may take the board's open book jurisprudence examination, up to once a year, and be granted three hours of continuing education credit for successfully passing the exam with a score of seventy-five percent or above. There will be a twenty-five dollar (\$25) administrative fee for the exam to cover the cost of handling.

G. Course limitations and courses not allowed.

(1) Courses that are primarily in relationship to maximizing income, billing, dental benefit claims submission or review, or marketing in the dental or dental hygiene practice shall be limited to eight hours per triennial period.

(2) Courses dealing largely with money management, personal finances or personal business matters, and courses in basic educational or cultural subjects that are not taught in direct relationship to dental care may not be used to fulfill continuing education requirements.

(3) CE received as part of declaratory decree or as a result of disciplinary order shall not count toward the total triennial continuing education hours needed by the licensee. or certificate holder.

H. [Approved] Board approved study clubs. The board may approve study clubs which meet the following criteria:

(1) composed of not less than five licensees with elected officers, written bylaws, and regular meetings;

(2) organized for the purpose of scientific study;

(3) the approved club must keep records of continuing education information or material presented the number of hours and the members in attendance; audio-visual recordings or similar media produced or distributed by approved providers may be used; guest speakers may also be used to present educational material;

(4) board approval is valid for three years; application for continued board approval must be resubmitted prior to expiration of existing approval;

(5) any changes to elected officers and written bylaws must be reported to the board and require board approval.

I. Verification of course attendance. The following documents, or combination of documents, may be used to verify attendance in the required continuing education:

(1) course certificate with the course title, content, presenter, sponsor [and hours;] date of attendance, hours, and method of instruction (self-study or live/interactive);

(2) pamphlet of course with same information as requested on certificate along with proof of purchase;

(3) course attendance sheet submitted from the sponsor;

(4) course code or statement of attendance from presenter or sponsor of licensee attendance;

(5) for out of state courses and meetings when certificates or sign-in sheets are not available, the licensee may provide a copy of the registration form, with a copy of courses in printed form which were offered, identify the ones attended, along with information regarding travel and lodging accommodations for the meeting;

(6) licensee is responsible for maintaining [records of all CEUs for one year following the renewal cycle.] CE records for four years.

[16.5.1.15 NMAC - Rp, 16.5.1.15 NMAC, 5/31/2023; A, 4/21/2026]

16.5.1.24 RECORD

KEEPING: [All records of patient treatment must be maintained for at least six years. If a dentist or non-dentist owner retires or is no longer practicing in New Mexico, the dentist or non-dentist owner must provide the following documentation to the board office:

_____ **A.** _____ actual date of retirement or date of no longer practicing in New Mexico;

_____ **B.** _____ proof of written notification to all patients currently under active treatment; and

_____ **C.** _____ the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients in the 12 previous months to the date of closing practice, the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records.]

_____ **A.** All records of patient treatment must be maintained for at least six years.

_____ **B.** Non-dentist owners must provide the name, address, phone number, and email address of the custodian of records who is responsible for patient record requests and accepting subpoenas and shall notify the board in writing within 30 days of any changes.

_____ **C.** If a dentist or non-dentist owner(s) leaves, changes, or closes a practice location, retires, or is no longer practicing in New Mexico, the dentist and, if applicable, the non-dentist owner(s) must provide the following documentation to the board office within 30 days of any changes:

_____ (1) the last date at practice location or date of retirement;

_____ (2) proof of written notification to all patients currently under active treatment; and

_____ (3) the name, address, phone number, and email address of the custodian of records where all active dental treatment

records will be maintained for a minimum of six years; active treatment records are records of patients in the 24 previous months to the date of closing practice or the departure of dentist.

[16.5.1.24 NMAC - Rp, 16.5.1.24, 5/31/2023; A, 4/21/2026]

16.5.1.25 CODE OF

ETHICS: Unless otherwise stated in the rules or statute, the board, licensees and certificate holders shall refer to the most recent version of the American dental association (ADA) [code of ethics for guidance.] principles of ethics and code of professional conduct for guidance. [16.5.1.25 NMAC - Rp, 16.5.1.25 NMAC, 5/31/2023; A, 4/21/2026]

16.5.1.29 ADVERTISING, PROMOTIONS AND SPECIALTY RECOGNITIONS FOR ALL

LICENSEES: This rule applies to advertising in all types of media that is directed to the public. No dentist, dental hygienist, non-dentist owner, or their representatives shall advertise in any form of communication in a manner that is misleading, deceptive, or false. The licensee will be responsible for any third party making such false claims or misleading advertising on their (licensee's) behalf.

A. Definitions:

(1) for the purposes of this section, "advertising/advertisement" is:

(a) any written or printed communication for the purpose of soliciting, describing, or promoting a dentist's, hygienist's, non-dentist owner's licensed activity, including, but not limited to, a brochure, letter, pamphlet, newspaper, directory listing, periodical, business card or other similar publication;

(b) any radio, television, internet, computer network or similar airwave or electronic transmission which solicits or promotes the dental practice';

(c) "advertising" or "advertisement" does not include any of the following:

(i) any printing or writing on buildings, uniforms or badges, where the purpose of the writing is for identification;

(ii) any printing or writing on memoranda or other communications used in the ordinary course of business where the sole purpose of the writing is other than the solicitation or promotion of the dental practice;

(iii) any printing or writing on novelty objects or dental care products.

(2) "bait advertising" is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise or services, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise or services of the type so advertised. See 16 U.S.C Section 238.

B. General requirements:

(1) at the time any type of advertisement is placed, the licensee must in good faith possess and provide to the board upon request information that would substantiate the truthfulness of any assertion, omission, or claim set forth in the advertisement;

(2) the board recognizes that clinical judgment must be exercised by a dentist or dental hygienist. Therefore, a good faith diagnosis that the patient is not an appropriate candidate for the advertised dental or dental hygiene service or product is not a violation of this rule;

(3) licensee shall be responsible for, and shall approve any advertisement made on behalf of the dental or dental hygiene practice, except for brand advertising, i.e. advertising that is limited to promotion of the name of the practice or dental corporation. The licensee

shall maintain a record documenting their approval and shall maintain such record for a period of three years.

C. The term false advertising means advertising, including labeling, which is misleading in any material respect; and in determining whether any advertising is misleading, there shall be taken into account among other things not only representations made by statement, word, design, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity to which the advertising related under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. See Section 57-15-2 NMSA 1978. Misleading, deceptive, or false advertising includes, but is not limited to the following, and if substantiated, is a violation and subject to disciplinary action by the board:

(1) a known material misrepresentation of fact;

(2) the omission of a fact necessary to make the statement considered as a whole not materially misleading;

(3) advertising that is intended to be or is likely to create an unjustified expectation about the results the dentist or dental hygienist can achieve;

(4) advertising that contains a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dental or dental hygiene services if that representation is not subject to reasonable substantiation. For the purpose of this subsection, reasonable substantiation is defined as tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area that have been 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. Individual experiences are not a substitute for scientific research.

Evidence about the individual experience of consumers may assist in the substantiation, but a determination as to whether reasonable substantiation exists is a question of fact on a case-by-case basis;

(5) the false or misleading use of a claim regarding licensure, certification, registration, permitting, listing, education, professional memberships or an unearned degree;

(6) advertising that uses patient testimonials unless the following conditions are met:

(a) the patient's name, address, and telephone number as of the time the advertisement was made must be maintained by the dentist or dental hygienist and that identifying information shall be made available to the [Board] board upon request by the board;

(b) dentists or dental hygienists who advertise dental or dental hygiene services, which are the subject of the patient testimonial, must have actually provided these services to the patient making the testimonial;

(c) if compensation, remuneration, a fee, or benefit of any kind has been provided to the person in exchange for consideration of the testimonial, such testimonial must include a statement that the patient has been compensated for such testimonial;

(d) a specific release and consent for the testimonial shall be obtained from the patient;

(e) any testimonial shall indicate that results may vary in individual cases;

(7) advertising that makes an unsubstantiated medical claim or is outside the scope of dentistry, unless the dentist or dental hygienist holds a license, certification, or registration in another profession and the advertising and or claim is within the scope authorized by the license, certification, or registration in another profession;

(8) advertising that makes unsubstantiated promises

or claims, including but not limited to claims that the patient will be cured;

(9) the use of bait advertising as outlined in federal trade commission guidelines;

(10) advertising that includes an endorsement by a third party in which there is compensation, remuneration, fee paid, or benefit of any kind if it does not indicate that it is a paid endorsement;

(11) advertising that infers or gives the appearance that such advertisement is a news item without using the phrase "paid advertisement";

(12) the promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform;

(13) the use of any personal testimonial by the licensee attesting to a quality or competence of a service or treatment.

(14) advertising that claims to provide services at a specific rate and fails to disclose that a dental benefit plan may provide payment for all or part of the services;

(15) print advertising that contains all applicable conditions and restrictions of an offer that is not clearly legible or visible. The board will consider font size and positioning within the advertisement as to what is determined as false, misleading or deceptive;

(16) audio advertising that contains all applicable conditions and restrictions that is broadcast at different speed and volume of the main recording and offer;

(17) failure to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist's or non-dentist owner's name(s), address and contact information or direct reference where the name of the dentist(s) or non-dentist owner(s) can be found, including, but not limited to, an internet website;

(18) failure to update website(s) wherein the names

of the current dentist(s) are for each office location within 30 days of the change;

(19) failure to practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;

(20) failure to practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office;

(21) advertising or making claims that a licensee or practice claims to be superior to any other licensee or practice, including, but not limited to, descriptions of being "the highest quality", a "super-dentist" or "super-general dentist/practitioner", "specially-trained hygienist", "hygienist specializing in non-surgical periodontics", or similar;

D. Specialty Practice and Advertising: the board may discipline a dentist for advertising or otherwise holding himself/herself out to the public as a practicing a dental specialty unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation (CODA) in one to the specialty areas of dentistry recognized by the ~~[American dental association. See Subsection E and F of Section 61-5A-12 NMSA 1978.] American dental association's national commission on recognition of dental specialties and certifying boards (NCRDSCB). See Subsection E and F of Section 61-5A-12 NMSA 1978.~~

E. Acronyms:

In addition to those acronyms required by law pertaining to one's business entity such as professional corporation (P.C.) or limited liability company (L.L.C.), dentists or dental hygienists may only use DDS, DMD,

RDH, MD, PhD, MA, MS, BA, BS. Any credential that does not meet this requirement must be completely spelled out.

[16.5.1.29 NMAC - Rp, 16.5.1.29 NMAC, 5/31/2023; A, 4/21/2026]

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.5 NMAC, Section 8, effective 4/21/2026.

16.5.5.8 FEES:

A. All fees are non-refundable.

B. Application for licensure by examination fee is \$600, which includes the initial licensing period.

C. Application for licensure by credential fee is \$850, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$100 to re-take the exam.

E. Triennial renewal fee for all dental licensees is \$550.

(1) impaired fee is \$30 per triennial renewal period plus renewal fee;

(2) late renewal fee of \$100 after July 1 through September 1 plus renewal and impaired fees;

(3) cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.

F. Triennial renewal fee for inactive license is \$90.

G. Temporary license fees:

(1) forty-eight-hour license, application fee of \$50, license fee of \$50;

(2) six-month license, application fee of \$100, license fee of \$200;

(3) twelve-month license, application fee of \$100, license fee of \$300;
 (4) twelve month license for student enrolled in residency program, application fee of \$25.00, license fee of \$50.00.

H. Anesthesia permit fees:

(1) nitrous oxide permit fee is \$25;
 (2) minimal sedation permit fee is \$25;
 (3) moderate sedation permit fee is \$300;
 (4) deep sedation and general anesthesia permit fee is \$300.

I. Reinstatement fee is \$400.

J. Application for licensure for inactive status is \$50.

K. Non-dentist owner fees.

(1) application for licensure fee is \$300, which includes the initial licensing period;
 (2) triennial renewal fee of \$150;

(3) late renewal fee of \$100 after July 1 through September 1 plus renewal fee;

(4) cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal and late fee.

L. ~~[Administrative and duplication fees:~~

~~(1) duplicate license fee is \$25;~~

~~(2) multiple copies of the statute or rules are \$10 each;~~

~~(3) copy fees are \$0.25 per page;~~

~~(4) list of current dental licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and~~

~~(5) mailing labels of current dental licensees is \$300.] Administrative and duplication fees:~~

(1) duplicate license fee is \$25;

(2) electronic processing fee, initial and renewal, per year is \$10;

(3) list of current dental licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and

(5) return payment fee is \$35.

M. Expedited licensure fees. The fees for expedited licensure submitted pursuant to Subsection B of Section 61-5A-14 NMSA 1978 are a \$100 application fee and a \$300 license fee.

[16.5.5.8 NMAC - Rp, 16.5.5.8 NMAC, 12/27/2022; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.6 NMAC, Sections 8, 9 and 10, effective 4/21/2026.

16.5.6.8 PREREQUISITE REQUIREMENTS FOR GENERAL PRACTICE LICENSE:

Each applicant for a license to practice dentistry by examination must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school as defined in Subsection A of Section 61-5A-12 NMSA 1978;

B. successfully completed the dental national board examination as defined in Subsection A of Section 61-5A-12 NMSA 1978;

C. passed a board approved clinical examination which includes hands-on periodontal and restorative procedures, the results of the clinical examination are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to a

board accepted examining agent for examination; and

(2) results of the clinical examination must be sent directly to the board office; and

D. completed the jurisprudence exam with a score of at least seventy five percent; ~~[the applicant shall schedule the exam through the board office;]~~

E. the board requires a background status report from a board designated professional background service the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.6.8 NMAC - Rp, 16.5.6.8 NMAC, 5/31/2023; A, 4/21/2026]

16.5.6.9 PREREQUISITE REQUIREMENTS FOR

SPECIALTY LICENSE: Each applicant for a license to practice a dental specialty by examination must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area:

A. graduated and received a diploma from an accredited dental school as defined in Subsection A of Section 61-5A-12 NMSA; and

B. a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in Subsection E of Section 61-5A-12 NMSA 1978 in one of the following specialty areas:

(1) dental public health,

(2) endodontics,

(3) oral and maxillofacial surgery,

(4) orthodontics and dento-facial orthopedics,

(5) oral pathology,

(6) pediatric dentistry,

(7) periodontology,

(8) prosthodontics, or

(9) other specialties approved by the [~~American dental association;~~] American dental association's national commission on recognition of dental specialties and certifying boards (NCRDSCB);

C. successfully completed the dental national board examination as defined in Subsection A of Section 61-5A-12 NMSA 1978;

D. passed a specialty clinical examination approved by the board; the results of the exam are valid in New Mexico for a period not to exceed five years; examination results must be sent directly to the board office;

E. an applicant in any specialty defined above for which there is no specialty clinical examination may substitute diplomat status for the examination;

F. completed the jurisprudence exam with a score of at least seventy five percent; the applicant shall schedule the exam through the board office; and

G. the board requires a [~~level~~H] background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.6.9 NMAC - Rp, 16.5.6.9 NMAC, 5/31/2023; A, 4/21/2026]

16.5.6.10 DOCUMENTATION REQUIREMENTS: Each applicant for a license by examination must submit the required fees and following documentation:

[A. completed application; applications are valid for one year from the date of receipt;

B. official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. a copy of clinical examination score card or certificate

from the appropriate specialty board;

D. copy of national board examination certificate or scorecard;

E. proof of having taken a course in infection control technique or graduation from dental school within the past 12 months;

F. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

G. the board will obtain verification of applicant status from the national practitioners data bank and the American association of dental examiners clearinghouse; and

H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

I. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

J. verification of licensure in all states where the applicant holds or has held a license in good standing to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a seal, and must attest to the status, issue date, license number, and other information contained on the form;

K. in addition to the documentation required above, an applicant for licensure in a specialty area must request official transcripts from the residency program or postgraduate training program to be

sent directly to the board office from the accredited program.];

A. completed application; applications are valid for one year from the date of receipt;

B. official transcripts successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. proof of having taken a course in infection control technique and sterilization procedures as defined in 16.5.1.16 NMAC or graduation from dental school within the past 12 months;

D. proof of completion of a course in ethics or jurisprudence that includes topics related to the New Mexico Dental Health Care Act and board rules within the past 12 months;

E. national board examination certificate or scorecard;

F. official board-approved clinical examination score report. For specialty licensure, official certificate of diplomate status or board-certification from the national certifying board recognized by the NCRDSCB;

G. official report from the national practitioner's data bank and the American association of dental examiners clearinghouse; and

H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

I. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American heart association (AHA), the American red cross (ARC), or the American safety and health institute/health and safety institute (ASHI/HSI); cannot be a self-study course;

J. verification of licensure in all states where the

applicant holds or has held a license in good standing to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must attest to the status, issue date, license number, and other information contained on the form;

~~K.~~ in addition to the documentation required above, an applicant for licensure in a specialty area must request official transcripts from the residency program or postgraduate training program to be sent directly to the board office from the accredited program.

[16.5.6.10 NMAC - Rp, 16.5.6.10 NMAC, 5/31/2023; A, 4/21/2026]

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.8 NMAC, Sections 9 and 10, effective 4/21/2026.

16.5.8.9 PREREQUISITE REQUIREMENTS FOR LICENSE IN SPECIALTY PRACTICE:

Any dentist who has taken a clinical examination accepted by the board and who has completed and passed a CODA accredited specialty program in one of the ~~[ADA recognized specialties may be issued a specialty license by the board. Each applicant for a license to practice a dental specialty by credentials must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area.] specialties recognized by the American dental association's national commission on recognition of dental specialties and certifying boards (NCRDSCB) may be issued a specialty license by the board. Each applicant for a license to practice a dental specialty by credentials must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area.~~

A. Graduated and received a diploma from an accredited dental school as defined in Subsection A of Section 61-5A-12 NMSA 1978.

B. Have a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in Subsection E of Section 61-5A-12 NMSA 1978, in one of the specialty areas of dentistry recognized by the ~~[ADA]~~ ADA's NCRDSCB.

C. Completed 60 hours of continuing education during the past 36 months in compliance with 16.5.1.15 NMAC of these rules.

D. Successfully completed the dental national board examination as defined in Subsection A of Section 61-5A-12 NMSA 1978.

E. An applicant in any specialty defined in Subsection E of 16.5.8.9 NMAC for which there is no specialty examination may substitute ~~[diplomat]~~ diplomate status for the examination.

F. Successfully completed ~~[an examination]~~ the examinations for ~~[diplomat]~~ diplomate status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology, other specialties approved by the American dental association; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for ~~[diplomat]~~ diplomate status given by the American board of public health dentistry.

G. Completed the jurisprudence exam with a score of at least seventy-five percent.

H. Hold a current active license in good standing by examination in another state or territory of the United States.

I. The board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

J. The board requires a level II background status report from a board designated professional background service. Application for this service will be included with other application materials. The applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.8.9 NMAC - Rp, 16.5.8.9 NMAC, 5/31/2023; A, 4/21/2026]

16.5.8.10 DOCUMENTATION REQUIREMENTS:

Each applicant for licensure by credentials must submit the required fees and following documentation:
~~[~~ **A.** ~~completed application; applications are valid for one year from the date of receipt;~~
B. ~~official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;~~
C. ~~copy of national board examination certificate or scorecard;~~
D. ~~copy of clinical examination score card or certificate from the accepted examining agent;~~
E. ~~proof of having taken a course in infection control technique within the past twelve months;~~
F. ~~proof of current life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross,~~

or the American safety and health institute (ASHI); cannot be a self-study course;

G. the board will obtain verification of applicant status from the national practitioner's data bank and the American association of dental examiners clearinghouse;

H. verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a seal, and must attest to the status, issue date, license number, and other information contained on the form;

I. a status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

J. the board may deny, stipulate or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentist and Hygienist Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

K. proof of 60 hours of continuing education during the 36 months prior to licensure in compliance with 16.5.1.15 NMAC of these rules;

L. dentists employed in uniform service practice shall furnish:

(1) a copy of the most recent commissioned officers effectiveness report, or equivalent, issued by the uniformed service dental service, and

(2) a certified letter from the clinic commander attesting to past record and any actions taken on applicant's uniform service credentials;

M. applicants for specialty by credentials in one of the following applicants for

specialty license must submit: official transcripts from the residency program or postgraduate training program, sent directly to the board office from the accredited program;

N. certificate of diplomat status from the specialty board, must be sent directly to the board office; and

O. successfully completed an examination for diplomat status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomat status given by the American board of public health dentistry;

P. supplemental information may be requested by the board.]

A. completed application; applications are valid for one year from the date of receipt;

B. verification of licensure in all states where the applicant holds or has held a license in good standing to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must attest to the status, issue date, license number, and other information contained on the form;

C. official transcripts successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

D. national board examination certificate or scorecard;

E. official board-approved clinical examination score report. For specialty licensure, official certificate of diplomate status or board-certification from the national certifying board recognized by the NCRDSCB;

F. official report from the national practitioner's data bank and the American association of dental examiners clearinghouse; and

G. a status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

H. proof of 60 hours of continuing education during the 36 months prior to licensure in compliance with 16.5.1.15 NMAC of these rules;

I. proof of completion of a course in ethics or jurisprudence that includes topics related to the New Mexico dental health care act and board rules within the past 12 months;

J. proof of having taken a course in infection control technique and sterilization procedures as defined in 16.5.1.16 NMAC or graduation from dental school within the past 12 months;

K. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association (AHA), the American red cross (ARC), or the American safety and health Institute/health and safety institute (ASHI/HSI); cannot be a self-study course;

L. dentists employed in uniform service practice shall furnish:

(1) a copy of the most recent commissioned officer's effectiveness report, or equivalent, issued by the uniformed service dental service, and

(2) a certified letter from the clinic commander attesting to past record and any actions taken on applicant's uniform service credentials;

M. applicants for specialty by credentials in one of the following applicants for specialty license must submit: official transcripts from the residency program or postgraduate training program, sent directly to the board office from the accredited program;

N. certificate of diplomate status from the specialty board, must be sent directly to the board office; and

O. successfully completed an examination for diplomate status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care; and

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomate status given by the American board of public health dentistry.

P. supplemental information may be requested by the board.

[16.5.8.10 NMAC - Rp, 16.5.8.10 NMAC, 5/31/2023; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.9 NMAC, Sections 7, 8, 10, 11 and 12, effective 4/21/2026.

16.5.9.7 DEFINITIONS:

A. "Employee" means a licensee of the board employed or contracted with a non-dentist owner for the purpose of providing dental or dental hygiene services as defined by

their respective scopes of practice; or enters into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

B. "Exempted entities" not included in non-dentist owner, under the following stipulations an entity may function as a non-dentist owner without a New Mexico license:

(1) government agencies providing dental services within affiliated facilities;

(2) government agencies engaged in providing public health measures to prevent dental disease;

(3) spouses of a deceased licensed dentist or dental hygienists for a period of one year following the death of the licensee;

(4) accredited school of dentistry, dental hygiene or dental assisting providing dental services solely in an education setting only;

(5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;

(6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;

(7) nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent person; and

(8) hospitals licensed by the department of health.

C. "Non-dentist owner" means [an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services.] a person, corporation or agency not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of New Mexico licensed dentists that employs or contracts with a dentist or dental

hygienist to provide dental or dental hygiene services, including telehealth services.

[16.5.9.7 NMAC - Rp, 16.5.9.7 NMAC, 5/31/2023; A, 4/21/2026]

16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER:

To employ and contract for dental services, a non-dentist owner shall apply to the board for the proper license and adhere to the re-licensure criteria and fees as established by the rules of the board.

A. unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

B. the non-dentist owner licensee shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

C. if an employee dentist or dental hygienist leaves the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;

D. non-dentist owner shall notify the board in writing within 30 days of any changes in ownership;

E. non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;

F. non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s);

G. non-dentist owner employees shall follow provision of 16.5.16 NMAC; failure of an employee of the licensee to follow

these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

H. non-dentist owners licensed prior to the effective date of these rules shall be allowed to maintain their existing license(s);

I. the name and contact information of the non-dentist owner(s) shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;

J. the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;

K. no person other than a New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment and treatment, including, referrals or prescriptions of laboratory services;

L. non-dentist owners shall maintain patient records for a minimum of six years; and

M. a non-dentist owner licensee shall notify the board of any adverse action taken against such licensee by any licensing board, peer review body, malpractice insurance carrier, or any other entity as defined by the board; a non-dentist owner licensee shall also notify the board of its surrender of a license while under, or in lieu of, an investigation by any authority; such report shall be made in conformance with the provision of 16.5.3 NMAC.

N. the non-dentist owner shall be subject to the provisions of 16.5.58 NMAC.]

A. unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico;

B. the non-dentist owner licensee shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

C. if an employee dentist or dental hygienist separates from the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;

D. non-dentist owner shall notify the board in writing within 30 days of any changes in ownership; business entity structure, officers, directors, and designated agent.

E. non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;

F. non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s) in New Mexico or other jurisdictions.

G. non-dentist owner employees shall follow provisions of 16.5.16 NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

H. non-dentist owners licensed prior to the effective date of these rules shall be allowed to maintain their existing license(s);

I. the name and contact information of the non-dentist owner(s) shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;

J. the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;

K. no person other than a New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment and treatment, including, referrals or prescriptions of laboratory services;

L. non-dentist owners shall maintain patient records for a minimum of six years; and shall follow provisions of 16.5.1.24 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC.

M. a non-dentist owner licensee shall notify the board of any adverse action taken against such licensee by any licensing board, peer review body, malpractice insurance carrier, or any other entity as defined by the board; a non-dentist owner licensee shall also notify the board of its surrender of a license while under, or in lieu of, an investigation by any authority; such report shall be made in conformance with the provision of 16.5.3 NMAC.

N. the non-dentist owner shall be subject to the provisions of 16.5.58 NMAC. [16.5.9.8 NMAC - Rp, 16.5.9.8 NMAC, 5/31/2023; A, 4/21/2026]

16.5.9.10 DOCUMENTATION REQUIREMENTS: Each applicant for a non-dentist owner license shall submit a completed application obtained from the board office with the required fees and the following documentation:

A. completed application signed by the individual that is the non-dentist owner or by the president of the parent corporation; applications are valid for one year from the date of receipt;

B. the board requires a board designated professional background service report; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service; if the applicant has or has had a professional license in dentistry or another related health care profession the board designated professional background service report will do a search of those appropriate databases for past disciplinary action as well as a criminal background check; in the case of any corporation entity, the board requires a review of

public records and other nationally recognized data resources that record actions against a corporation in the United States that may reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude;

C. passed the jurisprudence examination with a score of at least seventy-five percent;

D. non-dentist owner(s) shall comply with Subsection C of this section within six months of the effective date of the rule;

E. verification of licensure in all states where the non-dentist owner holds or has held a license, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form; and

F. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public.;

A. Applicants shall provide the following information:

(1) evidence of ownership, including percentages of ownership;

(2) corporate or business status;

(3) state of formation;

(4) copies of articles of incorporation;

(5) by-laws, if applicable;

(6) identity of designated point of contact with authority to speak on behalf of the corporation and registered agent to include address and phone number;

(7) If the corporation is a subsidiary corporation, the name of the parent

company, the state in which the parent company is incorporated, and the percent of stock that the parent company owns in the subsidiary;

(8) the facility manager's name, phone number, and email address;

(9) if a corporation owner or manager has ever been convicted of a felony, an explanation and court disposition documents;

(10) if the applicant corporation, owner, or manager has ever been the subject of a disciplinary investigation or action, including a cease-and-desist order, in any jurisdiction, an explanation of that investigation or action;

(11) the identity and contact information of two business or financial references;

(12) any other information requested by the board upon investigation and discrepancy of information.

B. Corporate applicant shall disclose civil actions brought within 10 years of the date of the application against an owner(s), partner(s), or director(s) for or involving nonpayment of a debt, fraud, embezzlement or misrepresentation and the disposition of such action(s).

C. A corporate applicant shall disclose is they filed or declared bankruptcy within the last seven years.

D. It shall be the duty of each corporation owner or manager to notify the board in writing within 60 days of:

(1) a change in ownership or management of the facility;

(2) a change in location of the facility;

(3) closure of the facility;

(4) a change in mailing address for the owner or manager of the corporation.

E. The board requires a board designated professional background service report; the applicant will apply and pay fees directly to a board designated

professional background service to initiate this service; if the applicant has or has had a professional license in dentistry or another related health care profession the board designated professional background service report will do a search of those appropriate databases for past disciplinary action as well as a criminal background check; in the case of any corporate entity, the board requires a review of public records and other nationally recognized data resources that record actions against a corporate entity in the United States that may reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude;

F. passed the jurisprudence examination with a score of at least seventy-five percent; and

G. verification of licensure in all states where the non-dentist owner holds or has held a license or registration, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

[16.5.9.10 NMAC - Rp, 16.5.9.10 NMAC, 5/31/2023; A, 4/21/2026]

16.5.9.11 LICENSURE

PROCEDURE: Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

A. Initial license: Non-dentist owner licenses are issued for a period not to exceed three years. The licensee shall apply for renewal on a triennial basis.

B. Posting: The license and subsequent renewal certificates shall be posted in each place of business. Duplicates may be requested from the board office

with location of each business address where they will be posted for the public to view.

C. License: This license is non-transferable.

D. Renewal: After the initial license period, non-dentist owner licenses expire every three years on July 1. Licenses not renewed by July 1 are considered expired.

(1) A completed renewal application with appropriate fees shall be post-marked on or before July 1 of the renewal year.

(2) The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received 30 days prior to license expiration.

E. Late renewals: Renewal applications post-marked after July 1 and prior to August 1 of the renewal year shall be accompanied by the completed renewal application, the triennial renewal fee, and the late fee.

(1) Renewal applications post-marked on or after August 1 but before September 1 of the renewal year, shall be accompanied by the completed application, the triennial renewal fee, a late fee, and a cumulative late fee of ten-dollars (\$10) per day from August 1 to the date of the postmark or hand-delivery to board office.

(2) If a renewal application is not received by the board office, or post-marked before September 1, the license shall be summarily revoked for non-payment of fees. Dental professionals in such offices or clinics shall cease and desist from further practice of dentistry or dental hygiene until non-dentist owner has renewed or re-applied.

F. Fees:
 (1) Initial
 Licensure: \$300.
 (2) Renewal:
 \$150.

(3) Jurisprudence Exam re-take:

\$100;
 (4) electronic processing fee, initial and renewal, per year: \$10;

(5) return payment fee \$35
 [16.5.9.11 NMAC - Rp, 16.5.9.11 NMAC, 5/31/2023; A, 4/21/2026]

16.5.9.12 PREREQUISITES FOR NON-DENTIST OWNER:

Each applicant for licensure as a non-dentist owner shall possess the following:

~~A. a corporate entity must be registered in New Mexico; and~~

~~B. an individual non-dentist owner(s) or agent of a corporation shall pass the New Mexico jurisprudence examination with seventy-five percent;~~

~~A. a corporate entity must be registered in New Mexico; and~~

~~B. the non-dentist owner(s) or designated agent shall pass the New Mexico jurisprudence examination with seventy-five percent~~
 [16.5.9.12 NMAC - Rp, 16.5.9.12 NMAC, 5/31/2023; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.8 NMAC, Sections 8, 9 & 10, effective 4/21/2026.

16.5.10.8 HOURS REQUIRED: ~~[60 hours of continuing education, a maximum of 30 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 20 hours per full year of the initial licensing period. Initial licenses issued for less than a full year do~~

~~not require continuing education for the first renewal.] Sixty hours of continuing education are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 20 hours per year for individuals licensed for less than three years. Initial licenses issued for less than a full year require 20 hours of continuing education for the first renewal.~~

[16.5.10.8 NMAC - Rp, 16.5.10.8 NMAC, 12/14/2019; A, 4/21/2026]

16.5.10.9 COURSES

REQUIRED: Continuing education coursework must contribute directly to the practice of dentistry and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal.

~~A. [Proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be self-study course.] Proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American heart association (AHA), the American red cross (ARC), or the American safety and health institute/health and safety institute (ASHI/HSI); cannot be a self-study course.~~

B. Infection control. As further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.

C. Anesthesia/ Sedation: Any dentist holding a minimal, moderate or deep sedation/ general anesthesia permit is required to follow continuing education requirements as set forth in 16.5.15.20 NMAC.

D. Management of pain with controlled substances.

Any dentist who holds a Federal drug enforcement administration registration to prescribe controlled substances shall successfully complete three continuing dental or medical education hours, as defined in Part 16.5.57 NMAC, in appropriate courses that shall include:

- (1) an understanding of the pharmacology and risks of controlled substances,
- (2) a basic awareness of the problems of abuse, addiction and diversion,
- (3) awareness of state and federal regulations for the prescription of controlled substances, and
- (4) management of the treatment of pain.

E. Ethics and jurisprudence. Proof of completion of a course in ethics or jurisprudence that includes topics related to the New Mexico dental health care act and board rules.

[16.5.10.9 NMAC - Rp, 16.5.10.9 NMAC, 12/14/2019; A, 4/21/2026]

16.5.10.10 VERIFICATION OF CONTINUING EDUCATION:

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for ~~[one year following the renewal cycle in which they are earned.]~~ four years.

[16.5.10.10 NMAC - Rp, 16.5.10.10 NMAC, 12/14/2019; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.15 NMAC, Sections 8 and 14, effective 4/21/2026.

16.5.15.8 REQUIREMENT TO BE REGISTERED OR CERTIFIED:

Dentists who administer nitrous oxide inhalation analgesia in New Mexico are required to be registered with the board.

Dentists who administer minimal sedation, moderate sedation, deep sedation, or general anesthesia in New Mexico are required to obtain an anesthesia permit from the board. Any dentist who fails to comply with these rules may be subject to disciplinary action by the board. Anesthesia permits valid on the effective date of this rule continue to be valid until the expiration date indicated on the permit.

A. Permit requirements: (In order of increasing complexity higher level permit includes all lower level permits within the scope of that permit).

(1) Anxiolysis only: No permit necessary (single drug/single dose, within the normal therapeutic dose for anxiolysis).

(2) Nitrous oxide alone: Permit required, no practitioner or facility exam required.

(3) Minimal sedation: Permit required, no exam of practitioner or facility, affidavit of compliance required (single enteral drug, with or without nitrous oxide, below the maximum recommended daily dose).

~~[(4) Moderate sedation: Permit required, affidavit of compliance, oral, written, and facility exam required at the discretion of the board or its anesthesia committee (single enteral drugs above the maximum recommended dose, multiple enteral drugs, enteral drug plus nitrous oxide, any parenteral drugs):~~

~~[(5) Deep sedation/general anesthesia: Permit required, affidavit of compliance, practitioner and facility exam required at the discretion of the board or its anesthesia committee:]~~

~~[(4) Moderate enteral sedation: Permit required, affidavit of compliance, oral, written, and facility exam required at the discretion of the board or its anesthesia committee (single enteral drugs above the maximum recommended daily dose, multiple enteral drugs).]~~

~~[(5) Moderate parenteral sedation – midazolam only: Permit required, affidavit of compliance, oral, written, and facility exam required at the discretion of the board or its anesthesia committee (parenteral midazolam with no other parenteral drugs or parenteral midazolam in combination with other inhalation or enteral drugs).]~~

~~[(6) Moderate parenteral sedation: Permit required, affidavit of compliance, oral, written, and facility exam required at the discretion of the board or its anesthesia committee (parenteral drugs limited to sedatives as defined in Section J of 16.5.15.14 NMAC).]~~

~~[(7) Deep sedation/general anesthesia: Permit required, affidavit of compliance, practitioner and facility exam required at the discretion of the board or its anesthesia committee.]~~

B. Facility limitations: If the dentist of a facility approved for a sedation permit utilizes a certified registered nurse anesthetist (CRNA) to provide the sedation, the CRNA may only administer sedation up to the permit level of the operating dentist and the facility.

[16.5.15.8 NMAC - Rp, 16.5.15.8 NMAC, 5/31/2023; A, 4/21/2026]

16.5.15.14 ADMINISTRATION OF MODERATE SEDATION (Formerly conscious sedation I and II):

A. Moderate sedation may be achieved by several methods: The end point of sedation, as in the definition, is the important factor. Drugs used here should have a wide safety margin so as to not allow patients to easily slide to deep sedation or general anesthesia. The dentist should also be aware that titrating an enteral dose of medication

is difficult due to onset of action and multiple variables.

(1) moderate enteral sedation (previously conscious sedation I) is achieved by the use of: single enteral drugs in doses as needed up to and above the maximum recommended single dose, or two or more enteral drugs used in combination, or single or multiple enteral drugs combined with nitrous oxide;

(2) moderate parenteral sedation (previously conscious sedation II) is achieved by the use of single or multiple parenteral drugs, with or without nitrous oxide.

B. Registration:

Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve moderate sedation shall be registered with the board. Moderate sedation permits are issued for a specific practice location (facility). An application form will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in 16.5.15.19 NMAC. Administration of moderate sedation without registration is a violation of these rules and may result in disciplinary action against the licensee.

C. Education/ qualifications: To administer moderate sedation by any means the dentist must satisfy one of the following criteria:

[~~(1) training to a level of competency in moderate sedation consistent with that described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students". The above involves completion of 60 hours of didactic instruction and administration of moderate sedation for at least 20 individually managed patients in a pre-doctoral program at a CODA accredited school, verifiable by the board, or in a post-doctoral continuing education program acceptable to the board and its anesthesia committee; or~~

~~(2) completion of CODA accredited post-doctoral training program, which affords comprehensive and appropriate training necessary to administer and manage moderate sedation as described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students".]~~

(1) training to a level of competency in moderate sedation consistent with that described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students". The above involves completion of 60 hours of didactic instruction and administration of moderate sedation for at least 20 individually managed patients in a pre-doctoral or post-doctoral program at a CODA accredited school or residency, verifiable by the board, or in a post-doctoral continuing education program that includes the supervised parenteral delivery of requested parenteral drugs acceptable to the board and its anesthesia committee; or

(2) completion of CODA accredited post-doctoral training program, which affords comprehensive and appropriate training necessary to administer and manage moderate sedation with curriculum that includes the supervised parenteral delivery of requested parenteral drugs as described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students";

(3) training which did not take place in a CODA accredited dental school, accredited teaching hospital, or other CODA-accredited based training would be eligible for a restricted midazolam-

Only moderate parenteral sedation permit with approval from the anesthesia committee and board.

D. To administer moderate enteral sedation, the dentist must have current certification in basic life support. Moderate enteral sedation does not require ETCO2 capnography monitoring.

E. To administer moderate parenteral sedation, the dentist must have current certification in advanced cardiac life support. Moderate parenteral sedation does require ETCO2 capnography or precordial stethoscope monitoring.

F. Auxiliary clinical personnel must have current certification in basic life support.

G. The dentist must sign an affidavit of compliance. An oral and written examination administered by the anesthesia committee or designee will be required if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This may require travel on the applicant's part to meet with an examiner. The applicant's facility may also be subject to inspection and approval by the anesthesia committee or its designated examiner.

H. Current permit holder's sedation education would be grandfathered in by board rules in effect at the time of original issue of their permit. However, safety standards must be updated to the current board and American dental association (ADA) guidelines.

I. Facility/records:

(1) the dentist must maintain a properly equipped facility for the administration of moderate sedation, staffed with supervised auxiliary personnel capable of handling procedures, problems and emergencies that may arise;

(2) the facility along with the dentist providing the sedation will be evaluated. The moderate sedation permit is valid only at the facility approved by the permit;

(3) the patients shall be monitored and

records shall reflect that the pre-operative patient evaluation, including American society of anesthesiologists (ASA) classification, pre-operative preparation, electrocardiogram (ECG) (for parenteral sedation), pulse oximetry, and blood pressure. ETCO2 capnography or precordial stethoscope monitoring is only required for moderate parenteral sedation. Recovery and discharge also needs to be performed and documented in accordance with the current “ADA guidelines for the use of sedation and general anesthesia by dentists”;

(4) a facility permitted for moderate sedation does not allow for the use of deep sedation or general anesthesia in that facility regardless of the licensee providing anesthesia;

(5) a log of drugs used, dosage or amount of drugs used and date of administration must be maintained separate from the patient’s record;

(6) informed consent is required.

J. Restrictions: A dentist with a moderate sedation (formerly conscious sedation II) permit shall not administer or employ any agent(s) which has a narrow margin for maintaining consciousness, or is federally classified as a general anesthetic including, but not limited to:

(1) ultra-short acting barbiturates including, but not limited to, sodium methohexital, thiopental, and thiamylal;

(2) alkylphenols-propofol (diprivan) including precursors or derivatives;

(3) neuroleptic agents;

(4) dissociative agents - i.e. ketamine;

(5) etomidate, and similarly acting drugs;

(6) volatile inhalational agents; or

(7) any quantity of agent(s) or technique(s), or any combination thereof, that renders a patient deeply sedated or generally anesthetized.

K. The drugs/ techniques enumerated in Subsection J of 16.5.15.14 NMAC are presumed to produce general anesthesia and may only be used by a licensee holding a valid deep sedation/general anesthesia permit issued by the board, or by a corresponding licensing board if the licensee is not a dentist (eg., MD, CRNA).
[16.5.15.14 NMAC - Rp, 16.5.15.14 NMAC, 5/31/2023; A, 4/21/2026]

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.16 NMAC, Section 10, effective 4/21/2026.

16.5.16.10 GUIDELINES:
The board shall use the following as guidelines for disciplinary action.

A. “Gross incompetence” or “gross negligence” means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. “Unprofessional conduct” means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one’s license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

(2) failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copy of that patient’s records and x-rays within 15 business days regardless whether patient has an outstanding balance;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience, including but not limited to:

(a) an owner dentist or supervisor causing an employee dentist to make a referral for dental treatment based on contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by referral to another practitioner, and failure to notify the patient of such contractual obligations for referrals;

(b) an owner dentist or supervisor causing an employee dentist to use a dental laboratory due to contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by the use of another dental laboratory.

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a dentist to comply with advertising and specialty recognition rules as defined in 16.5.1.29 NMAC.

(7) failure to use appropriate infection control techniques and sterilization procedures;

(8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another dentist licensed or applying for licensure by the board;

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental assistants on a basis of percentage of the fee

received for the overall service rendered be deemed accepting a commission;

(10) prescribe, dispense or administer drugs outside the scope of dental practice;

(11) charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

(12) sexual misconduct;

(13) ~~[breach of ethical standards, an inquiry into which the board will begin by reference to the most current code of ethics of the American dental association;]~~ breach of ethical standards, an inquiry into which the board will begin by reference to the most current principles of ethics and code of professional conduct of the American dental association;

(14) the use of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;

(15) employing abusive billing practices;

(16) fraud, deceit or misrepresentation in any application;

(17) violation of any order of the board, including any probation order;

(18) injudicious prescribing, administration, or dispensing of any drug or medicine;

(19) failure to report to the board any adverse action taken by any licensing board, compact commission; peer review body, malpractice insurance carrier or any other entity as defined by the board or committee; the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(20) ~~[negligent supervision of a dental hygienist or dental assistant;]~~ negligent supervision of a dental hygienist, dental assistant, dental therapist, community dental health coordinator,

expanded function dental auxiliary, or dental student;

(21) cheating on an examination for licensure; or

(22) failure to comply with the terms of a signed collaborative practice agreement;

(23) failure of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care as defined in Section 16.5.17 NMAC;

(24) assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(25) failure to make available to current patients of record a reasonable method of contacting the treating dentist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted dentist deems it necessary for the patient's well-being;

(26) conviction of either a misdemeanor or a felony punishable by incarceration;

(27) ~~[aiding and abetting a dental assistant, expanded function dental auxiliary or community dental health coordinator who is not properly certified;]~~ aiding and abetting a dental hygienist, dental assistant, dental therapist, expanded function dental auxiliary or community dental health coordinator who is not properly certified;

(28) patient abandonment;

(29) habitually addicted as defined in Section 61.5A-21 4 & 6 or Subsection C and D of Section 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, Section (30-31-1 NMSA 1978) or habitual or excessive use or abuse of alcohol;

(30) failure of the licensee to furnish the board within 10 business days of request, its investigators or representatives with

information requested by the board;

(31) failure to appear before the board when requested by the board in any disciplinary proceeding;

(32) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 NMSA 1978 seq.;

(33) ~~[fraudulent record keeping;]~~ fraudulent or incomplete record keeping;

(34) failure to properly install amalgam separator as defined in Section 16.5.58 NMAC;

(35) failure to properly operate and maintain amalgam separator as defined in 16.5.58 NMAC; and

(36) failure to properly dispose of amalgam waste as defined in Section 16.5.58 NMAC. [16.5.16.10 NMAC - Rp, 16.5.16.10, 12/14/2019; A, 4/21/2026]

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.17 NMAC, Sections 8, 11, 12 and 13, effective 4/21/2026.

16.5.17.8 [CERTIFICATION FOR TE COLLABORATIVE PRACTICE OF DENTAL HYGIENE:] CERTIFICATION FOR THE COLLABORATIVE PRACTICE OF DENTAL HYGIENE: The board, based on the recommendation of the dental hygienists committee, will certify qualified dental hygienists for collaborative practice.

A. Prerequisite requirements for certification. Each applicant for certification as a collaborative practice dental hygienist shall possess the following qualifications:

(1) possess a current New Mexico dental hygiene license in good standing;

(2) have been engaged in the active practice of dental hygiene as defined in Subsection B of Section 61-5A-4 NMSA 1978 of the act for not less than:

(a) 2400 hours of active practice for the past 18 months; or

(b) a total of 3,000 hours of active practice and has been engaged in active practice for two of the past three years;

(3) meet the educational criteria for licensure in Subsection A of Section 61-5A-13 NMSA 1978 of the act; and

(4) have 15 hours of continuing education in clinical dental hygiene in the 12 months prior to certification, which includes courses in infection control and pediatric and adult medical emergencies.

B. Documentation requirements. Each applicant for certification as a collaborative practice dental hygiene shall submit a completed application, the required fees and following documentation:

(1) verification of a current active license;

(2) proof of the active practice of dental hygiene as defined in 16.5.17.8 NMAC of this part; this proof may be in the form of letters from employers, supervisors of dental clinics of one of the uniformed services of the United States, or faculty administrators of accredited schools; if this documentation cannot be obtained, the applicant may request to provide other proof of the required hours to the committee for consideration;

(3) basic life support (BLS) or cardiac pulmonary resuscitation (CPR): proof of current certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(4) proof of 15 hours of continuing education related to the clinical practice of dental hygiene; and

(5) a copy of a signed collaborative practice agreement between a dental hygienist and a consulting dentist.

C. Renewal requirements. Each dental hygienist certified for collaborative practice shall:

(1) submit a completed renewal application for certification for collaborative practice, along with the triennial renewal application for their license, accompanied by the required fees as defined in 16.5.18 NMAC;

(2) complete 60 hours of continuing education every triennial renewal period; if the initial certification period is less than three years, the required continuing education will be prorated at 20 hours per full year of certification; 60 hours to include:

(a) basic life support (BLS) or cardiac pulmonary resuscitation (CPR): proof of current certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(b) infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

(c) medical emergencies: as for new certification defined in Paragraph (4) of Subsection A of 16.5.17.8 NMAC;

(3) submit a current list of all consulting dentists to the board with each renewal application; and

(4) submit a copy of the signed collaborative practice agreement(s) and protocols between a dental hygienist and a consulting dentist per renewal period. [16.5.17.8 NMAC - Rp, 16.5.17.8 NMAC, 5/31/2023; A, 4/21/2026]

16.5.17.11 RESPONSIBILITIES OF A COLLABORATIVE PRACTICE DENTAL HYGIENIST: The collaborative practice dental hygienist shall:

A. refer each patient for a dental examination every 12 months, as well as anyone who may require further dental services, to the patient's consulting dentist or to a dental specialist in [the] case of an emergency;

B. in conjunction with the consulting dentist, be responsible and liable for acts and omissions in the collaborative dental hygiene practice;

C. assure that each consulting dentist is duly licensed by the board of dental health care; by verification with the board office;

D. maintain a collaborative practice agreement with each consulting dentist; and

E. maintain an appropriate level of contact and communication with the consulting dentist;

F. contact the patient's dentist of record, if not a consulting dentist, prior to treating the patient to give the dentist the option of becoming a consulting dentist;

G. offer the patient a choice of the collaborative practice dental hygienist's consulting dentists if the patient's dentist of record chooses to be a non-participating dentist;

H. not to perform any treatment if the patient does not have an active consulting dentist on record with the collaborative practice dental hygienist;

I. follow the standardized protocol unless modified by the consulting dentist by prescription or order;

J. follow the verbal and written prescriptions and orders of the consulting dentist for those treatments requiring a diagnosis;

K. forward all records and x-rays, or duplicates, to the consulting dentist within 14 days;

L. assure that each consulting dentist meets the requirements of a consulting dentist as stated in 16.5.17.9 NMAC;

M. a copy of the collaborative agreement shall be on file with the board office; any changes to this agreement shall be filed with the board office within 60 days.

N. the collaborative dental hygienist shall be subject to provisions of 16.5.58 NMAC. [16.5.17.11 NMAC - Rp, 16.5.17.11 NMAC, 5/31/2023; A, 4/21/2026]

16.5.17.12

COLLABORATIVE DENTAL HYGIENE PRACTICE AND LIMITATIONS:

A. A dental hygienist in a collaborative practice may perform the procedures in a dental hygienist's scope of practice listed in 16.5.29 NMAC without general supervision while the hygienist is in a cooperative working relationship with a consulting dentist, pursuant to rules promulgated by the board and the committee.

B. A collaborative practice dental hygienist may have more than one consulting dentist.

C. A dentist shall have a consulting agreement with no more than three collaborative practice dental hygienists. The board may grant exception to this limitation for public health settings on a case-by-case basis.

D. The collaborative practice dental hygienist may own and manage a dental hygiene practice, or enter into a contractual arrangement, in any location or setting in New Mexico.

E. The committee, through the board, may take any disciplinary action allowed by the Uniform Licensing Act, against a dental hygienist certified in collaborative practice.

F. Collaborative dental hygienist can administer local anesthesia under general supervision as defined in 16.5.28.8 NMAC and 16.5.28.12 NMAC.

G. A collaborative dental hygienist may assess for pit and fissure sealants without a dentist's evaluation as provided in Subsection D of 16.5.29.8 NMAC.

H. A collaborative dental hygienists may prescribe, administer and dispense topically applied fluoride and topically applied antimicrobials as provided for in 16.5.29.11 NMAC.

I. Perform dental hygiene focused assessment.

J. A collaborative practice dental hygienist shall not:

(1) administer local anesthesia except under the general supervision of a dentist; and only if certified to do so through the committee and ratified by the board;

(2) administer a drug or medication, except those directly indicated as dental topical therapeutic or preventive agents; other therapeutic agents may only be dispensed if the collaborative practice dental hygienist holds a class C clinic license; any drugs dispensed as a class C clinic (as designated and defined by the New Mexico board of pharmacy) shall be on the specific individual authorization of a dentist:

(a) all non-controlled substance medications requiring a prescription or order from the dentist may only be dispensed for immediate use in the collaborative practice dental hygienist office, and only on the specific order or protocol from the consulting dentist; a log of these dispensing shall be kept and a copy of this log shall be sent to the corresponding consulting dentist every six months; collaborative practice dental hygienists may not dispense or administer any controlled substance;

(b) prescription drugs, which are kept in bulk at the collaborative practice dental hygienist's office, to be dispensed or used by the collaborative practice dental hygienist as in 16.5.17.12 NMAC, shall be purchased on an order or prescription by a consulting dentist;

(3) diagnose dental disease, but may advise the patient of suspected pathology and periodontal status;

(4) perform oral hygiene procedures on any patient identified as having a significant health risk from the procedures; unless the patients' current health history has been reviewed by the patient's dentist of record or the consulting dentist; or for patients who reside in residential or

long term care facilities, the patient's dentist or physician;

(5) perform treatments requiring the diagnosis of a dentist without a prescription/order from the consulting dentist; such treatments include but are not limited to, root planing, sealant application in presence of cavitation, [administration of therapeutic agents] and other services defined in Subsection B of Section 61-5A-4 NMSA 1978 as within the scope of dental hygiene practice but which require a dentist's diagnosis;

(6) modify the standard collaborative practice protocol without a prescription or order from the consulting dentist.

~~[(7) take impressions for bleaching trays, deliver bleaching materials or provide systems of home bleaching, or provide instructions to patients on using bleaching materials unless it is authorized on a case by case basis by prescription from a consulting dentist;~~

~~(8) provide in-office bleaching systems unless under indirect supervision of a consulting dentist.]~~

K. Effective July 1, 2015, a collaborative practice hygienist who owns a dental practice shall register with the board as a non-dentist owner. No additional license or fee is required for this registration. A collaborative practice hygienist who owns a dental practice must notify the board, in writing, if the dental practice has been sold or has closed.

[16.5.17.12 NMAC - Rp, 16.5.17.12 NMAC, 5/31/2023; A, 4/21/2026]

16.5.17.13 STANDARD COLLABORATIVE PRACTICE PROTOCOLS:

All protocols will include but are not limited to: review of health history charting of existing teeth and restorations, periodontal charting as necessary, and notations of potential pathology. Protocols may be amended upon written order of the consulting dentist. Time intervals for these protocols shall be established in the collaborative practice agreement as provided in Subsection G of 16.5.17.13 NMAC.

A. — Protocols for children 12 and under:
(1) — appropriate panoramic or occlusal x-rays;
(2) — two bitewing x-rays;
(3) — prophylaxis/scaling;
(4) — topical fluoride treatment;
(5) — other radiographs as indicated by consultation with the dentist.

B. — Protocols for teenagers:
(1) — appropriate panoramic or full mouth radiographs;
(2) — two or four bitewing x-rays;
(3) — prophylaxis/scaling;
(4) — topical fluoride treatment;
(5) — other radiographs as indicated by consultation with the dentist.

C. — Protocols for adults:
(1) — full mouth or panoramic radiograph;
(2) — bitewing radiographs annually;
(3) — complete periodontal charting;
(4) — prophylaxis/scaling or gross debridement and consultation with the consulting dentist if periodontal assessment suggests periodontal involvement.

D. — All other procedures not listed in the protocols shall require a prescription from the consulting dentist as stated in Subsections H and N of 16.5.17.10 NMAC.

E. — Guidelines for patient release forms, to include a disclaimer signed by the patient or legal guardian that the dental hygiene services rendered do not preclude the need for routine examinations by a dentist.

F. — Both the consulting dentist and the collaborative practice dental hygienist shall sign a copy of this or amended protocol and keep on file.

G. — Changes to practice protocol and agreements

shall be prescribed in writing by the consulting dentist and recorded by both the consulting dentist and the collaborative practice dental hygienist.]

A. Protocols shall include, but are not limited to, those applicable to individuals under the age of 18:

(1) radiograph selection and frequency should be based on individual clinical need and evidence-based risk assessment following ALARA principles;

(2) clinical assessment of extraoral/intraoral structures;

(3) intraoral/extraoral cancer screening;

(4) age appropriate periodontal assessment;

(5) assessment and application of pit and fissure sealants;

(6) topical fluoride and other topical therapeutic and preventive agents.

B. Protocols shall include, but are not limited to, those applicable to adults:

(1) radiographic selection and frequency should be based on individual clinical need and evidence-based risk assessment following ALARA principles;

(2) clinical assessment of extraoral/intraoral structures;

(3) oral cancer screening;

(4) prophylaxis/scaling or gross debridement;

(5) complete periodontal charting and assessment;

(6) topical fluoride and other topical therapeutic and preventive agents.

C. All other procedures not listed in the protocols or the collaborative practice agreement shall require a prescription from the consulting dentist as stated in Subsections H of 16.5.17.10 NMAC.

D. Guidelines for patient release forms, to include a disclaimer signed by the patient or

legal guardian that the dental hygiene services rendered do not preclude the need for routine examinations by a dentist.

E. Both the consulting dentist and the collaborative practice dental hygienist shall sign a copy of this or amended protocol and keep on file.

F. Changes to practice protocol and agreements shall be prescribed in writing by the consulting dentist and recorded by both the consulting dentist and the collaborative practice dental hygienist.

[16.5.17.13 NMAC - Rp, 16.5.17.13 NMAC, 5/31/2023; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.18 NMAC, Section 8, effective 4/21/2026.

16.5.18.8 FEES:

A. All fees are non-refundable.

B. Application fee for licensure by examination is \$350, which includes the initial licensing period.

C. Application fee for licensure by credentials is \$400, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.

E. Triennial renewal fee for all dental hygienist licensee is \$325:

(1) impaired fee is \$15 per triennial renewal period plus renewal fee;

(2) late renewal fee of \$100 after July 1 through September 1, plus renewal and impaired fees;

(3) cumulative late fee of \$5 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.

F. Fees for collaborative practice:

(1) application for certification for collaborative practice fee is \$150;

(2) renewal of certification for collaborative practice fee is \$50 at the time of each triennial license renewal; the initial fee will be prorated at \$20 per full year of certification.

G. Fees for temporary licenses and application:

(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$100;

(3) twelve month license, application fee of \$100, license fee of \$150.

H. Application for certification in local anesthesia fee:

(1) by examination - \$40;

(2) by credentials - \$100 for application and credential review.

I. Reinstatement fee is \$200.

J. Application for licensure for inactive status is \$50.

~~_____~~ **K.** Administrative fees: ~~_____~~ (1) duplicate license fee is \$25;

~~_____~~ (2) multiple copies of the statute or rules are \$10 each;

~~_____~~ (3) copies cost \$0.25 per page;

~~_____~~ (4) list of current dental hygiene licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and ~~_____~~ (5) mailing labels of current dental hygiene licensees is \$300.]

K. Administrative fees: (1) duplicate license fee is \$25;

~~_____~~ (2) electronic processing fee, initial and renewal, per year is \$10;

~~_____~~ (3) list of current dental hygiene licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and

~~_____~~ (4) return payment fee is \$35.

L. Expedited licensure fees. The fees for expedited licensure submitted pursuant to [61-5A-14 (B)] Subsection B of Section 61-5A-14 NMSA are a \$100 application fee and a \$150 license fee.

[16.5.18.8 NMAC - Rp, 16.5.18.8 NMAC, 12/27/2022; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.19 NMAC, Section 9, effective 4/21/2026.

16.5.19.9 DOCUMENTATION

REQUIREMENTS: Each applicant for a dental hygiene license by examination must submit the required fees and following documentation:

~~_____~~ **A.** completed application, applications are valid for one year from the date of receipt;

~~_____~~ **B.** official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

~~_____~~ **C.** copy of clinical examination score card or certificate;

~~_____~~ **D.** copy of national board examination certificate or score card;

~~_____~~ **E.** proof of having taken a course in infection control technique or graduation from dental hygiene school within the past 12 months;

~~_____~~ **F.** proof of current basic life support (BLS) or cardiac-pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

~~_____~~ **G.** verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include an embossed seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form; and

~~_____~~ **H.** the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the committee.]

~~_____~~ **A.** completed application, applications are valid for one year from the date of receipt;

~~_____~~ **B.** official transcripts verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

~~_____~~ **C.** proof of having taken a course in infection control technique and sterilization procedures as defined in 16.5.1.16 NMAC or graduation from dental hygiene school within the past 12 months;

~~_____~~ **D.** proof of completion of a course in ethics or jurisprudence that includes topics related to the New Mexico dental health care act and board rules within the past 12 months;

~~_____~~ **E.** national board examination certificate or score card;

~~_____~~ **F.** official board-approved clinical examination score card or certificate;

~~_____~~ **G.** official report from the national practitioner's data bank

and the American association of dental examiners clearinghouse; H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the committee;

I. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association (AHA), the American red cross (ARC), or the American safety and health institute/ health and safety institute (ASHI/ HSI); cannot be a self-study course; and

J. verification of licensure in all states where the applicant holds or has held a license in good standing to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must attest to the status, issue date, license number, and other information contained on the form. [16.5.19.9 NMAC - Rp, 16.5.19.9 NMAC, 5/31/2023; A, 4/21/2026]

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.20 NMAC, Sections 8 and 9, effective 4/21/2026.

16.5.20.8 PREREQUISITE REQUIREMENTS FOR LICENSE: Each applicant for licensure as a dental hygienist by credentials must possess the following qualifications:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental

hygiene curriculum as defined in Section 61-5A-13, NMSA 1978 of the act;

B. completed 15 hours of continuing education during the past year; these hours must meet the qualifications as defined in 16.5.1.15 NMAC;

C. passed the dental hygiene national board examination as defined in Subsection A of Section 61-5A-13., NMSA 1978;

D. passed the jurisprudence examination with a score of at least seventy-five percent;

E. holds a current active license in good standing obtained through a clinical examination in another state or territory of the United States;

F. the committee requires a background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service;

G. all licenses held by the applicant must have been in good standing for two years prior to application;

H. the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.]

D. passed clinical examination approved by the committee and ratified by the board;

E. passed the jurisprudence examination with a score of at least seventy-five percent;

F. holds a current active license in good standing obtained through a clinical examination in another state or territory of the United States;

G. all licenses held by the applicant must have been in good standing for two years prior to application;

H. the committee requires a background status report

from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.20.8 NMAC - Rp, 16.5.20.8 NMAC, 5/31/2023; A, 4/21/2026]

16.5.20.9 DOCUMENTATION

REQUIREMENTS: Each applicant for licensure by credentials must submit the required fees and following documentation:

A. completed application, applications are valid for one year from the date of receipt;

B. official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. copy of national board examination certificate or score card;

D. proof of having taken a course in infection control technique within the past 12 months;

E. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

F. proof of 15 hours of continuing education during the 12-months prior to application;

G. a status report must be received at the board office directly from a board designated professional background service; the results of the board designated professional background service background check must either indicate no negative findings or, if there are negative findings, those findings will be considered by the committee;

H. the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of

violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

(2)

supplemental information may be requested by the committee; and

H. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include an embossed seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form.]

A. completed application, applications are valid for one year from the date of receipt;

B. official transcripts verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must attest to the status, issue date, expiration date, license number, and other information contained on the form;

D. official national board examination certificate or score card;

E. official board-approved clinical examination score report from the accepted examining agent;

F. proof of having taken a course in infection control technique and sterilization procedures as defined in 16.5.1.16 NMAC within the past 12 months;

G. proof of completion of a course in ethics or jurisprudence that includes topics related to the New Mexico Dental Health Care Act and board rules;

H. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American

heart association, the American red cross, or the American safety and health institute/health and safety Institute (ASHI/HSI); cannot be a self-study course;

I. proof of 15 hours of continuing education during the 12 months prior to licensure in compliance with 16.5.1.15 NMAC and 16.5.10.9 NMAC of these rules;

J. official report from the national practitioner's data bank and the American association of dental examiners clearinghouse; and

K. a status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the committee.

[16.5.20.9 NMAC – Rp, 16.5.20.9 NMAC, 5/31/2023; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.28 NMAC, Sections 9, 10 and 13, effective 4/21/2026.

16.5.28.9 CERTIFICATION BY CURRICULUM OR NON- CURRICULUM:

Applicants for certification in local anesthesia by curriculum or exam must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) proof of successful completion of educational coursework in local anesthesia, by either;

(a) curriculum: successful completion

of an educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program as part of the regular curriculum for the dental hygiene degree, or

(b)

non-curriculum: successful completion of a board approved continuing educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with [requirements in] requirements in 16.5.1.15 NMAC.

(3)

Successfully pass a board approved examination, the results of the exam are valid in New Mexico for a period not to exceed five years. If the educational coursework in local anesthesia was obtained by;

(a)

curriculum: a board approved written local anesthesia exam is required.

(b)

non-curriculum: a board approved written and clinical local anesthesia exam is required.

B. Documentation:

(1) copy of

current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross or the American safety and health institute (ASHI); cannot be a self-study course;

(2) proof of

successful completion of educational coursework in local anesthesia;

(a)

transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia as part of the regular curriculum for the dental hygiene degree; or

(b)

copy of certificate showing successful completion of a board approved continuing education program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program

must comply with requirements in 16.5.1.15 NMAC.

(3) certificate or score card from a board approved exam indicating successful completion and date of local anesthesia exam, as required per Paragraph (9) of Subsection A of 16.5.28 NMAC.

[16.5.28.9 NMAC - Rp, 16.5.28.9 NMAC, 5/31/2023; A, 4/21/2026]

16.5.28.10 CERTIFICATION

BY CREDENTIALS: Applicants for certification in local anesthesia by credentials must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) successful completion of educational coursework in local anesthesia by;

(a) curriculum: successful completion of an educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program as part of the regular curriculum for the dental hygiene degree, or

(b) non-curriculum: successful completion of a board approved continuing educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with requirements in 16.5.1.15 NMAC; and

(3) successfully pass a board approved examination, the results of the exam do not have to be within a specific time frame. If educational coursework in local anesthesia was obtained by;

(a) curriculum: a board approved written local anesthesia exam is required.

(b) non-curriculum: a board approved written and clinical local anesthesia exam is required.

(4) administration of local anesthesia in the practice of dental hygiene for at least three of the past five years.

B. Documentation:

(1) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross or the American safety and health institute (ASHI); cannot be a self-study course;

(2) proof of successful completion of educational coursework in local anesthesia;

(a) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia as part of the regular curriculum for the dental hygiene degree, or

(b) copy of certificate showing successful completion of a board approved continuing education program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with requirements in 16.5.1.15 NMAC; and

(3) proof of active certification to administer local anesthesia;

(a) letter of verification from each jurisdiction where the applicant holds a certificate for administering local anesthesia, or if the jurisdiction doesn't supply licensees with a separate certification, then a letter is needed stating that local anesthesia is not a separate designation from the license but is part of the dental hygiene license; sent directly form the board in each jurisdiction, and describing any disciplinary action taken against the applicant; and

(b) if the applicants previous license includes the local anesthesia designation or certification is expired or inactive the applicant must show proof of completion of a board approved continuing education course in administration of local

anesthesia that includes a hand on-portion. Continuing education course must comply with ~~[requirements in]~~ requirements in 16.5.1.15 NMAC.

(4) proof of administration of local anesthesia while engaged in the practice of dental hygiene in at least three of the past five consecutive years; proof may be by notarized letters from employers, supervisors of dental clinics of the uniformed services of the United States, or faculty administrators of schools of dental hygiene or dentistry.

[16.5.28.10 NMAC - Rp, 16.5.28.10 NMAC, 5/31/2023; A, 4/21/2026]

16.5.28.13 LIMITATIONS

OF LOCAL ANESTHESIA

ADMINISTRATION:

Administration of local anesthetic under general supervision may occur when:

A. certification has been received as defined in Section 16.5.28.11 NMAC and meets the following requirements:

(1) the supervising or consulting dentist has written or verbally ordered local anesthetic for the specific patient; and

(2) verbal orders shall be converted to written record or electronic record in the patient's dental record; and

B. emergency medical services are available by:

(1) local 911 service with a response time of less than 10 minutes; or

(2) by arrangement with a local physician(s), oral surgeon, or other medical or dental professional holding an advanced cardiovascular life support (ACLS) certification; this arrangement to provide emergency services shall be in writing and on file in the board office with the dental hygienists license; and

C. ~~[indirect-supervision is required for continuing-education and clinical examinations:]~~ General supervision is required for continuing education when provided by a New Mexico school of dental hygiene, accredited by the

commission on dental accreditation (CODA) and when the instructor has a general supervision certification for the administration of local anesthesia.

D. Indirect supervision is required for:

(1) continuing education outside of a New Mexico school of dental hygiene and when the instructor does not possess a general supervision certification for the administration of local anesthesia;

(2) patient-based clinical examinations.

[16.5.28.12 NMAC - Rp, 16.5.28.13 NMAC, 5/31/2023; A, 4/21/2026]

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.33 NMAC, Sections 9, 12, 13 and 14, effective 4/21/2026.

**16.5.33.9 EDUCATION
AND EXAMINATION
REQUIREMENTS FOR DENTAL
RADIOGRAPHY:**

[A. Education requirements:

(1) study by independent preparation or in a training course on radiation health and safety within the past 36 months; and

(2) have assisted with or observed five cases of full mouth intra-oral radiographic series or five extra-oral radiographs if applying for a limited certificate.

B. Examination requirements:

(1) Pass the board or DANB written examination on radiation health and safety.

(2) After passing the board or DANB written exam must apply to the board for a training permit which allows the dental assistant to perfect radiography technique. The permit is valid for six months after passing the written exam.

(3) Pass the technique test demonstrating proficiency in the exposure of a full-mouth intra-oral radiographic series or panoramic film as established by the board within six months of passing the written exam.

(4) If an applicant chooses to provide only a panoramic film the certificate holder is limited to taking only extra-oral films.

(5) The technique test will be taken on a phantom or human patient. The applicant shall expose a full mouth intra-oral radiographic series of radiographs or a panoramic film, develop, mount, and label the films. The exam must be done independently and submitted to the board office with an affidavit signed by the dentist, dental hygienist, or dental assistant certified in radiography attesting to the independent exam. The radiographs must be of diagnostic quality and will be graded by at least two board or committee members and serve as the technique test required for certification.

(6) Pass the take home jurisprudence examination.

(7) When extenuating circumstances exist as defined in 16.5.1.7 NMAC, and the dental assistant cannot submit to the board exposed radiographs, the dental assistant may request an extension of time. The request must be put in writing and submitted to the board office prior to the deadline.

C. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who having passed a curriculum in dental radiography, may be granted a certificate to expose radiographs without an examination.

(2) A dental assistant certified to perform dental radiography in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.]

A. Requirements:

(1) An applicant for certification in dental

radiography shall meet the education and examination requirements through one of the following pathways:

(a) Pathway one - DANB radiation health and safety examination: Study by independent preparation or in a training course on radiation health and safety and pass the dental assisting national board (DANB) written examination on radiation health and safety. The results of the DANB exam are valid in New Mexico for a period not to exceed 24 months.

(b) Pathway 2 - Board-approved course with integrated examination: Successful completion of a board-approved training course in radiation health and safety that includes a board-approved written examination on radiation health and safety; and the course and examination must have been successfully completed within 24 months prior to application to the board.

(2) Pass the jurisprudence exam with a score of at least seventy-five percent.

(3) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute/health and safety Institute (ASHI/HSI); cannot be a self-study course;

(4) When extenuating circumstances exist as defined in 16.5.1.7 NMAC and the dental assistant cannot submit to the board a completed application within 24 months of examination completion, the applicant may request written request to the board for an extension of time.

B. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who having passed a curriculum in dental radiography, may be granted a certificate to expose radiographs without an examination.

(2) A dental assistant certified to perform dental

radiography in another state with requirements not less stringent than those in New Mexico may be certified based on credentials according to 16.5.33.13 NMAC.

[16.5.33.9 NMAC - Rp, 16.5.33.9 NMAC, 5/31/2023; A, 4/21/2026]

16.5.33.12 REQUIRED

DOCUMENTATION: Each applicant for an expanded function dental assistant certificate must submit to the board or its agent the required fees and following documentation.

A. Completed application [and the completed jurisprudence take home exam]. Applications are valid for one year from the date of receipt.

B. Dental radiography: ~~(1) proof of passing the board or DANB written examination on radiation health and safety;~~

~~(2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in radiography verifying the applicant has:~~

~~(a) assisted with and observed five cases of full-mouth intra oral radiographic series or five panoramic films if applying for a limited certification; and~~

~~(b) that upon reaching competency, the applicant independently exposed the radiographs submitted for technique examination;~~

~~(3) the completed full mouth intra oral radiographic series or a panoramic film as required for the technique exam described in 16.5.33.9 NMAC.;~~

~~(1) proof of passing the board or DANB written examination on radiation health and safety; proof of passing the board a board-approved or DANB written examination on radiation health and safety as defined in 16.5.33.9 NMAC;~~

~~(2) pass the jurisprudence exam with a score of at least seventy-five percent; and~~

~~(3) proof of current basic life support (BLS) or cardiac pulmonary resuscitation~~

(CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute/health and safety Institute (ASHI/HSI); cannot be a self-study course.

C. Rubber cup coronal polishing and application of topical fluoride:

(1) proof of passing the board or DANB written examination for rubber cup coronal polishing and application of topical fluoride;

(2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and topical fluoride application that the applicant has:

(a) assisted with and observed five cases of rubber cup coronal polishing on adults and children and five applications of topical fluoride on children; and

(b) while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing, application of topical fluoride provided rubber cup coronal polishing on five adults and five children; and, provide applications of topical fluoride on five children.

D. Pit and fissure sealants:

(1) proof of passing the board approved examination on application of pit and fissure sealants;

(2) an affidavit from a supervising dentist or dental hygienist verifying that the applicant has:

(a) assisted with and observed placement of 12 pit and fissure sealants; and

(b) while being personally observed by a dentist or dental hygienist, the applicant successfully place pit and fissure sealants on six patients.

(3) proof of 2080 hours of chair side dental assisting experience within two years

immediately prior to application for certification;

(4) the completed jurisprudence exam. [16.5.33.12 NMAC - Rp, 16.5.33.12 NMAC, 5/31/2023; A, 4/21/2026]

16.5.33.13 CERTIFICATION BY CREDENTIALS:

Applicants for certification by credentials must possess the following qualifications:

~~**A.** verification of certification in all states where the applicant holds or has held a certificate to practice dental assisting; verification must be sent directly to the board office from the other state(s) board, must include a seal, and must attest to the status, issue date, expiration date, certification number, and other information contained on the form;~~

~~**B.** an official letter from the director of an accredited dental hygiene program indicating the applicant has completed coursework in the requested expanded function; or~~

~~**C.** proof of current, valid, certification as a CDA issued by DANB; and~~

~~**D.** all certifications, letters and validations must be received directly by the board office from the state, institution, or DANB;~~

~~**E.** the board may deny, stipulate, or otherwise limit a certification if is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;~~

~~**F.** pass the jurisprudence exam with a score of a least seventy-five percent;~~

~~**G.** all certificates held by the applicant must have been in good standing for two years prior to application; and~~

~~**H.** the board may deny, stipulate, or otherwise limit a certification if it is determined the applicant holds or has held a certification in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients~~

or is guilty of violating any of the provisions of the act, the Uniform Licensing Act or these rules;]

A. verification of certification in all states where the applicant holds or has held a certificate to practice dental assisting; verification must be sent directly to the board office from the other state(s) board and must attest to the status, issue date, expiration date, certification number, and other information contained on the form;

B. all certificates held by the applicant must have been in good standing for two years prior to application;

C. an official letter from the director of an accredited dental hygiene program or dental assisting program indicating the applicant has completed coursework in the requested expanded function; if applicable;

D. proof of current, valid, certification as a CDA or other DANB-issued credentials issued by DANB; if applicable; and

E. pass the jurisprudence exam with a score of at least seventy-five percent.

[16.5.33.13 NMAC - Rp, 16.5.33.13 NMAC, 5/31/2023; A, 4/21/2026]

16.5.33.14 ~~[RE-~~ **EXAMINATION PROCEDURE:**

A. An applicant who does not obtain a passing score on the required written exam must re-apply and pay the required fees in order to retake the examination.

B. Applicants for certification in radiography will be allowed to submit radiographs for the technique exam three times. With each failure the supervising dentist, dental hygienist, or dental assistant certified in dental radiography will be notified of their responsibility for training the applicant.

C. After a third failure, the applicant and supervising dentist, dental hygienist, or dental assistant certified in radiography will be required to submit to the board a plan for remediation, including steps that will be taken to assure clinical competency. [RESERVED]

[16.5.33.14 NMAC - Rp, 16.5.33.14 NMAC, 5/31/2023; Repealed, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.41 NMAC, Section 8, effective 4/21/2026.

16.5.41.8 FEES:

A. all fees are non-refundable;

B. application fee: \$100;

C. board examination fee not to exceed \$100 per exam;

D. triennial renewal fee: \$100;

E. late penalty fee: \$25.00;

F. duplicate certificate fee: \$10.00;

G. list of current certificate holders: \$300; an annual list of current certificate holders is available to the professional association upon request at no cost;

H. labels of current certificate holders: \$300;

I. reinstatement fee: \$15.00;

J. copies cost \$0.25 per page;]

A. all fees are non-refundable;

B. application fee: \$100;

C. board examination fee not to exceed \$100 per exam;

D. triennial renewal fee: \$100;

E. late penalty fee: \$25.00;

F. reinstatement fee: \$15.00;

G. duplicate certificate fee: \$10;

H. electronic processing fee, initial and renewal, per year is \$10;

I. list of current certificate holders: \$300; an annual

list of current certificate holders is available to the professional association upon request at no cost; J. return payment fee is \$35.

[16.5.41.8 NMAC - N, 1/9/2012; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.44 NMAC, Sections 8, 9 and 10, effective 4/21/2026.

16.5.44.8 HOURS

REQUIRED: [36 hours of continuing education, a maximum of 12 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 12 hours per year for individuals certified for less than three years.] Thirty six hours of continuing education are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 12 hours per year for individuals certified for less than three years. Initial certifications issued for less than a full year require 12 hours of continuing education for the first renewal.

[16.5.44.8 NMAC - N, 1/9/2012; A, 4/21/2026]

16.5.44.9 COURSES

REQUIRED: Continuing education coursework must contribute directly to the practice of expanded function dental auxiliary. The following courses are required for certification renewal:

A. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period;

~~B. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course; and~~

~~C. 12 hours in restorative dentistry.]~~

B. ethics and jurisprudence. Proof of completion of a course in ethics or jurisprudence that includes topics related to the New Mexico dental health care act and board rules;

C. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American heart association (AHA), the American red cross (ARC), or the American safety and health institute/health and safety institute (ASHI/HSI); cannot be a self-study course; and

D. 12 hours in restorative dentistry.
[16.5.44.9 NMAC - N, 1/9/2012; A, 4/21/2026]

16.5.44.10 VERIFICATION OF CONTINUING EDUCATION:

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for [one year following the renewal cycle in which they are earned] four years.

[16.5.44.10 NMAC - N, 1/9/2012; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.49 NMAC, Section 8, effective 4/21/2026.

- 16.5.49.8 FEES:**
- ~~A. all fees are non-refundable;~~
 - ~~B. application fee: \$100;~~
 - ~~C. board examination fee not to exceed \$100 per exam;~~
 - ~~D. triennial renewal fee: \$100;~~
 - ~~E. late penalty fee: \$25.00;~~
 - ~~F. duplicate certificate fee: \$10.00;~~
 - ~~G. list of current certificate holders: \$300; an annual list of current certificate holders is available to the professional association upon request at no cost;~~
 - ~~H. labels of current certificate holders: \$300;~~
 - ~~I. reinstatement fee: \$15.00;~~
 - ~~J. copies cost \$0.25 per page.]~~
 - E. reinstatement fee: \$15.00;
 - G. duplicate certificate fee: \$10.00;
 - H. electronic processing fee, initial and renewal, per year is \$10;
 - I. list of current certificate holders: \$300; an annual list of current certificate holders is available to the professional association upon request at no cost;
 - J. return payment fee is \$35.

[16.5.49.8 NMAC - N, 1/9/2012; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.52 NMAC, Sections 8, 9 and 10, effective 4/21/2026.

16.5.52.8 HOURS REQUIRED: [36 hours of continuing education, a maximum of 12 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 12 hours per year for individuals certified for less than three years.] Thirty six hours of continuing education are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 12 hours per year for individuals certified for less than three years. Initial certifications issued for less than a full year require 12 hours of continuing education for the first renewal.
[16.5.52.8 NMAC - N, 01/09/2012; A, 06/14/12; A, 4/21/2026]

16.5.52.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of community dental health coordinator. The following courses are required for certificate renewal:

A. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period;

~~B. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course; and~~
~~C. 12 hours in preventive or emergency dentistry.]~~

B. proof of completion of a course in ethics or jurisprudence that includes topics related to the New Mexico dental health care act and board rules;

C. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American heart association (AHA), the American red cross (ARC), or the American safety and health institute/health and safety institute (ASHI/HSI); cannot be a self-study course; and

D. 12 hours in preventive or emergency dentistry. [16.5.52.9 NMAC - N, 01/09/2012; A, 06/14/12; A, 4/21/2026]

16.5.52.10 VERIFICATION OF CONTINUING EDUCATION:

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for [one year following the renewal cycle in which they are earned.] four years.

[16.5.52.10 NMAC - N, 01/09/2012; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.59 NMAC, Sections 9 and 11, effective 4/21/2026,

16.5.59.9 LIST OF DISAPPROVED LICENSING JURISDICTIONS FOR DENTISTS AND DENTAL HYGIENISTS:

A. Pursuant to Subsection C of 61-5A-14 NMSA 1978 of the Dental Health Care Act, applicants for licensure as a dentist licensed in the following state and territories for the United States shall not be eligible for expedited licensure because the education requirements are not or cannot be determined to be, consistent with New Mexico:

- ~~(1)~~ American Samoa;
- ~~(2)~~ Puerto Rico; and;
- ~~(3)~~ Washington;]
- (1) American Samoa;
- (2) Arizona;
- (3) Colorado;
- (4) Kentucky;
- (5) Minnesota;
- (6) New York;
- (7) Oregon;
- (8) Puerto Rico;
- (9) Virginia;
- (10) Washington; and
- (11) Wisconsin.

B. Pursuant to Subsection C of 61-5A-14 NMSA 1978 of the Dental Health Care Act, applicants for licensure as a dental hygienist licensed in the following states and territories of the United States shall not be eligible for expedited licensure because the education requirements are not, or cannot be determined to be, consistent with New Mexico:

- ~~(1)~~ American Samoa;
- (2) Alabama;
- (3) Arizona;
- (4) Delaware;
- (5) Florida;
- (6) Mississippi;
- (7) New York;
- (8) Northern Mariana Islands;
- (9) Oregon;
- (10) Puerto Rico; and
- (11) Guam;]
- (1) American Samoa;

- (2) Alabama;
- (3) Arizona;
- (4) California;
- (5) Colorado;
- (6) Delaware;
- (7) Florida;
- (8) Kentucky;
- (9) Massachusetts;
- (10) Mississippi;
- (11) New York;
- (12) Northern Mariana Islands;
- (13) Oregon;
- (14) Puerto Rico; and
- (15) Guam.

[16.5.59.9 NMAC - N, 12/27/2022; A, 4/21/2026]

16.5.59.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:

A. An applicant for expedited licensure under Section 61-1-34, NMSA 1978 shall submit to the board a complete application containing the following:

- ~~(1)~~ a completed and signed application form;
- (2) proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and
- (3) submission of the following documentation:
 - (a) for military service member: a copy of military orders;
 - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
 - (c) for spouses of deceased military service members: copy of decedent's DD-214 and copy of marriage license;
 - (d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the

following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or

~~(e) for veterans (retired or separated): proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.]~~

~~(1) a completed and signed application form;~~

~~(2) successfully pass a New Mexico jurisprudence exam;~~

~~(3) proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and~~

~~(4) submission of the following documentation:~~

~~(a) for military service member: a copy of military orders;~~

~~(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;~~

~~(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;~~

~~(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or~~

~~(e) for veterans (retired or separated): proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with~~

a veteran's designation, or other documentation verifying honorable discharge.

B. An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

C. Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

D. If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-5A-21 NMSA 1978:

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

E. A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

F. An expedited license issued to a military service member or veteran pursuant to Section 61-1-34, NMSA 1978, shall be valid for the same length of time as a regular initial license issued by the board.

G. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the examination requirements set forth in 16.5.6 NMAC, 16.5.19 NMAC, 16.5.33 NMAC, 16.5.42 NMAC, 16.5.50 NMAC, and 16.5.61 NMAC.

[16.5.59.11 NMAC - N, 12/27/2022; A, 4/21/2026]

REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.60 NMAC, Section 8, effective 4/21/2026.

16.5.60.8 FEES:

A. All fees are non-refundable.

B. Application fee for licensure is \$250, which includes the initial licensing period.

C. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.

D. Triennial renewal fee for all dental therapist licensee is \$150:

(1) late renewal fee of \$100 after July 1 through September 1, plus renewal and impaired fees;

(2) cumulative late fee of \$5 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.

E. Fees for temporary licenses and application:

(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$100;

(3) twelve month license, application fee of \$100, license fee of \$150.

F. Reinstatement fee is \$200.

G. Application for licensure for inactive status is \$50.

~~**H.** Administrative fees:~~

~~**(1)** duplicate license fee is \$25;~~

~~**(2)** multiple copies of the statute or rules are \$10 each;~~

~~**(3)** copies cost \$0.25 per page;~~

~~**(4)** list of current dental therapist licensees-~~

is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and

~~(5) mailing labels of current dental therapist licensees is \$300.~~

H. Administrative fees: ~~(1) duplicate license fee is \$25;~~

~~(2) electronic processing fee, initial and renewal, per year is \$10;~~

~~(3) list of current dental therapist licensees is \$300; an annual list of current licensees is available to the~~

~~professional association upon request at no cost; and~~

~~(4) return payment fee is \$35.~~

~~[16.5.60.8 NMAC - N, 5/30/2021; A, 4/21/2026]~~

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.62 NMAC, Sections 8 and 10, effective 4/21/2026.

16.5.62.8 HOURS

REQUIRED: ~~[15 hours of continuing education in addition to the 45 hours required for the dental hygiene license, a maximum of fifty percent of the required 15 hours can be on-line, webinars or self-study are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 20 hours per full year of the initial licensing period. Initial licenses issued for less than a full year do not require continuing education for the first renewal.] Fifteen hours of continuing education in addition to the 45 hours required for the dental hygiene license are required~~

~~during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 20 hours per year for individuals licensed for less than three years. Initial licenses issued for less than a full year require 20 hours of continuing education for the first renewal.~~

~~[16.5.62.8 NMAC - N, 5/30/2021; A, 4/21/2026]~~

16.5.62.10 VERIFICATION OF CONTINUING EDUCATION:

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for ~~[one year following the renewal cycle in which they are earned:]~~ four years.

~~[16.5.62.10 NMAC - N, 5/30/2021; A, 4/21/2026]~~

SUPERINTENDENT OF INSURANCE, OFFICE OF

13.19.2 NMAC, Writing Surplus Line Business was filed January 1, 1999.

The Superintendent of Insurance approved repealing and replacing 13.19.2 NMAC, Writing Surplus Line Business after hearing held on March 17, 2026, in her Final Order dated March 30, 2026. The repeal and replace are effective on April 21, 2026.

SUPERINTENDENT OF INSURANCE, OFFICE OF

**TITLE 13 INSURANCE
CHAPTER 19 NON-ADMITTED
OR SURPLUS LINE INSURANCE
PART 2 WRITING
SURPLUS LINE BUSINESS**

13.19.2.1 ISSUING

AGENCY: Office of Superintendent of Insurance.

[13.19.2.1 NMAC, Rp.13.19.2.1 NMAC, 04/21/2026]

13.19.2.2 SCOPE: This rule

applies to the transaction of surplus lines insurance business within the state.

[13.19.2.2 NMAC, Rp.13.19.2.2 NMAC, 04/21/2026]

13.19.2.3 STATUTORY

AUTHORITY: Sections 14-4-1 *et seq.*, NMSA 1978, State Rules Act, Section 59A-2-9 NMSA 1978, Subsection F of Section 59A-14-4 NMSA 1978, and Subsection I of Section 59A-6-1 NMSA 1978.

[13.19.2.3 NMAC, Rp.13.19.2.3 NMAC, 04/21/2026]

13.19.2.4 DURATION:

Permanent.

[13.19.2.4 NMAC, Rp.13.19.2.4 NMAC, 04/21/2026]

13.19.2.5 EFFECTIVE

DATE: April 21, 2026, unless a later date is cited at the end of a section.

[13.19.2.5 NMAC, Rp.13.19.2.5 NMAC, 04/21/2026]

13.19.2.6 OBJECTIVE: The

purpose of this rule is to implement Chapter 59A, Article 14 NMSA 1978 Surplus Line Insurance.

[13.19.2.6 NMAC, Rp.13.19.2.6 NMAC, 04/21/2026]

13.19.2.7 DEFINITIONS:

In addition to the definitions in Section 59A-14-2 NMSA 1978, the following definitions apply in this rule:

A. "Alien insurer" has the meaning given in Section 59A-5-2 NMSA 1978.

B. "Foreign insurer" means an insurer organized under the laws of a state other than New Mexico.

C. "IRIS" means the insurance regulatory information system of the national association of insurance commissioners.

D. "Type of insurance" has the meaning given in Subsection F of Section 59A-14-2 NMSA 1978.

[13.19.2.7 NMAC, Rp.13.19.2.7 NMAC, 04/21/2026]

13.19.2.8 EXPORT ON BASIS OF RATE PROHIBITED:

The possibility or actuality that insurance may be obtained at a lower cost from an unauthorized insurer is not sufficient rationale for the transaction of surplus lines insurance if an authorized insurer is willing to provide the insurance.

[13.19.2.8 NMAC, Rp.13.19.2.8 NMAC, 04/21/2026]

13.19.2.9 PROHIBITION ON ARTIFICIAL DIVISION OF COVERAGE:

A. Artificial divisions of coverage in one class or any form of coverage under one class into two or more proposed contracts for the purpose of obtaining a marketing or rate advantage upon the entire risk is prohibited where the entire coverage sought in that class or form would be acceptable as a single contract to an authorized insurer.

B. Combinations of primary coverage and excess coverage shall not be considered a violation of this section if the excess insurance is written by an eligible surplus lines insurer:

(1) because of a refusal in writing by the primary authorized insurer to assume the limits of liability desired by the person seeking insurance; or

(2) on a written demand, including specific reasons, by the person seeking insurance that the entire liability not be placed with one insurance company.

[13.19.2.9 NMAC, Rp.13.19.2.9 NMAC, 04/21/2026]

13.19.2.10 INVESTIGATION OF FINANCIAL CONDITION OF INSURER:

A. Prior to placing insurance with an eligible surplus lines insurer, the surplus lines broker must ascertain that the insurer is in sound financial condition. To fulfill this requirement, the surplus lines broker must:

(1) determine that the insurer is on the most recent list of eligible surplus lines insurers maintained by the superintendent; and

(2) make inquiry sufficient to satisfy the surplus lines broker that the insurer is well managed, possesses financial capacity adequate to its business, and has a good reputation in the community.

B. Whenever it comes to the attention of the surplus lines broker that there is any reasonable basis for doubt as to Subsection A of 13.19.2.10 NMAC for a particular insurer, the surplus lines broker shall not place any further business with such insurer and shall promptly notify the superintendent.

[13.19.2.10 NMAC, Rp.13.19.2.10 NMAC, 04/21/2026]

13.19.2.11 NONRESIDENT SURPLUS LINES BROKERS: A licensed nonresident agent or broker may also be licensed as a surplus lines broker in order to place exportable surplus lines coverage with a risk retention group or on behalf of a risk purchasing group. A nonresident surplus line broker shall be subject to the requirements of Section 59A-14-10 NMSA 1978.

[13.19.2.11 NMAC, Rp.13.19.2.11 NMAC, 04/21/2026]

13.19.2.12 APPLICATION PROCESS FOR SURPLUS LINES INSURER:

A. An alien insurer listed on the national association of insurance commissioners' international insurer's department quarterly listing of alien insurers will be deemed to have met the requirements of this section.

B. To apply for qualification as an eligible surplus lines insurer, an unauthorized foreign insurer shall file with the superintendent the information

required in Section 59A-14-4 NMSA 1978. In support of the application, the insurer shall file the following items, using forms prescribed and provided by the superintendent where available:

(1) a non-refundable fee of \$1,000.00 for registration;

(2) a letter requesting approval as an eligible surplus lines insurer;

(3) documentation showing the minimum capital and surplus requirements for eligibility is \$15,000,000.00;

(4) a properly executed power of attorney authorizing the superintendent to accept service of process on behalf of the insurer;

(5) a document indicating compliance by the insurer with the laws of its home state as to the kind or kinds of insurance which the insurer is authorized to transact in its state of domicile, certified by the state of domicile;

(6) a surplus lines insurer contact processing form prescribed by the superintendent; and

(7) any other information the superintendent may require.

C. In all submissions to the superintendent, all information requested shall be provided and all questions shall be answered. Failure to answer all of the questions, to provide all of the information, or to respond to an inquiry by the superintendent shall result in an automatic disqualification of the applicant until such time as this requirement is satisfied fully. The superintendent may require information to be furnished under oath in accordance with Section 59A-4-3 NMSA 1978.

[13.19.2.12 NMAC, Rp.13.19.2.12 NMAC, 04/21/2026]

13.19.2.13 [RESERVED]

[13.19.2.13 NMAC, Repealed, 04/21/2026]

13.19.2.14 REFUSAL OR WITHDRAWAL OF SURPLUS

LINES INSURER ELIGIBILITY: The superintendent may refuse to initially list or continue to list an unauthorized insurer on the superintendent's list of eligible surplus lines insurers for any one of the following reasons:

- A. the insurer's key management, owners or other employees have been involved in fraud, mismanagement, bankruptcy or other activities that reflect unfavorably on the integrity of the insurer;
- B. the insurer operates through managing general agents without appropriate safeguards;
- C. the insurer has a material conflict of interest;
- D. the insurer has been in business for less than three years;
- E. the insurer has had new owners or management for less than three years;
- F. the insurer has an a.m. best's rating of B or lower;
- G. the insurer has had three or more adverse IRIS reports, unless the superintendent accepts a valid explanation by the insurer;
- H. the insurer has had a rate of growth greater than 20% per year over the last three years, unless other financial indicators are favorable;
- I. the insurer has been unprofitable for each of the last three years or has a long-term history of chronic unprofitability, unless the superintendent accepts a valid explanation by the insurer;
- J. the insurer has a questionable financial condition for any other reason;
- K. the superintendent has reason to believe that the insurer meets the ineligibility standards of Section 59A-14-14.1 NMSA 1978; or
- L. the superintendent determines that such action is necessary for protection of the public.

[13.19.2.14 NMAC, Rp.13.19.2.14 NMAC, 04/21/2026]

13.19.2.15 APPEAL OF SUPERINTENDENT'S ACTION: An unauthorized insurer aggrieved by any action of the superintendent may request a hearing before the superintendent pursuant to Section 59A-4-15 NMSA 1978 et seq. [13.19.2.15 NMAC, Rp.13.19.2.15 NMAC, 04/21/2026]

13.19.2.16 NOTICE OF WITHDRAWAL: If the superintendent withdraws eligibility from an eligible surplus lines insurer, the superintendent shall promptly mail notice of such withdrawal to the insurer and to every surplus lines broker. Surplus lines brokers who placed insurance with such insurer shall follow the requirements in 13 NMAC 19.2.10.2 [now Subsection B of 13.19.2.10 NMAC]. [13.19.2.16 NMAC, Rp.13.19.2.16 NMAC, 04/21/2026]

13.19.2.17 [RESERVED]
[13.19.2.17 NMAC, Repealed, 04/21/2026]

13.19.2.18 SIGNATURE AND SPECIAL ENDORSEMENT OF SURPLUS LINE POLICY: If the statement required by Section 59A-14-5 NMSA 1978 does not fit on the declarations page of the policy, the superintendent will accept the New Mexico surplus line brokers' countersignature endorsement prescribed in 13.19.2.22 NMAC on a separate page containing the statement required by statute. [13.19.2.18 NMAC, Rp.13.19.2.18 NMAC, 04/21/2026]

13.19.2.19 PRODUCING BROKER AFFIDAVIT: This affidavit shall be completed by the producing broker (e.g., the agent selling the product) and submitted to the surplus lines broker within fifteen days of issuance of the policy.

Continued Next Page

PRODUCING BROKER AFFIDAVIT
(Required by Subsection B of Section 59A-14-11 NMSA 1978)

Name of producing broker: _____

Address of producing broker: _____

Being duly sworn, I affirm that:

1. I was engaged to obtain the following policy:

Insurer: _____

Policy number: _____

Type of coverage: _____

Effective date: _____

2. (Check **either A or B** below, as appropriate)

A. After making a diligent search I found that the full amount or type of insurance requested could not be obtained from authorized insurers in New Mexico.

or

B. Within the last year, I have tried to place this type of coverage with at least four insurers authorized in New Mexico, including insurers by whom I am not appointed, and therefore know from substantial recent experience that this coverage cannot be obtained from any authorized insurer in New Mexico.

3. I expressly advised the insured prior to placing the insurance, and the insurance policy states, that:

A. the insurer with whom the insurance is placed is not an authorized insurer in New Mexico and is not subject to the supervision of the superintendent of insurance; and

B. in the event the insurer becomes insolvent, claims will not be paid by any New Mexico guaranty association.

4. I have asked the insured and, to the best of my knowledge, this coverage is not replacing existing coverage from an authorized insurer who was willing to continue providing coverage.

5. I certify that I am licensed by the New Mexico department of insurance for the type of coverage provided and that the information in this form is true and correct and is in compliance with the applicable provisions of the New Mexico insurance code and this rule.

SIGNATURE
[13.19.2.19 NMAC, Rp.13.19.2.19 NMAC, 04/21/2026]

DATE

13.19.2.20 [RESERVED]
[13.19.2.20 NMAC, Repealed, 04/21/2026]

13.19.2.21 [RESERVED]
[13.19.2.21 NMAC, Repealed, 04/21/2026]

13.19.2.22 SURPLUS LINES BROKERS COUNTERSIGNATURE ENDORSEMENT:

NEW MEXICO SURPLUS LINES BROKER'S COUNTERSIGNATURE ENDORSEMENT

THIS ENDORSEMENT MUST BE ATTACHED TO THE POLICY
AS PART OF THE INSURANCE CONTRACT

This policy provides surplus lines insurance by an insurer not otherwise authorized to transact business in New Mexico. This policy is not subject to supervision, review or approval by the superintendent of insurance. The insurance so provided is not within the protection of any guaranty fund law of New Mexico designed to protect the public in the event of the insurer’s insolvency.

POLICY NUMBER: _____

NAME OF INSURED: _____

CERTIFICATE NUMBER: _____

DATE POLICY SIGNED: _____

UNDERWRITING COMPANY: _____

Surplus Lines Brokers Signature

[13.19.2.22 NMAC, Rp.13.19.2.22 NMAC, 04/21/2026]

HISTORY OF 13.19.2 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as part of ID 67-1, New Mexico Official Administrative Rules and Regulations Code, on December 1, 1967.

History of Repealed Material:

13 NMAC 19.2, Writing Surplus Line Business, was repealed effective 12/31/1998 and was repromulgated as 13 NMAC 19.2, Writing Surplus Line Business, effective 1/1/1999.

13 NMAC 19.2 – Writing Surplus Line Business, filed 1/1/1999 was repealed and replaced by 13.19.2 NMAC – Writing Surplus Line Business, effective 04/21/2026,

End of Adopted Rules

2026 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXVII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 2	January 13
Issue 2	January 15	January 27
Issue 3	January 29	February 10
Issue 4	February 12	February 24
Issue 5	February 26	March 10
Issue 6	March 12	March 24
Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
Issue 11	May 21	June 10
Issue 12	June 11	June 23
Issue 13	June 25	July 14
Issue 14	July 16	July 28
Issue 15	July 30	August 11
Issue 16	August 13	August 25
Issue 17	August 27	September 9
Issue 18	September 11	September 22
Issue 19	September 24	October 6
Issue 20	October 8	October 20
Issue 21	October 22	November 3
Issue 22	November 5	November 17
Issue 23	November 19	December 8
Issue 24	December 10	December 22

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. The *New Mexico Register* is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941