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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

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June 21, 2022

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Notices of Rulemaking and Proposed Rules

GAME AND FISH DEPARTMENT STATE GAME COMMISSION

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a meeting and rule hearings on Friday July 22, 2022 beginning at 9:00 a.m. at the Inn of the Mountain Gods, 287 Carrizo Canyon Rd., Mescalero, NM 88340. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Migratory Game Bird Rule.

Synopsis:

The proposal is to amend the Migratory Game Bird Rule 19.31.6 NMAC which will become effective September 1, 2022. The most recent version of the rule expired on March 31, 2022.

PROPOSED CHANGES TO THE MIGRATORY GAME BIRD RULE:

- Changes to regular waterfowl season dates based on public comment and calendar dates.
- Increase sandhill crane permits in MRGV hunts by 55 based on population data, and distribute licenses among existing hunts.
- Increase sandhill crane permits by 10 in the southwest January hunt.
- Bag limit for northern pintail to remain at 1 per USFWS regulatory framework.

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 Migratory Game Bird Rule to DGF-waterfowl@state.nm.us. Individuals may also submit written comments to the physical address below. Comments are due by 5:00

p.m. on July 21, 2022. The final proposed rules will be voted on by the Commission during a public meeting on July 22, 2022. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearings to be held on July 22, 2022.

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

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a meeting and rule hearings on Friday July 22, 2022 beginning at 9:00 a.m. at the Inn of the Mountain Gods, 287 Carrizo Canyon Rd., Mescalero, NM 88340. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Barbary Sheep, Oryx, and Persian Ibex Rule.

Synopsis:

The proposal is to amend the Barbary Sheep, Oryx, and Persian Ibex Rule 19.31.12 NMAC which will become effective April 1, 2023. The most recent version of the rule will expire on March 31, 2023.

PROPOSED CHANGES TO THE BARBARY SHEEP, ORYX, AND PERSIAN IBEX RULE:

- Modify the definition of a muzzle-loader under the Manner and Method Rule to include only muzzle-loading firearms that do not have a scope. This will apply to all big game species.

Barbary Sheep

- Increase draw licenses by ~20% due to increased population indices, particularly on McGregor.
- Increase the number of rifle hunts (from 5 to 8) and shorten hunt length to allow for more hunts.
- Include all of GMU 34 in the over-the-counter hunt area.
- Open all GMUs (outside of SE core areas) to OTC license holders.
- Increase draw licenses on McGregor Range from 40 to 190 and create a new F/IM bag limit.

Oryx

- Increase off-range licenses by ~18%.
- Shift season structures and slight increase in some once-in-a-lifetime licenses on WSMR.

- Change the “Iraq/Afghanistan veteran” hunts to allow “any veteran” to be eligible.
- Make WSMR youth licenses available “once-in-a-youth”. The holder of a once-in-a-youth license may apply for once-in-a-lifetime licenses.
- Create new draw hunts for hunters 70 years of age and older (shift 20 licenses from existing hunts on WSMR and 20 from existing hunts off of WSMR).

Persian Ibex

- Decrease licenses to address decrease in ibex population.
- Change the definition of a “female/immature ibex” to be <20 inches (rather than <15 inches).
- Change hunt length for F/IM hunts to 5 days and the muzzle-loader hunt to 7 days.
- Shift hunt dates.
- Similar to other species make youth licenses available “once-in-a-youth”. The successful youths would still qualify to apply for once-in-a-lifetime licenses.

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 Barbary Sheep, Oryx, and Persian Ibex Rule to DGf-Exotics-Rule@state.nm.us. Individuals may also submit written comments to the physical address below. Comments are due by 5:00 p.m. on July 21, 2022. The final proposed rules will be voted on by the Commission during a public meeting on July 22, 2022. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearings to be held on July 22, 2022.

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.

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 hybrid virtual meeting and rule hearing on Friday, August 19, 2022 beginning at 9:00 a.m. at the University of New Mexico – Gallup Campus, Room STC 200, 705 Gurley Ave., Gallup, New Mexico 87301. For instructions on how to attend this meeting either in person or virtually, visit the Department’s website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following: Repeal of the Landowner Certification of Non-Navigable Water Rule 19.31.22. NMAC.

Synopsis for Landowner Certification of Non-Navigable Water Rule 19.31.22 NMAC:

The proposal is to permanently repeal the Landowner Certification of Non-Navigable Water Rule 19.31.22 NMAC. On March 1, 2022, the New Mexico State Supreme Court issued a ruling from the bench that the Landowner Certification of Non-navigable Water Rule 19.31.22 NMAC is unconstitutional. Later that same day, the State Game Commission repealed the rule on an emergency basis in accordance with emergency rule provisions in 14-4-5.6 NMSA (1978). The Supreme Court also issued a Writ of Mandamus on March 2, 2022 wherein the State Game Commission was ordered to cease further implementation of 19.31.22 NMAC and withdraw the regulations as void and unconstitutional. The 180-day limit on an emergency rule will expire on August 28, 2022. Therefore, there is a need to permanently repeal the rule in accordance with the Writ of Mandamus.

A full text of changes is available on the Department’s website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Fisheries Rule at: DGf-Non-NavigableRule@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on August 2, 2022. The final proposed rule will be voted on by the Commission during a hybrid virtual public meeting on August 19, 2022. Interested persons may also provide data, views or arguments, orally or in writing, at the hybrid virtual public rule hearing to be held August 19, 2022.

Full copies of the text of the proposed new rule, 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://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 needs 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**

**STATE GAME COMMISSION
MEETING AND RULE MAKING
NOTICE**

The New Mexico State Game Commission ("Commission") will be hosting a meeting and rule hearings on Friday August 19, 2022 beginning at 9:00 a.m. at the UNM Gallup Campus Room STC 200, 705 Gurley Ave., Gallup, NM 87301. The purpose of this meeting is to hear and consider action as appropriate on the presentation of proposed changes to the Bighorn Sheep Rule. The original

hearing date of June 3, 2022 was postponed and is now rescheduled for August 19, 2022.

Synopsis:

The proposal is to amend the Bighorn Sheep Rule 19.31.17 NMAC, which will become effective April 1, 2023. The most recent version of the rule will expire on March 31, 2023.

PROPOSED CHANGES TO THE BIGHORN SHEEP RULE: 1) opening the Jemez population for hunting Aug. 10-24 and Sept. 1-15, likely beginning in the 2024 season; 2) splitting the Hatchet Mountains hunt area into the Little Hatchets and Big Hatchets hunt areas and shifting hunt dates to September 15-30 and October 1-15; 3) creating 2 hunt windows in the Peloncillos (Nov. 1-15 & Nov. 16-30) and Ladrones (Dec. 1-15 & Dec. 16-31); 4) creating a 3rd hunt window in the Rio Grande Gorge population, Nov. 1-15; 5) including the Double E Wildlife Management Area as open to hunters that hold a valid license for that GMU; 6) making small adjustments to season dates in some areas.

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 to the Bighorn Sheep Rule at DGF-Bighorn-Rule@state.nm.us. Individuals may also submit written comments to the physical address below. Comments are due by 8:00 a.m. on August 17, 2022. The final proposed rules will be voted on by the Commission during a public meeting on August 19, 2022. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearings to be held on August 19, 2022.

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**

**STATE GAME COMMISSION
MEETING AND RULE MAKING
NOTICE**

The New Mexico State Game Commission ("Commission") will be hosting a meeting and rule hearings on Friday August 19, 2022 beginning at 9:00 a.m. at the UNM Gallup Campus Room STC 200, 705 Gurley Ave., Gallup, NM 87301. The purpose of this meeting is to hear and consider action as appropriate on the presentation of proposed changes to the Wildlife Management Areas Rule.

Synopsis:

The proposal is to amend the Wildlife Management Areas Rule 19.34.5 NMAC, which will become effective April 1, 2023. This rule is a permanent rule.

PROPOSED CHANGES TO THE WILDLIFE MANAGEMENT AREAS RULE:

- Include the name and location descriptions of properties acquired by the State Game Commission that are not currently included in the Wildlife Management Areas Rule.

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 to the Wildlife Management Areas Rule to DonaldP.Auer@state.nm.us. Individuals may also submit written comments to the physical address below. Comments are due by 8:00 a.m. on August 17, 2022. The final proposed rules will be voted on by the Commission during a public meeting on August 19, 2022. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearings to be held on August 19, 2022.

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.

**HEALTH,
DEPARTMENT OF
NOTICE OF PUBLIC HEARING**

The New Mexico Department of Health will hold a public hearing on the proposed new rule, 7.4.8 NMAC, "Maternal Mortality and Severe Maternal Morbidity Review". The public hearing will be held on July 26, 2022 at 9:00 a.m. via Cisco WebEx online, via telephone, and comments will be received via email through the conclusion of the hearing.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding Coronavirus and in consideration of Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders. Members of the public who wish to submit public comment regarding the proposed rule changes will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment before the conclusion of the hearing.

The hearing will be conducted to receive public comments regarding the proposed new rule 7.4.8 NMAC,

concerning the review of maternal mortality and severe maternal morbidity in New Mexico. The proposed rule is intended address the statutory requirements of the Maternal Mortality and Morbidity Prevention Act, Section 24-32-1 to 24-32-5, NMSA 1978.

The legal authority authorizing the proposed repeal and replacement of the rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, Section 24-1-3 NMSA, 1978, and Sections 24-32-1 to 24-32-5 NMSA 1978.

Purpose of the proposed rules are listed below:

7.4.8.1 - Issuing Agency:

- To identify the Department of Health, family health bureau of the public health division as the agency and division responsible for issuing and implementing these rules.

7.4.8.2 - Scope:

- Included to identify the community and population that will be affected by these regulations.

7.4.8.3 - Statutory Authority:

- Identifies the statutory authority allowing the department of health to issue these rules.

7.4.8.4 - Duration

- Identifies these rules as permanent rules in effect until lawfully removed.

7.4.8.5 - Effective date

- Provides for when these rules will be in effect.

7.4.8.5 - Objective

- Defines the objective of the rules and the purpose and duties of the maternal mortality review committee.
- This section includes acknowledgement of disparities in morbidity and mortality experienced by people of color in New Mexico and establishes a framework of health equity, representation and justice intended to be applied throughout the rules.

7.4.8.7 - Definitions

- Provides necessary definitions for terms as they are applied throughout the rules.

7.4.8.8 - Program Administration

- Describes how the maternal mortality and morbidity review committee will be administered.

7.4.8.9 - Executive Committee

- This section allows for an executive committee to be called, describes the makeup of the committee and describes the duties of such a committee. The purpose of this section is to permit, but not require, an executive committee to be established if it is determined that such a committee would be helpful to the purpose of the larger maternal mortality review committee.

7.4.8.10 - Membership

- This section describes the statutory makeup of the committee membership and the process for the appointment of the committee members.
- This section describes that members other than the nominated members will be recruited through an open call which will be posted along with an application on the Department's website. This will allow for the casting of a broad net in the recruitment of committee members.
- Once the applications are received, staff will use a scoring matrix to objectively evaluate the applications. The use of the scoring matrix is intended to assure a consistent and transparent means of evaluation. Scoring criteria will be applied to assure that applicants who are working in and representing communities that are the most impacted by maternal mortality will be prioritized when reviewing applications. This process will ensure the representation of highly impacted communities as required by the statute. Applicants with specific expertise in fields that encounter issues related to maternal mortality and morbidity will also be prioritized to ensure a well-rounded

and knowledgeable committee composition.

- The rule also establishes service terms, reimbursement requirements, and training for committee members.

7.4.8.11 - Case Identification

- Maternal Mortality
- This section identifies committee operational staff and the NM Department of Health Bureau of Vital Records and Health Statistics as the parties responsible for identifying cases of maternal mortality for the committee to review. A timeframe and reporting criteria are also identified.

7.4.8.12 - Data Collection

- This section outlines the individuals that are required to report cases of maternal mortality, the committee's authority to obtain the health and any law enforcement information connected to those cases and how that information may be collected. This section also provides for interviews of individuals connected to a mortality case. This process is important as the information needed for the review may not be fully contained within the medical or law enforcement records alone.
- This section also provides that the race and ethnicity of the deceased will be noted in otherwise de-identified case summaries for the committee to consider the possibilities of racism, bias and inequity having had a role in the death of that individual. The importance of considering that information is to build awareness of those factors as potential contributors to maternal mortality and to inform committee recommendations on how to address those factors.

7.4.8.13 - Committee Responsibilities

- This section describes the operation of the committees and what is expected of the committee members including what they will be responsible for producing.

7.4.8.14 - Case Review Process

- This section provides the process by which the committee reviews case summaries and how the committee's decisions are recorded and reported. This section also provides a method for how a committee member might address concerns about information missed by the case abstractor. For example, if a committee member is concerned that information related to racial justice and health equity is missing from a case summary, that committee member may request a review of that work or request that a new abstractor be assigned.

7.4.8.15 - Confidentiality of Records, Proceedings, and Findings:

- This section outlines the provisions for the maintenance of confidentiality during meetings, how the confidentiality records will be maintained and who will have access to those records.

7.4.8.16 - Dissemination of Information; Development of Recommendations; Advancement of recommendations

- This section describes how the information produced by the committee including aggregated and de-identified data, analysis and prevention recommendations will be distributed.
- Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. To access the hearing by telephone: please call 1-844-992-4726. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the "Join" button; click the "Join a meeting" button; enter the following meeting number and password where indicated on screen—Meeting number (access code): 2491 423 0759 #, Meeting password: GmyeZQZs386; click the "OK" button. You may also provide comment via Chat during the live streaming.

Written public comment regarding

the proposed rule amendments can be submitted by either mailing the comment to the following address:

Sheila Apodaca
Office of General Counsel
New Mexico Department of Health
1190 St. Francis Drive, Suite N-4095
Santa Fe, NM 87505
(505) 827-2997

Or preferably by e-mailing the comment to the e-mail address:
Sheila.Apodaca@state.nm.us.

Written comments must be received by the close of the public rule hearing on July 26, 2022. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within three (3) days of receipt and will be available at the New Mexico Department of Health Public Health Division for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

The foregoing are summaries of the proposed rule. The proposed rule includes various additional substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained online from the Department's website at <https://nmhealth.org/publication/regulation/>

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico

Administrative Code (NMAC) rules 8.280.500 NMAC, PACE, Income and Resource Standards, 8.281.400 NMAC, Institutional Care, Recipient Policies, and 8.281.500 NMAC, Institutional Care, Income and Resource Standards.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: June 21, 2022
Hearing Date: July 22, 2022
Adoption Date: Proposed as December 1, 2022
Technical Citations: 42 CFR 435.725(c)(4)

The Department is proposing to amend the rules as follows:

Background:

Federal policy at 42 Code of Federal Regulations (CFR) 435.725(c)(4)(ii) mandates that for the post-eligibility treatment of income (PETI) deductions be allowed for "necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts for these expenses." The Centers for Medicare and Medicaid Services (CMS) notified the Department that the Department's approved State Plan did not allow for the deduction of necessary medical or remedial care for the PETI calculation. The Department is submitting a State Plan Amendment that includes allowed PETI deductions for necessary medical or remedial care. Institutional Care Medicaid rules are being updated through these proposed rules to incorporate this mandated PETI deduction. Institutional Care Medicaid also prohibits the coverage of long-term care facility services furnished to applicants or recipients in out-of-state facilities. The Department is revising the special recipient requirements section of Institutional Care Medicaid rules to allow for

an exception to the out-of-state prohibition of long-term care facility services that are medically necessary and not available in the state of New Mexico referencing current covered out-of-state services rules found at Subsection F of 8.302.4.12 NMAC.

8.280.500 NMAC

Section 23 of the Program for All-Inclusive Care for the Elderly (PACE) rules are being updated to reference the correct medical care credit rules found in Institutional Care Medicaid policy at 8.281.500.22.

8.281.400 NMAC

Section 15 Institutional Care rules are being updated to add a reference to Subsection F of 8.302.4.12 NMAC to allow for the coverage of out-of-state NF services that are not available in the state of New Mexico. These services require prior authorization.

8.281.500 NMAC

Section 23 Institutional Care rules are being updated to incorporate language found at 42 CFR 435.725(c)(4) regarding expenses not subject to third party payment which includes Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care as PETI deductions. A deduction for incurred medically necessary non-covered medical or remedial care expenses will be allowed when the bill is incurred during a period which is no more than three months prior to the month of the current application.

The rules clarify the meaning of "not covered under the State Plan". For PETI purposes as required by section 1902(r)(1) of the Social Security Act, expenses for services not covered under the State Plan are any services not paid for by Medicaid for that particular individual. These include services listed as covered services in the State Plan, as well as services the plan does not cover. They also include services the individual received prior to becoming eligible for Medicaid, as well as services received after becoming eligible. Institutional long-term care medical

expenses incurred within three months prior to the month of application may be allowed as a deduction.

Current language will remain that the deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero.

Throughout the rule amendments have been made to comply with formatting requirements.

The Department proposes to implement these rules effective December 1, 2022. A public hearing to receive testimony on these proposed rules will be held via conference call on Friday, July 22, 2022, at 9:00 a.m. Mountain Time (MT). **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on July 22, 2022. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

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 MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

**SUPERINTENDENT OF
INSURANCE,
OFFICE OF THE
NOTICE OF PROPOSED
RULEMAKING**

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (“OSI” or “Superintendent”) will hold a public video/telephone hearing regarding proposed new rules 13.10.40 NMAC, VACCINE PURCHASING FUND. This hearing will commence on **July 22, 2022** at 9:00 a.m.

PURPOSE OF THE PROPOSED RULES: The proposed new rule is intended to implement the Vaccine Purchasing Act, and establish regulatory requirements for the carriers subject to the Vaccine Purchasing Act.

STATUTORY AUTHORITY:
Section 24-5A-8 NMSA 1978.

TO ATTEND THE HEARING:
Join via Video: <https://us02web.zoom.us/j/7188280685>
Join via telephone: 1-312-626-6799
Meeting ID: 718 828 0685

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and other interested parties. Any updates concerning

the hearing date, time, or location will be available by subscribing to the “Rulemaking and Ratemaking” newsletter at: <https://newsletter.osi.state.nm.us/>.

Copies of the Notice of Proposed Rulemaking and proposed new rules are available by electronic download from the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5764> or by requesting a copy by calling (505) 372-9135. Note: Due to the COVID-19 pandemic, the physical offices of the OSI remain closed to the public until further notice.

Written comments will be accepted through 4:00 p.m. July 22, 2022. Responses to written comments or oral comments will be accepted through 4:00 p.m. on August 1, 2022. All comments shall be filed electronically through the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5764> or mailed to:

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

For help submitting a filing, please contact OSI-docketfiling@state.nm.us.

The below docket number must be indicated on filed comments.

Docket No. 2022-0043

IN THE MATTER OF ADOPTION
OF NEW RULES 13.10.40 NMAC,
VACCINE PURCHASING FUND

All filings must be received 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 all timely submitted written comments and responses.

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Freya Tschantz at 505-372-9135 no later than ten (10) business days prior to the hearing.

DONE AND ORDERED this 9th day
of June, 2022
/S/RUSSELL TOAL

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

Adopted Rules

Effective Date and Validity of Rule Filings

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

GAME AND FISH DEPARTMENT STATE GAME COMMISSION

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 31 HUNTING AND FISHING PART 15 PRONGHORN ANTELOPE

19.31.15.1 ISSUING

AGENCY: New Mexico department of game and fish.

[19.31.15.1 NMAC - Rp, 19.31.15.1 NMAC, 4/1/2023]

19.31.15.2 SCOPE:

Sportspersons interested in pronghorn antelope hunting and management. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.

[19.31.15.2 NMAC - Rp, 19.31.15.2 NMAC, 4/1/2023]

19.31.15.3 STATUTORY

AUTHORITY: Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17, NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.15.3 NMAC - Rp, 19.31.15.3 NMAC, 4/1/2023]

19.31.15.4 DURATION:

April 1, 2023 through March 31, 2027.

[19.31.15.4 NMAC - Rp, 19.31.15.4 NMAC, 4/1/2023]

19.31.15.5 EFFECTIVE

DATE: April 1, 2023, unless a later date is cited at the end of a section.

[19.31.15.5 NMAC - Rp, 19.31.15.5 NMAC, 4/1/2023]

19.31.15.6 OBJECTIVE:

Establishing open hunting seasons and regulations, rules, and procedures governing the distribution and issuance of pronghorn licenses by the department.

[19.31.15.6 NMAC - Rp, 19.31.15.6 NMAC, 4/1/2023]

19.31.15.7 DEFINITIONS:

A. "Department"

shall mean the New Mexico department of game and fish.

B. "Director"

shall mean the director of the New Mexico department of game and fish.

C. "Either sex" or

"ES" shall mean any one pronghorn.

D. "Female or

immature pronghorn" or "**F-IM**" shall mean any female pronghorn or any pronghorn with both horns shorter than its ears.

E. "Game

management unit" or "**GMU**" shall mean those areas as described in 19.30.4 NMAC Game Management Units.

F. "Mature buck

pronghorn" or "**MB**" shall mean a pronghorn with at least one horn longer than its ears.

G. "Wildlife

management areas" or "**WMAs**" shall mean those areas as described in 19.34.5 NMAC Wildlife Management Areas.

[19.31.15.7 NMAC - Rp, 19.31.15.7 NMAC, 4/1/2023]

19.31.15.8

ADJUSTMENT OF LICENSES, AUTHORIZATIONS AND HARVEST LIMITS: The director, with the verbal concurrence of the chairperson of the New Mexico state game commission or their designee,

may adjust the number of licenses, or authorizations for pronghorn up or down to address significant changes in population levels or to address critical department management needs. This adjustment may be applied to any or all of the specific hunt codes for pronghorn, and may include a limit to the number of private land-only licenses by hunt code. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.15.8 NMAC - Rp, 19.31.15.8 NMAC, 4/1/2023]

19.31.15.9 PRONGHORN POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for pronghorn when justified in writing by department personnel.

B. The director or their designee shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses or permits to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available

to landowner identified hunters. The balance of prospective hunters shall be identified by the department.
[19.31.15.9 NMAC - Rp, 19.31.15.11 NMAC, 4/1/2023]

19.31.15.10 SPECIAL PRONGHORN HUNTING OPPORTUNITIES

A. Pronghorn conservation recognition program: Private landowners who are conducting and maintaining substantial habitat improvements and/or land management practices on their deeded lands that directly and significantly benefit pronghorn may be considered for special recognition. Only those projects as determined by the department to be relevant and beneficial to pronghorn will be considered. Landowners must submit an application and once approved, develop a pronghorn conservation and management plan in cooperation with the department. Upon approval of the plan the landowner may be granted alternative season dates as approved by the department. Landowners receiving special recognition are required to submit an update as directed by the department to be considered for continued participation. The hunt code for any unique hunt season approved pursuant to this program shall be ANT-1-600.

B. Ranch-wide agreements: Properties consisting of deeded and leased public lands deemed by the department to have pronghorn hunting opportunities may enter into an agreement with the department to create a pronghorn hunting ranch. The boundaries would include both the deeded and leased public lands. The department will negotiate with the landowner the number of private licenses to be issued to landowners with ranch-wide agreements. These private licenses shall have access to the deeded and leased public land within the hunting ranch boundary during the respective pronghorn hunt. The landowner shall allow access to the deeded and leased public land to all legally licensed public draw hunters pursuant to Subsection A of Section 19.31.15.11 NMAC for the respective game management unit. Any ranch entered into such an agreement shall be issued one authorization valid for a free pronghorn license pursuant to 17-3-14 NMSA 1978.
[19.31.15.10 NMAC - N, 4/1/2023]

19.31.15.11 PRONGHORN HUNTS:

Numbers of licenses are evaluated annually based upon population dynamics, weather conditions, sustainable harvest, and department management objectives.

A. Public land pronghorn hunts: Pronghorn draw hunts, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, sporting arms type, number of licenses and bag limit shall be as indicated below. Pronghorn draw hunt licenses are valid on all open public lands and any private land the licensee has written permission to hunt within the GMU or area. All WMAs are open to pronghorn hunts in respective GMUs listed in this section unless specifically closed by rule.

Open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	Hunt code	Licenses	Bag limit
2, 7, 9, 10	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-100	10	MB
2, 7, 9, 10: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-101	3	ES
2, 7, 9, 10	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-102	5	MB
12	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-103	10	MB
12: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-104	3	ES
12	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-105	10	MB
12: mobility impaired only	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-106	10	MB
12	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-107	10	MB
13	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-108	10	MB
13: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-109	2	ES
13	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-110	10	MB
13: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-111	10	MB
13	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-112	5	MB

15	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-113	20	MB
15: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-114	5	ES
15	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-115	10	MB
15: mobility impaired only	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-117	3	MB
15	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-118	10	MB
16	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-119	20	MB
16: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-120	5	ES
16	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-121	15	MB
16: mobility impaired only	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-123	3	MB
16	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-124	25	MB
17	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-125	20	MB
17: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-126	5	ES
17	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-127	5	MB
17	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-128	5	MB
17: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-129	3	MB
17	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-130	10	MB
18	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-131	25	MB
18	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-132	15	MB
18	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-133	15	MB
19: WSMR only, youth only	10/6-10/8	10/4-10/6	10/3-10/5	10/2-10/4	ANT-1-134	5	ES
20	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-135	10	MB
20: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-136	2	ES
20	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-137	10	MB
21, 24	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-138	25	MB
21, 24: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-139	10	ES
21, 24	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-140	5	MB
21, 24	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-141	10	MB
21, 24: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-142	8	MB
21, 24	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-143	15	MB
22, 23	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-144	10	MB
22, 23: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-145	5	ES
22, 23	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-146	5	MB

22, 23	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-147	10	MB
22, 23: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-148	3	MB
25, 26, 27	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-149	10	MB
25, 26, 27: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-150	5	ES
25, 26, 27	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-151	5	MB
25, 26, 27	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-152	10	MB
25, 26, 27: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-153	3	MB
28 McGregor Range only	9/2-9/3	8/31-9/1	8/30-8/31	9/5-9/6	ANT-3-154	7	MB
28: McGregor Range only, military only	9/2-9/3	8/31-9/1	8/30-8/31	9/5-9/6	ANT-3-155	7	MB
29: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-3-156	5	ES
29	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-3-157	15	MB
29	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-3-158	25	MB
30	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-159	25	MB
31 north of US 380	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-160	25	MB
31 north of US 380: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-161	5	ES
31 north of US 380	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-162	5	MB
31 north of US 380	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-163	10	MB
31 north of US 380: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-164	5	MB
31 north of US 380	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-165	15	MB
31 south of US 380	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-166	50	MB
31 south of US 380: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-167	5	ES
31 south of US 380	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-168	10	MB
31 south of US 380	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-169	10	MB

31 south of US 380: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-170	5	MB
31 south of US 380	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-171	20	MB
32 east of Pecos River	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-172	25	MB
32 east of Pecos River: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-173	5	ES
32 east of Pecos River	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-174	10	MB
32 east of Pecos River	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-175	5	MB
32 east of Pecos River: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-176	5	MB
32 east of Pecos River	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-177	15	MB
32 west of Pecos River	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-178	20	MB
32 west of Pecos River	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-179	15	MB
32 west of Pecos River	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-180	10	MB
32 west of Pecos River: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-181	5	MB
32 west of Pecos River	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-182	15	MB
32 (Roswell, hunt area)	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15	ANT-1-183	15	F-IM
33	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-184	30	MB
33: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-185	5	ES
33	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-186	25	MB
33	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-187	20	MB
33: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-188	5	MB
33	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-189	25	MB
36, 37	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-190	20	MB
36, 37: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-191	5	ES
36, 37	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-192	10	MB
36, 37	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-193	10	MB

36, 37: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-194	5	MB
36, 37	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-195	15	MB
38	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-196	20	MB
38: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-197	10	ES
38	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-198	15	MB
38	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-199	20	MB
38: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-200	10	MB
38	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-201	30	MB
39	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-202	5	MB
39: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-203	5	ES
39	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-204	10	MB
39	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-205	10	MB
39: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-206	5	MB
39	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-207	10	MB
40	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-208	5	MB
40	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-209	10	MB
40: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-210	5	MB
40	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-211	10	MB
41	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-212	35	MB
41: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-213	5	ES
41	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-214	30	MB
41	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-215	30	MB
41: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-216	5	MB
41	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-217	35	MB
41, youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-218	10	F-IM
42	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-219	5	MB
42: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-220	10	ES
42	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-221	10	MB
42	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-222	10	MB
8, 43	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-223	5	MB
8, 43	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-224	10	MB
47	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-225	10	MB

47: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-226	5	ES
47	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-227	25	MB
47	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-228	30	MB
47: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-229	5	MB
47	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-230	35	MB
47: youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-231	20	F-IM
50, 52: youth only	8/5-8/7	8/3-8/5	8/2-8/4	8/1-8/3	ANT-3-232	40	ES
50, 52	8/8-8/16	8/6-8/14	8/5-8/13	8/4-8/12	ANT-2-233	20	MB
50, 52	8/19-8/21	8/17-8/19	8/16-8/18	8/15-8/17	ANT-1-234	20	MB
50, 52	8/26-8/28	8/24-8/26	8/23-8/25	8/22-8/24	ANT-3-235	40	MB
56	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-236	50	MB
56: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-237	50	ES
56	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-238	5	MB
56	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-239	45	MB
56: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-240	5	MB
56	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-241	50	MB
56: youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-242	40	F-IM
57	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-243	5	MB
57: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-244	5	ES
57	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-245	5	MB
57: youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-246	5	F-IM
58	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-247	40	MB
58: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-248	20	ES
58	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-249	30	MB
58	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-250	30	MB
58: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-251	5	MB
58	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-252	40	MB
58: youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-253	35	F-IM
59	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-254	50	MB
59: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-255	45	ES
59	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-256	5	MB
59	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-257	40	MB

59: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-258	10	MB
59	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-259	50	MB
59: youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-260	40	F-IM

B. Private land-only pronghorn hunts: Private land-only pronghorn licenses shall be restricted to the hunt dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the draw hunt code listed in Subsection A of Section 19.31.15.11 NMAC for the GMU where the private landowner's property lies. Private land-only pronghorn licenses shall be unlimited, except the any legal sporting arms hunt in GMUs 4, 50 and 52 shall be limited to 15 licenses, or as otherwise provided in 19.31.15.8 NMAC, and available from any license vendor and the department's web site. These licenses are not valid for ranch-wide agreement properties as described in Subsection B of Section 19.31.15.10 NMAC. Private land-only pronghorn licenses are valid only on deeded private property where the licensee has written permission to hunt, and within the GMU or area allowed by hunt code, except ranch-wide agreement properties. Private land-only pronghorn licenses are not restricted to only one ranch or property. In those GMUs where there is no pronghorn draw hunt (GMUs 4, 14, 46, 48, 54, and 55), hunt dates, eligibility requirements or restrictions, sporting arms type, and bag limit will be:

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
4: youth only	8/5-8/7	8/3-8/5	8/2-8/4	8/1-8/3	ANT-3-300	unlimited	ES
4	8/8-8/16	8/6-8/14	8/5-8/13	8/4-8/12	ANT-2-301	unlimited	MB
4, 50, 52	8/19-8/21	8/17-8/19	8/16-8/18	8/15-8/17	ANT-1-302	15	MB
4	8/26-8/28	8/24-8/26	8/23-8/25	8/22-8/24	ANT-3-303	unlimited	MB
14	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-304	unlimited	MB
14	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-305	unlimited	MB
14	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-306	unlimited	MB
14	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-307	unlimited	MB
46	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-308	unlimited	MB
46: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-309	unlimited	ES
46	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-310	unlimited	MB
46	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-311	unlimited	MB
46	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-312	unlimited	MB
48	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-313	unlimited	MB
48: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-314	unlimited	ES
48	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-315	unlimited	MB
48	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-316	unlimited	MB
48	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-317	unlimited	MB
54	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-318	unlimited	MB
54: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-319	unlimited	ES
54	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-320	unlimited	MB
54	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-321	unlimited	MB
54	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-322	unlimited	MB
55	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-323	unlimited	MB
55: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-324	unlimited	ES
55	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-325	unlimited	MB

55	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-326	unlimited	MB
55	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-327	unlimited	MB

C. Private land-only F-IM pronghorn hunts: The department will work with interested landowners with sufficient pronghorn populations to authorize F-IM hunts on private deeded land. Sporting arms type, hunt dates, eligibility requirements or restrictions and authorization numbers for private deeded land F-IM hunts will be negotiated to maintain appropriate harvest within the exterior boundaries of participating ranches.

D. Pronghorn hunt for injured service men and women: The department may annually issue up to 15 authorizations for hunting by injured service men and women on Melrose Air Force Range. The director shall determine the procedures for issuing the authorizations, and the dates for each hunt.

[19.31.15.11 NMAC - Rp,
19.31.15.12 NMAC, 4/1/2023]

HISTORY OF 19.31.15 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Regulation No. 482, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 5/31/1967; Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/1967; Regulation No. 489, Establishing Turkey Seasons For The Spring of 1968, filed 3/1/1968; Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/1968; Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/1968; Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/1968; Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area,

Elk Area P-6, filed 12/11/1968; Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/1969; Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/1969; Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/1969; Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/1969; Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/1970; Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/1970; Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/1970; Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/1971; Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/1971; Regulation No. 523, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/9/1971; Regulation No. 531, Establishing A Season On Javelina, filed 12/17/1971; Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/1972; Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/1972; Regulation No. 536, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk,

Antelope, Barbary Sheep And Bighorn Sheep, filed 6/26/1972; Regulation No. 542, Establishing A Season On Javelina, filed 12/1/1972; Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/1973; Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/1973; Regulation No. 547, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, And Javelina, filed 5/31/1973; Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/1974; Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/1974; Regulation No. 558, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex, filed 5/29/1974; Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/1975; Regulation No. 567, Establishing 1975 Seasons On Deer, Bear, And Turkey On The Jicarilla Apache And Navajo Indian Reservations And On Elk On The Jicarilla Apache Indian Reservation, filed 3/24/1975; Regulation No. 568, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 6/25/1975; Regulation No. 573, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/1976;

Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/1977;
 Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/1978;
 Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/1979;
 Regulation No. 603, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1980 through March 31, 1981, filed 2/22/1980;
 Regulation No. 609, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1981 through March 31, 1982, filed 3/17/1981;
 Regulation No. 614, Establishing Open Seasons On Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1982 through March 31, 1983, filed 3/10/1982;
 Regulation No. 622, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1983 through March 31, 1984, filed 3/9/1983;
 Regulation No. 628, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1984 through March 31, 1985, filed 4/2/1984;
 Regulation No. 634, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1985 Through March 31, 1986, filed 4/18/1985;
 Regulation No. 640, Establishing

Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1986 through March 31, 1987, filed 3/25/1986;
 Regulation No. 645, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1987 through March 31, 1988, filed 2/12/1987;
 Regulation No. 653, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1988 through March 31, 1989, filed 12/18/1987;
 Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/1989;
 Regulation No. 664, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1989 through March 31, 1990, filed 3/20/1989;
 Regulation No. 674, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1990 through March 31, 1991, filed 11/21/1989;
 Regulation No. 683, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1991 through March 31, 1992, filed 2/8/1991;
 Regulation No. 689, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1992 through March 31, 1993, filed 3/4/1992;
 Regulation No. 700, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1993 through March 31, 1995, filed

3/11/1993.

History of Repealed Material:
 19.31.8 NMAC, Big Game, filed 3/1/2001 - duration expired 3/31/2003.
 19.31.8 NMAC, Big Game and Turkey, filed 3/3/2003 - duration expired 3/31/2005.
 19.31.8 NMAC, Big Game and Turkey, filed 12/15/2004 - duration expired 3/31/2007.
 19.31.15 NMAC, Pronghorn Antelope and Javelina, filed 12/1/2006 - duration expired 3/31/2009.
 19.31.15 NMAC, Pronghorn Antelope and Javelina, filed 3/13/2009 - duration expired 3/31/2011.
 19.31.15 NMAC, Pronghorn Antelope, filed 8/15/2010 - duration expired 3/31/2015.
 19.31.15 NMAC, Pronghorn Antelope, filed 3/17/2015, repealed 3/31/2016.
 19.31.15 NMAC, Pronghorn Antelope, filed 2/29/2016 - duration expired 3/31/2019
 19.31.15 NMAC, Pronghorn Antelope, filed 5/31/2018 - duration expired 3/31/2023.

**GAME AND FISH
 DEPARTMENT
 STATE GAME COMMISSION**

**TITLE 19 NATURAL
 RESOURCES AND WILDLIFE
 CHAPTER 31 HUNTING AND
 FISHING
 PART 21 JAVELINA**

19.31.21.1 ISSUING
AGENCY: New Mexico department of game and fish.
 [19.31.21.1 NMAC - Rp, 19.31.21.1 NMAC, 4/1/2023]

19.31.21.2 SCOPE:
 Sportspersons interested in javelina hunting and management. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.
 [19.31.21.2 NMAC - Rp, 19.31.21.2 NMAC, 4/1/2023]

19.31.21.3 STATUTORY AUTHORITY: Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish. [19.31.21.3 NMAC - Rp, 19.31.21.3 NMAC, 4/1/2023]

19.31.21.4 DURATION: April 1, 2023 through March 31, 2027. [19.31.21.4 NMAC - Rp, 19.31.21.4 NMAC, 4/1/2023]

19.31.21.5 EFFECTIVE DATE: April 1, 2023, unless a later date is cited at the end of a section. [19.31.21.5 NMAC - Rp, 19.31.21.5 NMAC, 4/1/2023]

19.31.21.6 OBJECTIVE: Establishing open hunting seasons and regulations, rules and procedures governing the distribution and issuance of javelina licenses by the department. [19.31.21.6 NMAC - Rp, 19.31.21.6 NMAC, 4/1/2023]

19.31.21.7 DEFINITIONS:

- A. **“Department”** shall mean the New Mexico department of game and fish.
- B. **“Director”** shall mean the director of the New Mexico department of game and fish.
- C. **“Either sex”** or **“ES”** shall mean any one javelina.
- D. **“Game management unit”** or **“GMU”** shall mean those areas as described in 19.30.4 NMAC

Boundary Descriptions for Game Management Units.

E. **“Wildlife management areas”** or **“WMAs”** shall mean those areas as described in 19.34.5 NMAC, Wildlife Management Areas. [19.31.21.7 NMAC - Rp, 19.31.21.7 NMAC, 4/1/2023]

19.31.21.8 ADJUSTMENT OF LICENSES, AUTHORIZATIONS AND HARVEST LIMITS: The director, with the verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may adjust the number of licenses for javelina up or down by no more than twenty percent of the total licenses available in the area or GMU to address significant changes in population levels or habitat availability. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code. [19.31.21.8 NMAC - Rp, 19.31.21.8 NMAC, 4/1/2023]

19.31.21.9 JAVELINA HUNTING SEASONS: Javelina hunts for the 2023-24 through 2026-27 hunt seasons shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, sporting arms, number of licenses, and bag limit. All WMAs shall remain closed to javelina hunting, except the prairie-chicken areas, Heart Bar, Double E, River Ranch, Red Rock (outside of the high-fence bighorn sheep enclosure only), and Socorro-Escondida WMAs are open to javelina hunting.

A. Draw hunts:

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
Statewide except GMU 28, youth only	2/1-3/31	2/1-3/31	2/1-3/31	2/1-3/31	JAV-1-100	180	ES
GMUs 19, 23, 24, 25, 26 and 27	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	JAV-2-101	330	ES
	2/1-3/31	2/1-3/31	2/1-3/31	2/1-3/31	JAV-1-102	1100	
GMU 28 McGregor range, military only	12/30-12/31	12/28-12/29	12/27-12/28	12/26-12/27	JAV-1-105	5	ES
GMU 28 McGregor range	12/30-12/31	12/28-12/29	12/27-12/28	12/26-12/27	JAV-1-106	5	ES

B. Over-the-counter hunts: The hunt area shall be statewide except GMUs 19, 23, 24, 25, 26, 27 and 28.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
Statewide except GMUs 19, 23, 24, 25, 26, 27 and 28	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	JAV-2-103	360	ES
	2/1-3/31	2/1-3/31	2/1-3/31	2/1-3/31	JAV-1-104	1200	ES

[19.31.21.9 NMAC - Rp, 19.31.21.9 NMAC, 4/1/2023]

19.31.12.10 POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for javelina when justified in writing by department personnel.

B. The director or their designee shall designate the legal sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.21.10 NMAC - N, 4/1/2023]

HISTORY OF 19.31.21 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Regulation No. 482, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 5/31/1967; Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/1967; Regulation No. 489, Establishing Turkey Seasons For The Spring of

1968, filed 3/1/1968; Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/1968; Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/1968; Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/1968; Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/1968; Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/1969; Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/1969; Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/1969; Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/1969; Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/1970; Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/1970; Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/1970; Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/1971; Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache

Indian Reservation, filed 3/9/1971; Regulation No. 523, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/9/1971; Regulation No. 531, Establishing A Season On Javelina, filed 12/17/1971; Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/1972; Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/1972; Regulation No. 536, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/26/1972; Regulation No. 542, Establishing A Season On Javelina, filed 12/1/1972; Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/1973; Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/1973; Regulation No. 547, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, And Javelina, filed 5/31/1973; Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/1974; Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/1974; Regulation No. 558, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn

Sheep, Javelina, Oryx, And Ibex, filed 5/29/1974;
 Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/1975;
 Regulation No. 567, Establishing 1975 Seasons On Deer, Bear, And Turkey On The Jicarilla Apache And Navajo Indian Reservations And On Elk On The Jicarilla Apache Indian Reservation, filed 3/24/1975;
 Regulation No. 568, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 6/25/1975;
 Regulation No. 573, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/1976;
 Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/1977;
 Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/1978;
 Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/1979;
 Regulation No. 603, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1980 through March 31, 1981, filed 2/22/1980;
 Regulation No. 609, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1981 through March 31, 1982, filed 3/17/1981;
 Regulation No. 614, Establishing Open Seasons On Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx

And Ibex For The Period April 1, 1982 through March 31, 1983, filed 3/10/1982;
 Regulation No. 622, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1983 through March 31, 1984, filed 3/9/1983;
 Regulation No. 628, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1984 through March 31, 1985, filed 4/2/1984;
 Regulation No. 634, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1985 Through March 31, 1986, filed 4/18/1985;
 Regulation No. 640, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1986 through March 31, 1987, filed 3/25/1986;
 Regulation No. 645, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1987 through March 31, 1988, filed 2/12/1987;
 Regulation No. 653, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1988 through March 31, 1989, filed 12/18/1987;
 Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/1989;
 Regulation No. 664, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1989 through March 31, 1990, filed 3/20/1989;
 Regulation No. 674, Establishing Open Seasons On Deer, Turkey,

Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1990 through March 31, 1991, filed 11/21/1989;
 Regulation No. 683, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1991 through March 31, 1992, filed 2/8/1991;
 Regulation No. 689, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1992 through March 31, 1993, filed 3/4/1992;
 Regulation No. 700, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1993 through March 31, 1995, filed 3/11/1993.

History of Repealed Material:

19.31.8 NMAC, Big Game, filed 3/1/2001 - duration expired 3/31/2003.
 19.31.8 NMAC, Big Game and Turkey, filed 3/3/2003 - duration expired 3/31/2005.
 19.31.8 NMAC, Big Game and Turkey, filed 12/1/2004 - duration expired 3/31/2007.
 19.31.15 NMAC, Pronghorn Antelope and Javelina, filed 12/1/2006 - duration expired 3/31/2009.
 19.31.15 NMAC, Pronghorn Antelope and Javelina, filed 3/13/2009 - duration expired 3/31/2011.
 19.31.21 NMAC, Javelina, filed 8/15/2010 - duration expired 3/31/2015.
 19.31.21 NMAC, Javelina, filed 3/17/2015 - duration expired 3/31/2019.
 19.31.21 NMAC, Javelina, filed 5/31/2018 - duration expired 3/31/2023.

GENERAL SERVICES DEPARTMENT

The New Mexico General Services Department approved and adopted, at its 6/2/2022 hearing, to repeal its rule 1.4.1 NMAC - Procurement Code Regulations (filed 8/13/2013) and replace it with 1.4.1 NMAC - Procurement Code Regulations, adopted on 6/6/2022 and effective 6/21/2022.

GENERAL SERVICES DEPARTMENT

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 4 STATE PROCUREMENT PART 1 PROCUREMENT CODE REGULATIONS

1.4.1.1 ISSUING AGENCY: General Services Department - State Purchasing Division.

[1.4.1.1 NMAC - Rp, 1.4.1.1 NMAC, 6/21/2022]

1.4.1.2 SCOPE: All executive branch state agencies.

A. Except as otherwise provided in the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, the code applies to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction.

B. General: Except as otherwise provided in this section, this rule applies to every agency and to every transaction to which the Procurement Code applies except the following:

- (1) procurement of highway construction or reconstruction by the department of transportation;
- (2) procurement by the judicial branch of state government;
- (3) procurement by the legislative branch

of state government;

(4) procurement by the boards of regents of state educational institutions named in Article 12 Section 11 of the constitution of New Mexico;

(5) procurement by the state fair commission of tangible personal property, services and construction under twenty thousand dollars (\$20,000);

(6) purchases from the instructional material fund;

(7) procurement by all local public bodies;

(8) procurement by regional education cooperatives;

(9) procurement by charter schools;

(10) procurement by each state health care institution that provides direct patient care and that is, or a part of which is, medicaid certified and participating in the New Mexico medicaid program; and

(11) procurement by the public school facilities authority.
[1.4.1.2 NMAC - Rp, 1.4.1.2 NMAC, 6/21/2022]

1.4.1.3 STATUTORY AUTHORITY: Section 9-17-5 NMSA 1978, Laws of 1983, Chapter 301, Section 5; and 13-1-95, Laws of 1984, Chapter 65, Section 68 (Repl. Pamp. 1997). Subject to the authority of the secretary of the general services department, Section 13-1-95 NMSA 1978 designates the state purchasing agent as both the administrator and chief executive of the state purchasing division. The cite further designates the state purchasing agent and purchasing division shall be responsible for the procurement of items of tangible personal property, services and construction for all state agencies except as otherwise provided in the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, and shall administer the code for those state agencies not excluded from the requirement of procurement

through the state purchasing agent. Among the statutory duties and responsibilities afforded the state purchasing agent is to recommend procurement regulations to the secretary of the general services department.
[1.4.1.3 NMAC - Rp, 1.4.1.3 NMAC, 6/21/2022]

1.4.1.4 DURATION:
Permanent.
[1.4.1.4 NMAC - Rp, 1.4.1.4 NMAC, 6/21/2022]

1.4.1.5 EFFECTIVE DATE: June 21, 2022, unless a later date is cited at the end of a section.
[1.4.1.5 NMAC - Rp, 1.4.1.5 NMAC, 6/21/2022]

1.4.1.6 OBJECTIVE:
Subsection C of Section 13-1-29 NMSA 1978 states that, the purposes of the Procurement Code are to provide for the fair and equal treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity. The objective of this rule is to have the force and effect of law to implement, interpret or make statute specific as it applies to the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978 and the purposes stated therein.
[1.4.1.6 NMAC - Rp, 1.4.1.6 NMAC, 6/21/2022]

1.4.1.7 DEFINITIONS:
A. Most of the terms which appear in this rule are defined in the Procurement Code.
B. In these rules and regulations the following definitions apply.

(1) **“Anti-poverty program businesses”** means small businesses, cooperatives, community self-determination corporations or other such enterprises designed and operated to alleviate poverty conditions and aided by state or federal antipoverty programs or through private philanthropy.

(2) **“Best obtainable price”** means that price at which services or goods can be purchased which is most advantageous to the purchasing entity; best obtainable price can be found by obtaining quotes or other appropriate methods; where there is only one vendor available for such a purchase utilizing a direct purchase order in accordance with statute (such as an entity requiring dues, for example), the price would be the best obtainable price since it is the only possible price for that particular procurement.

(3) **“Bidding time”** means the period of time between the date the invitation to bid notice is published and the date and time set for receipt of bids.

(4) **“Bidder”** means one who submits a bid in response to an invitation for bid.

(5) **“Competitive process”** means an invitation for bid or request for proposals. Three quotes does not constitute a competitive process as the vendors from whom the quotes are received are singled out and specifically chosen. Increasing the number of quotes does not invalidate this lack of fairness, transparency, and competitiveness.

(6) **“Competitive sealed bid”** means the response from a bidder to an invitation to bid (ITB).

(7) **“Competitive sealed proposal”** means the response from an offeror to a request for proposals (RFP).

(8) **“Contract”** means any written, binding agreement for the procurement of items of tangible personal property, services or construction. A purchase order alone can be a binding contract.

(9) **“Invitation for bid (IFB)”** means all documents, including those attached or incorporated by reference, used for soliciting competitive sealed bids. Also sometimes referred to as an invitation to bid (ITB).

(10) **“Offeror”** means one who submits a proposal in

response to a request for proposals.

(11) **“Sealed”** means, in terms of a non-electronic submission, that the bid or proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The state reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the procurement manager of any particular procurement. In terms of electronic submission, the entire required information and accompanying documents for the bid or proposal must be submitted via the electronic system being used by the state and by the deadline specified in the procurement. The deadline is that minute as stated in the procurement. That is, if a submission is due by 3:00 p.m., on a particular day, that deadline means 3:00:00 p.m., and does not mean 3:00:59 p.m.

[1.4.1.7 NMAC - Rp, 1.4.1.7 NMAC, 6/21/2022]

1.4.1.8 CENTRALIZATION OF PROCUREMENT ACTIVITY (1.4.1.8 - 1.4.1.13 NMAC):

A. State purchasing agent. All procurement for state agencies shall be performed by the state purchasing agent except the following:

- (1) professional services;
- (2) small purchases having a value not exceeding one thousand five hundred dollars (\$1,500);
- (3) emergency procurements; and
- (4) the types of procurement specified in Subsection B of 1.4.1.2 NMAC.

B. Central purchasing offices. All procurement for state agencies excluded from the requirement of procurement through

the state purchasing agent shall be performed by a central purchasing office designated by statute, the governing authority of that state agency or as otherwise provided in the Procurement Code.

C. Cooperative procurement. Nothing in this section should be interpreted as limiting the ability of state agencies to make procurements under existing contracts or enter into cooperative procurement agreements in accordance with Sections 13-1-29, 13-1-135 and 13-1-136 NMSA 1978.

[1.4.1.8 NMAC - Rp, 1.4.1.8 NMAC, 6/21/2022]

1.4.1.9 **INSPECTION OF PUBLIC RECORDS:** The inspection of public records is governed by the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. To the extent that any provision of this rule conflicts with the Inspection of Public Records Act, as interpreted by the courts of this state, that act shall control. Furthermore, no obligation to keep data confidential which is contained in this rule is intended to create any liability that would not otherwise exist under state law.

[1.4.1.9 NMAC - Rp, 1.4.1.9 NMAC, 6/21/2022]

1.4.1.10 **DOLLAR AMOUNTS:** Whenever a dollar amount appears in this rule, such amount is exclusive of applicable gross receipts and local option taxes as the term is defined in Subsection Q of Section 7-9-3 NMSA 1978.

[1.4.1.10 NMAC - Rp, 1.4.1.10 NMAC, 6/21/2022]

1.4.1.11 INDEMNIFICATION AND INSURANCE:

A. Tort liability. Except as provided for in the Tort Claims Act, Section 41-4-1 through 41-4-27 NMSA 1978, no contract governed by this rule shall contain any provision whereby a state agency agrees to indemnify or provide tort liability insurance for any contractor.

B. Other risks. No contract governed by this rule shall

contain any provision whereby a state agency agrees to indemnify a contractor or provide a contractor with a limitation of liability or provide a contractor with insurance for non-tort risks.

C. Contract provisions void. Any indemnification or insurance provision in any contract executed in violation of this section shall be void and of no effect.

[1.4.1.11 NMAC - Rp, 1.4.1.11 NMAC, 6/21/2022]

1.4.1.12 [RESERVED]

1.4.1.13 SEVERABILITY:

If any provision of this rule, or any application thereof, to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application.

[1.4.1.13 NMAC - Rp, 1.4.1.13 NMAC, 6/21/2022]

1.4.1.14 APPLICATION (COMPETITIVE SEALED BIDS;

1.4.1.14 -1.4.1.28 NMAC): The provisions of 1.4.1.14 through 1.4.1.28 NMAC apply to every procurement made by competitive sealed bids.

[1.4.1.14 NMAC - Rp, 1.4.1.14 NMAC, 6/21/2022]

1.4.1.15 COMPETITIVE SEALED BIDS REQUIRED: All procurement performed pursuant to the procurement code shall be achieved by competitive sealed bids except procurement achieved pursuant to the following methods:

- A. competitive sealed proposals;
- B. small purchases;
- C. sole source procurement;
- D. emergency procurement;
- E. procurement under existing contracts; and
- F. purchases from anti-poverty program businesses.

[1.4.1.15 NMAC - Rp, 1.4.1.15 NMAC, 6/21/2022]

1.4.1.16 INVITATION FOR BIDS (“IFB”):

A. General: The invitation for bids (“IFB”), also sometimes referred to as the invitation to bid (ITB), is used to initiate a competitive sealed bid procurement. The IFB shall include the following:

(1) the specifications for the services, construction or items of tangible personal property to be procured, except that professional services and a design and build project delivery system cannot be procured with an IFB pursuant to Section 13-1-111 NMSA 1978;

(2) all contractual terms and conditions applicable to the procurement including any requirements for complying with applicable preferences provided in law;

(3) the term of the contract and conditions of renewal or extension, if any;

(4) instructions and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening;

(5) a notice that the IFB may be canceled and that any and all bids may be rejected in whole or in part when it is in the best interest of the state of New Mexico; and

(6) a notice that reads substantially as follows: The Procurement Code, Section 13-1-28 through Section 13-1-199 NMSA 1978, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

B. Incorporation by reference: The IFB may incorporate documents by reference, provided that the IFB specifies where such documents can be obtained.

C. Evaluation criteria: The IFB shall set forth the evaluation criteria that will be used to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular

purpose. Those criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price shall be objectively measurable. No criteria may be used in bid evaluation that are not set forth in the IFB.

D. Bid form: The IFB shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall affirm, certify, or sign and submit along with all other necessary submissions. This may be an entirely electronic process if required by the procurement.

E. Bid samples and descriptive literature:

(1) “Descriptive literature” means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item.

(2) “Bid sample” means a sample furnished by a bidder that shows the characteristics of an item offered in the bid.

(3) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the item bid.

(4) Bid samples, when required, shall be furnished free of expense to the state and prior to the time set for the opening of bids. Samples not destroyed or mutilated in testing will be returned upon request by mail, express or freight, collect. Each sample must be labeled to clearly show the bid number and the bidder’s name.

F. Bidding time: Bidding time is the period of time between the date of distribution of the IFB and the time and date set for receipt of bids. In each case bidding time shall be set to provide bidders a reasonable time to prepare their bids. In no case shall the bidding time be shorter than the time required for publication under 1.4.1.17 NMAC of this rule.

[1.4.1.16 NMAC - Rp, 1.4.1.16 NMAC, 6/21/2022]

1.4.1.17 PUBLIC NOTICE INVITATION FOR

BID: Publication. The IFB or notice thereof shall be published not less than ten calendar days prior to the date set for the opening of bids. The IFB or notice must be published in accordance with statute.

A. These requirements of publication are in addition to any other procedures that may be adopted by the state purchasing agent to notify prospective bidders that bids will be received, including but not limited to publication in trade journals, if available.

B. Bidder lists. The state purchasing agent shall send copies of the notice or IFB to those businesses which have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and which have paid any required fees. This may be done through electronic means. (Section 13-1-104 NMSA 1978). Reference is also given to 1.4.1.48 NMAC of this rule.

C. Public availability. A copy of the IFB shall be made available for public inspection on the state purchasing agent's website. [1.4.1.17 NMAC - Rp, 1.4.1.17 NMAC, 6/21/2022]

1.4.1.18 PRE-BID

CONFERENCES: Pre-bid conferences may be conducted to explain the procurement requirements. If a pre-bid conference is to be held it shall be noticed in the IFB. The conference should be held long enough after the IFB has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the IFB. An IFB shall only be changed by written amendment as provided in this rule. [1.4.1.18 NMAC - Rp, 1.4.1.18 NMAC, 6/21/2022]

1.4.1.19 AMENDMENTS TO THE INVITATION FOR BIDS:

A. Form. An

amendment to the IFB shall be identified as such and shall require that bidders acknowledge its receipt. The amendment shall refer to the portions of the IFB it amends.

B. Distribution. Amendments shall be sent to all prospective bidders known to have received the IFB.

C. Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the time shall be increased to the extent possible in the amendment or, if necessary, by other electronic means and confirmed in the amendment.

D. Use of amendments: Amendments should be used to:

(1) make any changes in the IFB such as changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(2) correct defects or ambiguities; or

(3) furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

[1.4.1.19 NMAC - Rp, 1.4.1.19 NMAC, 6/21/2022]

1.4.1.20 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS:

A. Procedure: A bid may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or electronic notice to the location designated in the IFB as the place where bids are to be received.

B. Disposition of bid security: If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

C. Records: All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

[1.4.1.20 NMAC - Rp, 1.4.1.20 NMAC, 6/21/2022]

1.4.1.21 LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS:

A. Definition: Any bid or any withdrawal or modification of a bid received after the time and date for opening of bids at the place designated for opening is late. (NOTE: if the time a bid is due is listed as "3 p.m." this means 3:00:00 and not 3:00:59.)

B. General rule: No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of state personnel directly serving the procurement activity.

C. Records: All documents relating to late bids, late modifications, or late withdrawals shall be made a part of the appropriate procurement file.

[1.4.1.21 NMAC - Rp, 1.4.1.21 NMAC, 6/21/2022]

1.4.1.22 BID OPENING:

A. Receipt: Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. This may be done entirely electronically.

B. No bids received: Except as provided in 1.4.1.68 through 1.4.1.72 NMAC of this rule, if no bids are received or if all bids received are rejected in accordance with the provisions of 1.4.1.68 through 1.4.1.72 NMAC of this rule, a new IFB shall be issued. If upon re-bidding with no change in specifications from the first IFB, the bids received are unacceptable, or if no bids are secured, the state purchasing agent may purchase (i.e., as opposed to procure) the items of tangible personal property, construction or services in the open market at the best obtainable price.

C. Opening and recording: Bids and modifications shall be opened publicly in the presence of one or more witnesses at the time and place designated in the

IFB. Presence in this context may include virtual presence. The name of each bidder, the amount of each bid and each bid item, if appropriate, the names and addresses of the required witnesses, and such other relevant information as may be specified by the state purchasing agent shall be recorded. The record shall be open for public inspection. Each bid, except those portions for which a bidder has made a written request for confidentiality, shall also be open to public inspection. Any data, which a bidder believes should be kept confidential shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

[1.4.1.22 NMAC - Rp, 1.4.1.22 NMAC, 6/21/2022]

1.4.1.23 MISTAKES IN BIDS:

A. Consideration for award: Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in 1.4.1.14 through 1.4.1.28 NMAC of this rule.

B. General principles: Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent authorized in 1.4.1.14 through 1.4.1.28 NMAC of this rule.

C. Mistakes discovered before opening: A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in 1.4.1.20 NMAC of this rule.

D. Confirmation of bid: When the procurement officer knows or has reason to conclude that a mistake has been made in the low bid, the procurement officer should request the low bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the low bid or a bid unreasonably lower than the other bids submitted. If the low bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in Subsection E of this section are met.

E. Mistakes discovered after opening: This subsection sets forth procedures to be applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening.

(1) Technical irregularities: Technical irregularities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, when there is no effect on price, quality or quantity. The procurement officer may waive such irregularities or allow the low bidder to correct them if either is in the best interest of the state. Examples include the failure of the low bidder to:

- (a)** return the number of signed bids required by the IFB;
- (b)** sign the bid, but only if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound; or
- (c)** acknowledge receipt of an amendment to the IFB, but only if:
 - (i)** it is clear from the bid that the low bidder received the amendment and intended to be bound by its terms; or
 - (ii)** the amendment involved had no effect on price, quality or quantity.

(2) Mistakes where intended correct bid is evident: If the mistake and the intended correct bid are clearly evident on the face

of a bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of a bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. It is emphasized that mistakes in unit prices cannot be corrected.

(3) Mistakes where intended correct bid is not evident: A low bidder alleging a material mistake of fact which makes the bid non-responsive may be permitted to withdraw the bid if:

- (a)** a mistake is clearly evident on the face of the bid document but the intended correct bid is not; or
- (b)** the low bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

(4) Written determination: When a bid is corrected or withdrawn, or a correction or withdrawal is denied, the procurement officer shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

[1.4.1.23 NMAC - Rp, 1.4.1.23 NMAC, 6/21/2022]

1.4.1.24 BID EVALUATION AND AWARD:

A. General: A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. The IFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bid. No bid shall be evaluated for any requirement or criterion that is not disclosed in the IFB. Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross receipts tax or local option tax but that the contracting agency shall be required to pay the tax including any increase in the tax becoming effective after the contract is entered into. The tax shall be shown as a separate amount

on each billing or request for payment made under the contract.

B. Product acceptability: The IFB shall set forth all evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any or all of the following prior to award:

(1) inspection or testing of a product for such characteristics as quality or workmanship;

(2) examination of such elements as appearance, finish, taste or feel; or

(3) other examinations to determine whether it conforms with other purchase description requirements.

C. Purpose of acceptability evaluation: An acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another's but only to determine that a bidder's offering is acceptable as set forth in the IFB. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive.

D. Brand-name or equal specification: Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. When bidding an "or equal" the burden of persuasion is on the supplier or manufacturer who has not been specified to convince the procurement officer that their product is, in fact, equal to the one specified. The procurement officer is given the responsibility and judgement for making a final determination on whether a proposed substitution is an "or equal".

E. Determination of lowest bidder: Following determination of product acceptability as set forth in Subsections B, C and

D of this section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the IFB. Only objectively measurable criteria that are set forth in the IFB shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, discounts, transportation costs and ownership or life-cycle formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the state has available concerning future use.

(1) **Prompt payment discounts.** Prompt payment discounts shall not be considered in computing the low bid. Such discounts may be considered after award of the contract.

(2) **Trade discounts.** Trade discounts shall be considered in computing the low bid. Such discounts may be shown separately, but must be deducted by the bidder in calculating the unit price quoted.

(3) **Quantity discounts.** Quantity discounts shall be included in the price of an item. Such discounts may not be considered where set out separately unless the IFB so specifies.

(4) **Transportation costs.** Transportation costs shall be considered in computing the low bid. Such costs may be computed into the bid price or be listed as a separate item.

(5) **Total or life-cycle costs.** Award may be determined by total or life-cycle costing if so indicated in the IFB. Life-cycle cost evaluation may take into account operative, maintenance, and money costs, other costs of ownership and usage and resale or residual value, in addition to acquisition price, in determining the lowest bid cost over the period the item will be used.

(6) **Energy efficiency.** Award may be determined by an evaluation consisting of

acquisition price plus the cost of energy consumed over a projected period of use.

F. Restrictions: Nothing in 1.4.1.24 NMAC of this rule shall be deemed to permit contract award to a bidder submitting a higher quality item than designated in the IFB unless the bidder is also the lowest bidder as determined under Subsection E of this section. Further, except as provided in this Subsection F of 1.4.1.24 NMAC of this rule does not permit negotiations with any bidder. If the lowest responsive bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest responsible bidder may negotiate with the purchaser (i.e., this exception applies only to purchases and does not apply to procurements generally) for a lower total bid to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.

G. Documentation of award: Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

H. Publicizing awards: Written notice of award shall be sent to the successful bidder. Notice of award shall also be posted on the state purchasing website.

[1.4.1.24 NMAC - Rn 1.4.1.24 NMAC, 6/21/2022]

1.4.1.25 STATUTORY

PREFERENCES: Statutory preferences to be applied in determining low bidder or successful offeror. New Mexico law provides certain statutory preferences for several categories of bidders and offerors as well as for recycled content goods (Sections 13-1-21 and 13-1-22 NMSA 1978). These preferences must be applied in regard to invitations for bids and requests for

proposals in accordance with statute in determining the lowest bidder or successful offeror.

[1.4.1.25 NMAC - Rp, 1.4.1.25 NMAC, 6/21/2022]

1.4.1.26 IDENTICAL LOW BIDS:

A. Definition:

Identical low bids are low responsive bids, from responsible bidders, which are identical in price after the application of the preferences referred to in 1.4.1.25 NMAC of this rule and which meet all the requirements and criteria set forth in the IFB.

B. Award: When two or more identical low bids are received, the state purchasing agent may:

(1) award pursuant to the multiple source award provisions of Sections 13-1-153 and 13-1-154 NMSA 1978;

(2) award to a bidder with a statutory preference if the identical low bids are submitted by a bidder with a statutory preference and a nonresident business or nonresident contractor;

(3) award to a bidder offering recycled content goods if the identical low bids are for recycled content goods and virgin goods;

(4) award by lottery to one of the identical low bidders; or

(5) reject all bids and re-solicit bids or proposals for the required services, construction or items of tangible personal property. [1.4.1.26 NMAC - Rp, 1.4.1.26 NMAC, 6/21/2022]

1.4.1.27 MULTI-STEP SEALED BIDS:

A. General: Multi-step bidding is a variant of the competitive sealed bidding method. This method may be utilized when the state purchasing agent or a central purchasing office makes a determination that it is impractical initially to prepare specifications to support an award based on price, or that specifications are inadequate or are too general to permit full and

free competition without technical evaluation and discussion.

B. Phased process:

Multi-step bidding is a phased process which combines elements of both the competitive sealed proposal method, seeking necessary information or unpriced technical offers in the initial phase; and regular competitive sealed bidding, inviting bidders who submitted technically acceptable offers in the initial phase, to submit competitive sealed price bids on the technical offers in the final phase.

The contract shall be awarded to the lowest responsible bidder. If time is a factor, the state purchasing agent or a central purchasing office may require bidders to submit a separate sealed bid during the initial phase to be opened after the technical evaluation.

C. Public notice: Whenever multi-step sealed bids are used, public notice for the first phase shall be given in accordance with 1.4.1.17 NMAC of this rule. Public notice is not required for the second phase.

[1.4.1.27 NMAC - Rp, 1.4.1.27 NMAC, 6/21/2022]

1.4.1.28 PAYMENTS FOR PURCHASES:

Contract clause. All contracts resulting from an invitation for bids shall contain a clause allowing for late payment charges against the state agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

[1.4.1.28 NMAC - Rp, 1.4.1.28 NMAC, 6/21/2022]

1.4.1.29 APPLICATION (COMPETITIVE SEALED PROPOSALS; 1.4.1.29-1.4.1.47 NMAC):

A. General: Except as provided in Subsections B and C of this section, the provisions of 1.4.1.29 through 1.4.1.47 NMAC of this rule apply to every procurement made by competitive sealed proposals.

B. Architects, engineers, landscape architects and surveyors: The provisions of 1.4.1.29 through 1.4.1.47 NMAC of this rule do not apply to the procurement of professional services of architects,

engineers, landscape architects and surveyors for state public works projects or local public works projects. Except that when procuring such professional services for state public works projects or local public works projects state agencies and local public bodies shall comply with Section 13-1-120 through 13-1-124 NMSA 1978, competitive sealed qualifications-based proposals.

C. Procurement of professional services by state agencies with rulemaking authority: A state agency with rule making authority may adopt its own regulations for the procurement of professional services by competitive sealed proposals under the following conditions:

(1) the state agency must receive prior written authorization from the general services department secretary;

(2) the state agency's proposed regulations must provide that RFPs or notices thereof having a value exceeding sixty thousand dollars (\$60,000) will be provided to the state purchasing agent for distribution to prospective offerors who have registered with the state purchasing agent's office in accordance with the terms of Subsection B of 1.4.1.17 NMAC and Subsection A of 1.4.1.32 NMAC of this rule.

D. "Professional services" are defined in Section 13-1-76 NMSA 1978: The section of statute acknowledges the difficulty of any attempt made to recognize and list each and every service that could conceivably fall within the definition of "professional services". Instead, the statute provides in relevant part that "...other persons or businesses providing similar professional services to those listed may be designated as such by a determination issued by the state purchasing agent or a central purchasing office." In instances where "...other persons or businesses providing similar professional services..." as cited in Section 13-1-76, NMSA 1978, is not clearly defined, state agencies shall submit a written request to the state purchasing agent for issuance

of a determination and a finding that the service is to be designated as a professional service. State agencies shall not make such a determination independent of the state purchasing agent.

[1.4.1.29 NMAC - Rp, 1.4.1.29 NMAC, 6/21/2022]

1.4.1.30 GENERAL DISCUSSION:

A. Use of competitive sealed proposals: When a state agency procures professional services that are not related to a design and build project delivery system in accordance with Section 13-1-119.1 NMSA 1978, or when the state purchasing agent or a designee makes a determination that the use of competitive sealed bids is either not practicable or not advantageous to the state, a procurement shall be effected by competitive sealed proposals. Note well: Section 13-1-111 NMSA 1978 only authorizes state agencies other than the state purchasing agent to procure professional services by means of competitive sealed proposals. Section 13-1-111 NMSA 1978 does not authorize state agencies to avoid centralized purchasing through the state purchasing agent by issuing RFPs for items of tangible personal property, or nonprofessional services.

B. Definitions: The words “practicable” and “advantageous” are to be given ordinary dictionary meanings. The term “practicable” denotes what may be accomplished or put into practical application. “Advantageous” denotes a judgmental assessment of what is in the state’s best interest. The use of competitive sealed bids may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the state’s best interest.

C. Proposals offer flexibility: The key element in determining advantageousness is the need for flexibility. The competitive sealed proposal method differs from the competitive sealed bid method in two important ways:

(1) it permits discussions with competing offerors and changes in their proposals including price; and;

(2) it allows more subjective evaluations to be made in comparing acceptable offerors’ proposals with stated evaluation criteria when selecting among acceptable proposals for award of a contract.

D. Determinations by category: The state purchasing agent may make determinations by category of services or items of tangible personal property that it is either not practicable or not advantageous to procure specified types of service or items of tangible personal property by competitive sealed bids in which case competitive sealed proposals shall be utilized. The state purchasing agent may modify or revoke such determinations at any time.

[1.4.1.30 NMAC - Rp, 1.4.1.30 NMAC, 6/21/2022]

1.4.1.31 REQUEST FOR PROPOSALS (“RFP”):

A. Initiation: The request for proposals (“RFP”) is used to initiate a competitive sealed proposal procurement. All state agencies shall follow published guidelines and procedures issued by the state purchasing agent from development stage through award of RFP-based procurements. At a minimum the RFP shall include the following:

(1) the specifications for the services or items of tangible personal property to be procured;

(2) all contractual terms and conditions applicable to the procurement;

(3) instructions concerning the submission and response to questions;

(4) the term of the contract and conditions of renewal or extension, if any;

(5) instructions and information to offerors, including the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed;

(6) all of the evaluation factors, and the relative weights to be given to the factors in evaluating proposals;

(7) a statement that discussions may be conducted with offerors who submit proposals determined to be potentially acceptable of being selected for award, but that proposals may be accepted without such discussions;

(8) a notice that the RFP may be canceled and that any and all proposals may be rejected in whole or in part when it is in the best interest of the state of New Mexico; and

(9) a statement of how proposed costs should be submitted;

(10) a notice that reads substantially as follows: The Procurement Code, Section 13-1-28 through 13-1-199 NMSA 1978, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

B. Incorporation by reference: The RFP may incorporate documents by reference, provided that the RFP specifies where such documents can be obtained.

C. Form of proposal: The manner in which proposals are to be submitted, including any forms for that purpose, must be designated in the RFP.

D. Proposal preparation time: 30 calendar days between the date of issue and the proposal due date is the recommended minimum proposal preparation time. A longer preparation time may be required for complex procurements or for procurements that require substantial offeror resources to prepare an acceptable proposal. [1.4.1.31 NMAC - Rp, 1.4.1.31 NMAC, 6/21/2022]

1.4.1.32 PUBLIC NOTICE REQUEST FOR PROPOSAL:

A. Procurements by the state purchasing agent: The state purchasing agent shall give public

notice of the RFP in the same manner as provided in 1.4.1.17 NMAC of this rule. However, an RFP or a notice shall be published not less than 20 days prior to the date set for receipt of proposals unless a shorter time frame is requested and approval granted by the state purchasing agent.

B. Procurements of all tangible personal property or services: The procurement manager shall deliver to the state purchasing agent or designee the following listed items no later than 15 calendar days prior to the proposed issue date (this requirement may be waived by the state purchasing agent at the state purchasing agent's discretion):

(1) the RFP authorization and plan document, if required;

(2) a state of New Mexico requisition completed according to state purchasing division processes;

(3) a list containing the names and addresses of suggested vendors, if any;

(4) a copy of the complete RFP document; for large or complex procurements, the draft RFP document shall be delivered to the state purchasing agent for review at least thirty days prior to the proposed issue date (this requirement may be waived by the state purchasing agent at the state purchasing agent's discretion).

C. Procurements of professional services by other central purchasing offices: When procuring professional services, central purchasing offices other than the state purchasing agent shall provide the following notice:

(1) the RFP or a notice thereof shall be published not less than 10 calendar days prior to the date set for the receipt of proposals; it is recommended, however, that the time period between the published date and the date set for receipt of proposals be no less than 20 days; the RFP or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located; if there is no newspaper

of general circulation in the area, such other notice may be given as is commercially reasonable; and

(2) a copy of the RFP and notice may be delivered to the state purchasing agent not less than 15 calendar days prior to the date set for the issuance; if so received, the state purchasing agent shall distribute the RFP or notice to prospective offerors who have registered with the state purchasing agent's office in accordance with the terms of Subsection B of 1.4.1.17 NMAC of this rule and Subsection A of this section; and

(3) a copy of the RFP shall be made available for public inspection at the central purchasing office or electronically or online.

D. Additional notice: The requirements of Subsections A, B and C of this section are in addition to any other procedures which may be adopted by the state purchasing agent or central purchasing offices to notify prospective offerors that proposals will be received, including but not limited to publication in professional journals, if available.

[1.4.1.32 NMAC - Rp 1.4.1.32 NMAC, 6/21/2022]

1.4.1.33 PRE-PROPOSAL CONFERENCES: Pre-proposal conferences may be conducted in accordance with 1.4.1.18 NMAC of this rule. Any such conference should be held prior to submission of initial proposals. Other than for particular procurements where an agency feels a pre-proposal conference is necessary (such as for construction procurements where building walk-throughs or similar activities would be required or other like procurements), it is strongly recommended that pre-proposal conferences not be made mandatory so as to not eliminate potential vendors prior to receiving bids or proposals.

[1.4.1.33 NMAC - Rp, 1.4.1.33 NMAC, 6/21/2022]

1.4.1.34 AMENDMENTS TO THE REQUEST FOR PROPOSALS:

A. Prior to submission of proposals: Prior to submission of proposals, amendments to the RFP may be made in accordance with 1.4.1.19 NMAC of this rule.

B. After submission of proposals: After submission of proposals, amendments to the RFP shall be distributed only to short-listed offerors. The short-listed offerors shall be permitted to submit new proposals or to amend those submitted. If in the opinion of the procurement officer or procurement manager, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled in accordance with 1.4.1.68 through 1.4.1.72 NMAC of this rule, and a new RFP issued.

[1.4.1.34 NMAC - Rp, 1.4.1.34 NMAC, 6/21/2022]

1.4.1.35 MODIFICATION OR WITHDRAWAL OF

PROPOSALS: Proposals may be modified or withdrawn prior to the established due date in accordance with 1.4.1.20 NMAC of this rule. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or, if discussions have begun, it is the time and date by which best and final offers must be submitted by short-listed offerors. (NOTE: if the time a proposal is due is listed as "3 p.m." this means 3:00:00 and not 3:00:59.)

[1.4.1.35 NMAC - Rp, 1.4.1.35 NMAC, 6/21/2022]

1.4.1.36 LATE PROPOSALS, LATE WITHDRAWALS AND LATE

MODIFICATIONS: Any proposal, withdrawal, or modification received after the established due date at the place designated for receipt of proposals is late. (See 1.4.1.35 NMAC of this rule for the definition of "established due date.") They may be considered only in accordance with 1.4.1.21 NMAC of this rule.

[1.4.1.36 NMAC - Rp, 1.4.1.36 NMAC, 6/21/2022]

1.4.1.37 RECEIPT AND OPENING OF PROPOSALS:

A. Receipt: Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. This may be done entirely electronically. (See 1.4.1.35 NMAC of this rule for the definition of “established due date.”)

B. Opening: Proposals shall not be opened publicly and shall not be open to public inspection until after award of a contract. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement. An offeror may request in writing nondisclosure of confidential data. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the nonconfidential portion of the proposal.
[1.4.1.37 NMAC - Rp, 1.4.1.37 NMAC, 6/21/2022]

1.4.1.38 EVALUATION OF PROPOSALS:

A. Evaluation factors: The evaluation shall be based on the evaluation factors and the relative weights set forth in the RFP. Appropriate rating systems (numerical, point-based, pass/fail, etc.) are required for requests for proposals-based procurements.

B. Evaluation committee: The state agency management shall appoint an evaluation committee prior to the due date for receipt of proposals. The size of the committee should be manageable and include both user and technical support representatives. Contractor subject matter experts may be used to advise the committee but cannot evaluate proposals.

C. Classified proposals: For the purpose of conducting discussions under 1.4.1.39 NMAC of this rule, proposals shall be initially classified as:

- (1) responsive;
- (2) potentially responsive, that is, reasonably susceptible of being made responsive; or

(3) non-responsive.

D. Disqualification: Non-responsive proposals are disqualified and eliminated from further consideration. A written determination in the form of a letter shall be sent to the disqualified offeror setting forth the grounds for the disqualification, and made a part of procurement file.
[1.4.1.38 NMAC - Rp, 1.4.1.38 NMAC, 6/21/2022]

1.4.1.39 PROPOSAL DISCUSSIONS AND NEGOTIATIONS WITH INDIVIDUAL OFFERORS:

A. Discussions authorized: Discussions may be conducted with responsible offerors who submit acceptable or responsive, potentially acceptable or potentially responsive proposals.

B. Purposes of discussions: Discussions are held to clarify technical or other aspects of the proposals.

C. Conduct of discussions: If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

Proposals may be accepted and evaluated without such discussion. This is not an opportunity for the offerors to amend the substance of their proposals.

D. Short list: All responsible offerors who submit acceptable proposals are eligible for the short list. If numerous acceptable proposals have been submitted, however, the procurement officer or procurement manager may rank the proposals and select the highest ranked proposals for the short list. Those responsible offerors who are selected for the short list are the “short-listed offerors” or “finalist offerors”.

E. Competitive negotiations: Competitive

negotiations may be held among the short-listed offerors to:

(1) promote understanding of a state agency’s requirements and short-listed offerors’ proposal; and

(2) facilitate arriving at a contract that will be most advantageous to a state agency taking into consideration the evaluation factors set forth in the RFP;

(3) except for circumstances and situations otherwise approved by the state purchasing agent, negotiations of the relevant terms and conditions as well as any other important factors in an RFP and proposed contract are negotiated prior to award of a contract, not after award.

F. Conduct of competitive negotiations: Short-listed offerors shall be accorded fair and equal treatment with respect to any negotiations and revisions of proposals. The procurement officer should establish procedures and schedules for conducting negotiations. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the short-listed offeror.
[1.4.1.39 NMAC - Rp, 1.4.1.39 NMAC, 6/21/2022]

1.4.1.40 DISCLOSURE:

The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process and prior to award. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.
[1.4.1.40 NMAC - Rp, 1.4.1.40 NMAC, 6/21/2022]

1.4.1.41 BEST AND FINAL OFFERS:

Best and final offers in a request for proposals are sometimes appropriate and helpful. An offeror’s best offer should be included in that offeror’s original proposal and no discussion or changes to that offer

should be allowed prior to selection of the offeror as the successful offeror unless negotiations are undertaken pursuant to 1.4.1.39 NMAC of this rule. After such selection of a successful offeror or offerors (for a multiple award procurement) and before final award, an agency may negotiate with the selected successful offeror(s) for the best possible terms for the state but such negotiations shall not change the successful offeror's or offerors' (for a multiple award procurement) proposal(s) to the detriment of the state. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement. [1.4.1.41 NMAC - Rp, 1.4.1.41 NMAC, 6/21/2022]

1.4.1.42 MISTAKES IN PROPOSALS:

A. Modification or withdrawal of proposals: Proposals may be modified or withdrawn as provided in 1.4.1.35 NMAC of this rule.

B. Mistakes discovered after receipt of proposals: This subsection sets forth procedures to be applied in several situations in which mistakes in proposals are discovered after receipt of proposals.

(1) Confirmation of proposal. When the procurement officer or procurement manager knows or has reason to conclude before award that a mistake has been made, the procurement officer or procurement manager should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in Subsection C of this section are met.

(2) During negotiations. If best and final offers are requested in the RFP, between the period of selecting short-listed/finalist offerors and the date set for best and final offers, any short-listed or finalist offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

C. Technical irregularities: Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the procurement officer or procurement manager may waive such irregularities or allow an offeror to correct them if either is in the best interest of the state. Examples include, but are not limited to, the failure of an offeror to:

- (1) return the number of signed proposals required by the RFP;
- (2) sign the appropriate forms where called for, but only if the unsigned forms are accompanied by other material indicating the offeror's intent to be bound; or
- (3) acknowledge receipt of an amendment to the RFP, but only if:
 - (a) it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms; or
 - (b) the amendment involved had no effect on price, quality or quantity.

D. Correction of mistakes: If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident to the evaluation committee members or the procurement officer or the procurement manager on the face of the proposal, in which event the proposal may not be withdrawn.

E. Withdrawal of proposals: If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal non-responsive may be

permitted to withdraw the proposal if:

- (1) the mistake is clearly evident to the evaluation committee members or the procurement officer or the procurement manager on the face of the proposal but the intended correct offer of the offeror is not; or
- (2) the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

F. Determination required: When a proposal is corrected or withdrawn, or correction or withdrawal is denied under Subsections C through E of this section, the procurement officer or procurement manager shall prepare a written determination showing that the relief was granted or denied in accordance with this section. [1.4.1.42 NMAC - Rp, 1.4.1.42 NMAC, 6/21/2022]

1.4.1.43 AWARD: PROFESSIONAL SERVICES:

A. Procedure: An award shall be made to the responsible offeror whose proposal is most advantageous to a state agency, taking into consideration the evaluation factors set forth in the RFP. The procurement officer shall make a written determination in the form of an evaluation committee report showing the basis on which an award was found to be most advantageous to a state agency based on the factors set forth in the RFP. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

B. Publicizing awards: The procurement manager or procurement officer shall promptly provide all offerors who submitted proposals written notice of the award. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

C. Publicizing awards: The procurement manager or procurement officer shall promptly provide all offerors who submitted proposals written notice of the award which notice shall be sent via certified

mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP.

[1.4.1.43 NMAC - Rp, 1.4.1.43 NMAC, 6/21/2022]

1.4.1.44 AWARD: ALL TANGIBLE PERSONAL PROPERTY OR SERVICES: (INCLUDES SOFTWARE, HARDWARE, NON-PROFESSIONAL SERVICES, etc):

A. Procedure: The award shall be made by the state purchasing agent or designee to the responsible offeror whose proposal is most advantageous to the state agency, taking into consideration the evaluation factors set forth in the RFP. The procurement manager shall make a written determination in the form of an evaluation committee report showing the basis on which the recommended award was found to be most advantageous to the state agency based on the factors set forth in the RFP.

B. Publicizing awards: The procurement manager shall promptly provide all offerors who submitted responsive proposals written notice of the award. The written notice shall be sent via certified mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP. [1.4.1.44 NMAC - Rp, 1.4.1.44 NMAC, 6/21/2022]

1.4.1.45 PUBLIC INSPECTION:

A. General: After award, any written determinations made pursuant to these rules, the evaluation committee report and each proposal, except those portions for which the offeror has made a written request for confidentiality, shall be open to public inspection. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with

the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed may not be designated as confidential information. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

B. Confidential data: If a request is received for disclosure of data, for which an offeror has made a written request for confidentiality, the state purchasing agent or central purchasing office shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. If it is determined that an offeror's requested confidential data should be disclosed, that offeror will receive reasonable notice in order to afford the offeror the opportunity to take legal action to prevent the disclosure. Unless the offeror takes legal action to prevent the disclosure, the data will be so disclosed. After award the proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

[1.4.1.45 NMAC - Rp, 1.4.1.45 NMAC, 6/21/2022]

1.4.1.46 PAYMENTS FOR PURCHASES: Contract clause. All contracts resulting from a request for proposals shall contain a clause allowing for late payment charges against the state agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978. [1.4.1.46 NMAC - Rp, 1.4.1.46 NMAC, 6/21/2022]

1.4.1.47 GSD CONTRACT REVIEW: All contracts for professional services with state agencies shall be reviewed as to all requirements as set forth in statute and rule by the general services department, if such review is required by the general services department or subsequent general services

department rules.

[1.4.1.47 NMAC - Rp, 1.4.1.47 NMAC, 6/21/2022]

1.4.1.48 APPLICATION (SMALL PURCHASES; 1.4.1.48 - 1.4.1.52 NMAC): The provisions of 1.4.1.48 through 1.4.1.52 NMAC of this rule apply to the procurement of nonprofessional services, construction or items of tangible personal property having a value not exceeding the value set forth in statute for small purchases and to the procurement of professional services having a value not exceeding the value set forth in statute for small purchases of professional services, the use of a statewide price agreement, an existing contract or the methods of procurement set forth in 1.4.1.50 through 1.4.1.52 NMAC of this rule provide alternatives to the competitive sealed bid and competitive sealed proposal methods of procurement. If an existing statewide price agreement, an existing contract or, the procurement methods set forth in 1.4.1.50 through 1.4.1.52 NMAC of this rule are not used, the competitive sealed bid or competitive sealed proposal methods shall apply. [1.4.1.48 NMAC - Rp, 1.4.1.48 NMAC, 6/21/2022]

1.4.1.49 DIVISION OF REQUIREMENTS: Procurement requirements shall not be artificially divided so as to constitute a small purchase under 1.4.1.48 through 1.4.1.52 NMAC of this rule. [1.4.1.49 NMAC - Rp, 1.4.1.49 NMAC, 6/21/2022]

1.4.1.50 SMALL PURCHASES OF \$20,000 OR LESS: A state agency may procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000) by issuing a direct purchase order to a contractor based upon the best obtainable price and in accordance with any procedures or processes set forth by the state purchasing agent and the state controller. [1.4.1.50 NMAC - Rp, 1.4.1.50 NMAC, 6/21/2022]

1.4.1.51 SMALL PURCHASES OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:

A. Quotation to be obtained: Insofar as it is practical for small purchases of nonprofessional services, construction or items of tangible personal property having a value exceeding twenty thousand dollars (\$20,000) but not exceeding the value set forth in statute for small purchases, and in accordance with any procedures or processes set forth by the state purchasing agent and the state controller, no fewer than three businesses shall be solicited via written requests containing the specifications for the procurement to submit written quotations that are recorded and placed in the procurement file. Such notations as “does not carry” or “did not return my phone call” do not qualify as a valid quotation. The central nonprofit agency’s declining to offer to perform a particular service does not qualify as a valid quotation; it is, in fact, the refusal to provide a quotation. If the lowest quotation is not acceptable, the central purchasing office must issue a written determination as to the reasons for such a decision. These reasons must not be arbitrary or capricious. The written determination becomes a part of the procurement file.

B. Disclosure: Prior to award, the contents of any response to a quotation shall not be disclosed to any other business from which the same request for quotation is also being solicited. Award in this context means the final required state agency signature on the contract(s) or purchase order resulting from the procurement.

C. Award: Award shall be made to the responsible and responsive business offering the lowest acceptable quotation.

D. Records: The names of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public

record.
[1.4.1.51 NMAC - Rp, 1.4.1.51 NMAC, 6/21/2022]

1.4.1.52 SMALL PURCHASES OF PROFESSIONAL SERVICES:

A. Application: A central purchasing office may procure professional services having a value not to exceed the value set forth in statute for small purchases of professional services, except for the services of architects, engineers, landscape architects, or surveyors for state public works projects, as that term is defined in Section 13-1-91 NMSA 1978, in accordance with Subsections B, C, and D of this section and 1.4.10 NMAC.

B. Examination of offeror list: Before contacting any business, a central purchasing office is encouraged to examine the state purchasing agent’s current list of registered offerors, if any. Central purchasing offices are encouraged to contact at least three businesses for written offers before selecting a contractor.

C. Negotiations: A central purchasing office shall negotiate a contract for the required services at a fair and reasonable price to the state agency.

D. Disclosure: If more than one business is contacted, the contents of the written or oral offer of one business shall not be disclosed to another business until award is made. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

[1.4.1.52 NMAC - Rp, 1.4.1.52 NMAC, 6/21/2022]

1.4.1.53 APPLICATION (SOLE SOURCE PROCUREMENTS, 1.4.1.53 -

1.4.1.57 NMAC): The provisions of 1.4.1.53 through 1.4.1.57 NMAC of this rule apply to all sole source procurements unless emergency conditions exist as defined in 1.4.1.59 NMAC of this rule.

[1.4.1.53 NMAC - Rp, 1.4.1.53 NMAC, 6/21/2022]

1.4.1.54 SOLE SOURCE PROCUREMENT OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:

A. Conditions for use: A contract may be awarded without competitive sealed bids or competitive sealed proposals, regardless of the estimated cost, when the state purchasing agent or a central purchasing office, employing due diligence, determines, in writing, that:

(1) there is only one source for the required service, construction or item of tangible personal property;

(2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and

(3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

B. Request by using agency: Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need. The written explanation shall be made upon a form provided by the state purchasing agent and available on-line.

C. Posting: Prior to the award of a sole source procurement contract, the state purchasing agent or central purchasing office shall:

(1) provide the information set forth in statute and listed upon the form made available by the state purchasing agent on the state purchasing agent’s website to the department of information technology for posting on the sunshine portal; and

(2) forward the same information to the legislative finance committee.

D. A local public body central purchasing office, prior to award of a sole source contract,

shall post the information required by statute on the local public body website, if one exists, and post the information required by statute on the state purchasing agent’s website.

E. Negotiations: The state purchasing agent or a central purchasing office shall conduct negotiations, as appropriate, as to price, delivery and quantity, in order to obtain the price most advantageous to the state.

F. Notice; protest: At least 30 days before a sole source contract is awarded, the state purchasing agent, a central purchasing office, a local public body, or a designee of any of these entities shall post notice of the intent to award a sole source contract on its website if one exists, and post the information required by statute on the state purchasing agent’s website. Any qualified potential contractor who was not awarded a sole source contract may protest to the state purchasing agent or a central purchasing office. The protest shall be submitted:

- (1) in writing;
- and
- (2) within 15 calendar days of the notice of intent to award a contract being posted on the state purchasing agent’s website or a central purchasing office’s website, if it maintains one, or on a local public body’s website, if it maintains one. (NOTE: the posting date should be the same on all websites upon which it is posted. If this is not the case, however, the 15 calendar period runs from the latest posted date.)

G. Specifications: The state purchasing agent or a central purchasing office shall not circumvent the sole source request and posting and award process by narrowly drafting specifications so that only one predetermined source would satisfy those specifications. [1.4.1.54 NMAC - Rp, 1.4.1.54 NMAC, 6/21/2022]

1.4.1.55 [RESERVED]

1.4.1.56 [RESERVED]

1.4.1.57 RECORDS OF SOLE SOURCE

PROCUREMENTS: The state purchasing agent or central purchasing office shall maintain records of sole source procurements for a period as required by the commission of public records, state records center and archives statutes and rules. The party responsible for the procurement must retain the records. Posting such procurements on the state purchasing agent’s website does not remove the central purchasing office’s or a local public body’s responsibility to maintain these records if the central purchasing office or a local public body was responsible for the procurement. The record of each such procurement shall be a public record and shall contain:

- A.** the contractor’s name and address;
- B.** the amount and term of the contract;
- C.** a listing of the services, construction, or items of tangible personal property procured under the contract; and
- D.** the justification for the procurement method which shall include any written determinations and written approvals required by any provision of 1.4.1.53 through 1.4.1.57 NMAC of this rule.

[1.4.1.57 NMAC - Rp, 1.4.1.57 NMAC, 6/21/2022]

1.4.1.58 APPLICATION (EMERGENCY PROCUREMENTS, 1.4.1.58 - 1.4.1.64 NMAC):

The provisions of 1.4.1.58 through 1.4.1.64 NMAC of this rule apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

[1.4.1.58 NMAC - Rp, 1.4.1.58 NMAC, 6/21/2022]

1.4.1.59 DEFINITION OF EMERGENCY CONDITIONS:

Refer to Section 13-1-127 NMSA 1978 for conditions allowing for the use of an emergency procurement.

[1.4.1.59 NMAC - Rp, 1.4.1.59 NMAC, 6/21/2022]

1.4.1.60 SCOPE OF EMERGENCY

PROCUREMENTS: Emergency procurements shall be limited to those services, construction, or items of tangible personal property necessary to meet the emergency. Such procurement shall not include the purchase or lease-purchase of heavy road equipment.

[1.4.1.60 NMAC - Rp, 1.4.1.60 NMAC, 6/21/2022]

1.4.1.61 AUTHORITY TO MAKE EMERGENCY

PROCUREMENTS: The state purchasing agent or a central purchasing office, employing due diligence, may make emergency procurements when an emergency condition arises; provided that emergency procurements shall be made with such competition as is practicable under the circumstances.

[1.4.1.61 NMAC - Rp, 1.4.1.61 NMAC, 6/21/2022]

1.4.1.62 PROCEDURE:

The procedure used shall be selected to assure that the required services, construction, or items of tangible personal property are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

[1.4.1.62 NMAC - Rp, 1.4.1.62 NMAC, 6/21/2022]

1.4.1.63 WRITTEN DETERMINATION AND POSTING REQUIRED:

A written determination of the basis for the emergency procurement shall be made containing the information set forth in statute and listed on the form issued by the state purchasing agent and available on the state purchasing agent’s website. Within three business days of awarding an emergency procurement, the awarding central purchasing office within a state agency shall:

- A.** provide the information required by statute to the department of information technology for posting on the sunshine portal; and
- B.** forward the same information to the legislative finance

committee.

[1.4.1.63 NMAC - Rp, 1.4.1.63 NMAC, 6/21/2022]

1.4.1.64 RECORDS OF EMERGENCY

PROCUREMENTS: The state purchasing agent or central purchasing office shall maintain records of emergency procurements for a period as required by the commission of public records, state records center and archives statutes and rules. The party responsible for the procurement must retain the records. Posting such procurements on the state purchasing agent's website does not remove the central purchasing office's responsibility to maintain these records if the central purchasing office was responsible for the procurement. The record of each such procurement shall be a public record and shall contain:

- A. the contractor's name and address;
- B. the amount and term of the contract;
- C. a listing of the services, construction, or items of tangible personal property procured under the contract; and
- D. the justification for the procurement method.

[1.4.1.64 NMAC - Rp, 1.4.1.64 NMAC, 6/21/2022]

1.4.1.65 PROCUREMENT UNDER EXISTING CONTRACTS AUTHORIZED:

The state purchasing agent or a central purchasing office may contract for services, professional services, construction, or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:

- A. at a price equal to or less than the contractor's current federal supply contract (GSA), providing the contractor has indicated in writing a willingness to extend the contract's pricing, terms and conditions to the state agency and the purchase order adequately identifies the contract relied upon; or
- B. with a business which has a current price agreement

with the state purchasing agent or a central purchasing office for the item, services, or construction meeting the same standards and specifications as the items to be procured, if the following conditions are met:

(1) the total quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and

(2) the purchase order adequately identifies the price agreement relied upon;

C. other than Subsection A and B of this section and cooperative procurements as authorized by statute (and described in Section 13-1-135 NMSA 1978) or the state procurement card program (described in Section 6-5-9.1 NMSA 1978), no other procurement under existing contracts is authorized; no central purchasing office of a state agency or any other governmental entity may utilize a contract entered into by a different state agency or other governmental entity if not involved in the procurement itself (i.e., so-called "piggybacking" of contracts; the practice of "piggybacking" is not allowed under the Procurement Code); purchases under contracts developed through cooperative procurement authorized under Section 13-1-135 NMSA 1978 or contracts which qualify under Section 13-1-129 NMSA 1978 is permitted and does not constitute "piggybacking."

[1.4.1.65 NMAC - Rp, 1.4.1.65 NMAC, 6/21/2022]

1.4.1.66 LIMITATION ON SUBSECTION A OF 1.4.1.65 OF THIS RULE RELATING TO GSA CONTRACTS:

It should be understood, the state is not authorized to utilize a GSA contract per se. It is imperative, therefore, that the contractor, not a dealer or distributor, who has a current GSA contract indicate in writing a willingness to extend the contract's pricing, terms and conditions to the state of New Mexico. Therefore, a state agency shall not procure services, construction or items of tangible

personal property directly under a general services administration (GSA) contract. Rather, a state agency must procure pursuant to a state purchasing agent price agreement which reflects the prices, terms and conditions of the respective GSA contract. If no such state purchasing agent price agreement exists, a state agency may make a written request to the state purchasing agent for the issuance of one. The request must be accompanied by a current copy of the applicable GSA contract, a letter from the contractor expressing a willingness to extend the contract's pricing, terms and conditions to the state of New Mexico and a letter from the state agency indicating a commitment to utilize the price agreement. The state purchasing agent will ascertain whether it is current and whether the proposed price is equal to or less than the federal supply contract price. If everything is in order, the state purchasing agent will issue a price agreement or purchase order reflecting the prices, terms and conditions of the GSA contract. A state agency shall make no procurements from the GSA contractor until a state purchasing agent price agreement has been issued.

[1.4.1.66 NMAC - Rp, 1.4.1.66 NMAC, 6/21/2022]

1.4.1.67 COPIES OF CONTRACTS AND PRICE AGREEMENTS:

A central purchasing office shall retain for public inspection and for the use of auditors a copy of each state purchasing agent contract or current price agreement relied upon to make purchases without seeking competitive bids.

[1.4.1.67 NMAC - Rp, 1.4.1.67 NMAC, 6/21/2022]

1.4.1.68 APPLICATION (CANCELLATION OF SOLICITATIONS OR REJECTION OF BIDS OR PROPOSALS;

1.4.1.68 - 1.4.1.72 NMAC): The provisions of 1.4.1.68 through 1.4.1.72 NMAC of this rule shall govern the cancellation

of any solicitations whether issued by the state purchasing agent under competitive sealed bids, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

[1.4.1.68 NMAC - Rp, 1.4.1.68 NMAC, 6/21/2022]

1.4.1.69 POLICY: Any solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state of New Mexico.

[1.4.1.69 NMAC - Rp, 1.4.1.69 NMAC, 6/21/2022]

1.4.1.70 CANCELLATION OF SOLICITATIONS OR REJECTION OF ALL BIDS OR PROPOSALS:

A. Prior to opening:

(1) As used in this section, "opening" means the date set for opening of bids or receipt of proposals.

(2) Prior to opening, a solicitation may be canceled in whole or in part when the state purchasing agent or central purchasing office makes a written determination that such action is in the state's best interest for reasons including but not limited to:

(a) the services, construction, or items of tangible personal property are no longer required;

(b) the using agency no longer can reasonably expect to fund the procurement; or

(c) proposed amendments to the solicitation would significantly change the nature of the procurement.

(3) When a solicitation is canceled prior to opening, notice shall be sent to all businesses solicited. The notice shall:

(a) identify the solicitation;

(b) briefly explain the reason for cancellation; and

(c) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar services, construction, or items of tangible personal property.

B. After opening:

(1) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the state purchasing agent or central purchasing office makes a written determination that such action is in the state's best interest for reasons including but not limited to:

(a) all of the bids and proposals are nonresponsive;

(b) the services, construction, or items of tangible personal property are no longer required;

(c) ambiguous or otherwise inadequate specifications were part of the solicitation;

(d) the solicitation did not provide for consideration of all factors of significance to the using agency;

(e) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(f) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or

(g) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(2) A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to Paragraph (3) of Subsection A of this section.

[1.4.1.70 NMAC - Rp, 1.4.1.70 NMAC, 6/21/2022]

1.4.1.71 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS:

A. Reasons for rejection:

(1) Bids. As used in this section, "bid" means competitive sealed bids. Reasons for rejecting a bid shall include but are not limited to:

(a) the business that submitted the bid is nonresponsible as determined under 1.4.1.73 NMAC of this rule;

(b) the bid is not responsive; or

(c) the service, construction, or item of tangible personal property offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptability criteria set forth in the IFB.

(2) Proposals. As used in this section, "proposal" means competitive sealed proposals. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and a using agency's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

(a) the business that submitted the proposal is nonresponsible as determined under 1.4.1.75 through 1.4.1.79 NMAC of this rule;

(b) the proposal is not responsive; or

(c) the proposed price is clearly unreasonable; or

(d) the proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.

B. Written determination required: A written determination which contains the reasons for the rejection of an

individual bid or proposal shall be prepared by the state purchasing agent or central purchasing office and made a part of the procurement file.
[1.4.1.71 NMAC - Rp, 1.4.1.71 NMAC, 6/21/2022]

1.4.1.72 “ALL OR NONE” BIDS: When the term “all or none” is used:

A. By the purchaser in a solicitation: A solicitation may require bidders to submit bids or offers on all items listed in the solicitation, or may identify certain groups of items in which all items must be bid. If the solicitation is properly so limited, a bidder’s failure to bid all items identified as “all or none” items may render the bid nonresponsive.

B. By the bidder or offeror, and not the purchaser: If the bidder restricts acceptance of the bid, or a portion thereof, by such a statement as “all or none”, the bidder has “qualified” the offer which may render the bid as nonresponsive.

C. In instances as stated in both Subsections A and B of this section such a bid or offer may be accepted only if the state purchasing agent or a central purchasing office issues a determination setting forth the basis for accepting the bid or offer as being in the best interest of the state. Also in both instances, the bid or offer is only eligible for award if it is the overall low bid for the item or items so restricted.

[1.4.1.72 NMAC - Rp, 1.4.1.72 NMAC, 6/21/2022]

1.4.1.73 APPLICATION (RECEIPT; INSPECTION; ACCEPTANCE OR REJECTION OF DELIVERIES; 1.4.1.73 -

1.4.1.74 NMAC): The using agency is responsible for inspecting and accepting or rejecting deliveries.

A. The using agency shall determine whether the quantity is as specified in the purchase order or contract.

B. The using agency shall determine whether the quality conforms to the specifications referred to or included in the purchase order or contract.

C. If inspection reveals that the delivery does not meet or conform to the quantity or quality specified in the purchase order or contract, the using agency shall notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery.

D. In case the vendor fails to comply, the using agency shall promptly file a purchasing complaint with the state purchasing agent.

E. Also, in case the vendor fails to comply, the using agency shall have no obligation to pay for the nonconforming delivery.

F. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify that delivery has been completed and is satisfactory.

[1.4.1.73 NMAC - Rp, 1.4.1.73 NMAC, 6/21/2022]

1.4.1.74 SUMMARY:

Notwithstanding the requirements of 1.4.1.73 NMAC, if, after delivery and acceptance of the delivery, the delivery or a portion thereof is later found to be non-conforming to the specifications referred to or included in the purchase order or contract, such acceptance does not waive any rights or remedies which are otherwise granted to the buyer in accordance with other applicable sections of laws of New Mexico.

[1.4.1.74 NMAC - Rp, 1.4.1.74 NMAC, 6/21/2022]

1.4.1.75 APPLICATION (RESPONSIBILITY OF BIDDERS AND OFFERORS; 1.4.1.75 -

1.4.1.79 NMAC): A determination of responsibility or non-responsibility shall be governed by 1.4.1 75 through 1.4.1.79 NMAC.

[1.4.1.75 NMAC - Rp, 1.4.1.75 NMAC, 6/21/2022]

1.4.1.76 STANDARDS OF RESPONSIBILITY:

A. Standards for bidders: Factors to be considered in determining whether the standard of

responsibility has been met include whether a bidder has:

(1) submitted a responsive bid;

(2) adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services, construction, or items of tangible personal property described in the IFB;

(3) a satisfactory record of performance;

(4) a satisfactory record of integrity;

(5) qualified legally to contract with the state; and
(6) supplied all necessary information and data in connection with any inquiry concerning responsibility.

B. Standards for offerors: Factors to be considered in determining whether the standard of responsibility has been met include whether an offeror has:

(1) submitted a responsive proposal;

(2) adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services or items of tangible personal property described in the proposal;

(3) a satisfactory record of performance;

(4) a satisfactory record of integrity;

(5) qualified legally to contract with the state; and
(6) supplied all necessary information and data in connection with any inquiry concerning responsibility.

[1.4.1.76 NMAC -Rp, 1.4.1.76 NMAC, 6/21/2022]

1.4.1.77 ABILITY TO MEET STANDARDS:

A bidder or offeror may demonstrate the availability of adequate financial resources, production or service facilities, personnel and experience by submitting, upon request:

A. evidence that the bidder or offeror possesses the necessary items;

B. acceptable plans to subcontract for the necessary items; or
C. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
 [1.4.1.77 NMAC - Rp, 1.4.1.77 NMAC, 6/21/2022]

1.4.1.78 INQUIRY BY PROCUREMENT OFFICER: Before awarding a contract, the procurement officer or procurement manager must be satisfied that the bidder or offeror is responsible. Therefore, a bidder or offeror shall supply information and data requested by the procurement officer concerning the responsibility of the bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply information or data in connection with such an inquiry is grounds for a determination that the bidder or offeror is not responsible.
 [1.4.1.78 NMAC - Rp, 1.4.1.78 NMAC, 6/21/2022]

1.4.1.79 DETERMINATION REQUIRED: If a bidder or offeror who otherwise would have been awarded a contract is found to be non-responsible, a written determination, setting forth the basis of the finding, shall be prepared by the state purchasing agent or central purchasing office. The written determination shall be made part of the procurement file, and a copy of the determination shall be sent to the non-responsible bidder or offeror.
 [1.4.1.79 NMAC - Rp, 1.4.1.79 NMAC, 6/21/2022]

1.4.1.80 APPLICABILITY (PROTESTS; 1.4.1.80 - 1.4.1.93 NMAC): The provisions of 1.4.1.80 through 1.4.1.93 NMAC of this rule apply to all protests filed with the state purchasing agent and all central purchasing offices that have not adopted regulations for resolving protests. Central purchasing offices with rulemaking authority, other than the state purchasing agent, may adopt regulations for resolving protests filed within their jurisdictions.
 [1.4.1.80 NMAC - Rp, 1.4.1.80 NMAC, 6/21/2022]

1.4.1.81 RIGHT TO PROTEST: Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract, including a sole source procurement, may protest to the state purchasing agent or central purchasing office.
 [1.4.1.81 NMAC - Rp, 1.4.1.81 NMAC, 6/21/2022]

1.4.1.82 FILING OF PROTEST:
A. Protest must be written: Protests must be in writing and addressed to the state purchasing agent or central purchasing office, whichever has control and administration over the procurement.
B. Contents: The protest shall:
 (1) include the name and address of the protestant;
 (2) include the solicitation number;
 (3) contain a statement of the grounds for protest;
 (4) include supporting exhibits, evidence or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated; and
 (5) specify the ruling requested from the state purchasing agent or central purchasing office.

C. Pleadings: No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.
D. Time limit: Protests shall be submitted within 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence. Posting on the state purchasing division’s website is considered public notice in this regard as well.
 [1.4.1.82 NMAC - Rp, 1.4.1.82 NMAC, 6/21/2022]

1.4.1.83 PROCUREMENTS AFTER PROTEST:

A. In the event of a timely protest, as defined in Subsection D of 1.4.1.82 NMAC of this rule, the state purchasing agent or central purchasing office shall not proceed further with the procurement unless the state purchasing agent or central purchasing office makes a written determination that the award of the contract is necessary to protect substantial interests of a state agency. Such written determination should set forth the basis for the determination. As used in 1.4.1.80 through 1.4.1.93 NMAC of this rule, the point in time in which a contract is awarded is that point at which a legally enforceable contract is created unless the context clearly requires a different meaning. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

B. A procurement shall not be halted after a contract has been awarded merely because a protest has been filed. After a contract has been awarded, the state purchasing agent or central purchasing office may, in its sole discretion, halt a procurement in exceptional circumstances or for good cause shown.
 [1.4.1.83 NMAC - Rp, 1.4.1.83 NMAC, 6/21/2022]

1.4.1.84 PROCEDURE:

A. Upon the filing of a timely protest, the state purchasing agent or central purchasing office shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.

B. The protestant and every business that receives notice pursuant to Subsection A of this section will automatically be parties to any further proceedings before the state purchasing agent or central purchasing office. In addition, any other person or business may move to intervene at any time during the course of the proceedings. Intervention will be granted upon a showing of a substantial interest

in the outcome of the proceedings. Interveners shall accept the status of the proceedings at the time of their intervention; in particular, they must abide by all prior rulings and accept all previously established time schedules. The state purchasing agent or central purchasing office, and all employees thereof, are not parties to the proceedings.

C. The state purchasing agent or central purchasing office may take any action reasonably necessary to resolve a protest. Such actions include, but are not limited to, the following:

- (1) issue a final written determination summarily dismissing the protest;
- (2) obtain information from the staff of the state purchasing agent or central purchasing office;
- (3) require parties to produce for examination information or witnesses under their control;
- (4) require parties to express their positions on any issues in the proceedings;
- (5) require parties to submit legal briefs on any issues in the proceeding;
- (6) establish procedural schedules;
- (7) regulate the course of the proceedings and the conduct of any participants;
- (8) receive, rule on, exclude or limit evidence;
- (9) take official notice of any fact that is among the traditional matters of official or administrative notice;
- (10) conduct hearings; and
- (11) take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses.

[1.4.1.84 NMAC - Rp, 1.4.1.84 NMAC, 6/21/2022]

1.4.1.85 DISCOVERY:

Upon written request of any party, or upon its own motion, the state purchasing agent or central purchasing office may require parties

to comply with discovery requests. [1.4.1.85 NMAC - Rp, 1.4.1.85 NMAC, 6/21/2022]

1.4.1.86 HEARINGS:

A. Hearings will be held only when the state purchasing agent or central purchasing office determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. Any party may request a hearing, but such requests shall be deemed denied unless specifically granted.

B. Hearings, when held, should be as informal as practicable under the circumstances, but the state purchasing agent or central purchasing office has absolute discretion in establishing the degree of formality for any particular hearing. In no event is the state purchasing agent or central purchasing office required to adhere to formal rules of evidence or procedure. [1.4.1.86 NMAC - Rp, 1.4.1.86 NMAC, 6/21/2022]

1.4.1.87 RESOLUTION:

A. The state purchasing agent or central purchasing office shall promptly issue a written determination relating to the protest. The determination shall:

- (1) state the reasons for the action taken; and
- (2) inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183 NMSA 1978.

B. A copy of the written determination shall be sent immediately by certified mail, return receipt requested, to each of the contractors, if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.

[1.4.1.87 NMAC - Rp, 1.4.1.87 NMAC, 6/21/2022]

1.4.1.88 RELIEF:

A. Prior to award: If, prior to award, the state purchasing

agent or central purchasing office makes a written determination that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled.

B. After award:

(1) No fraud or bad faith. If, after an award, the state purchasing agent or central purchasing office makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith:

(a) the contract may be ratified, affirmed or revised to comply with law, provided that a written determination is made that doing so is in the best interest of the state; or

(b) the contract may be terminated, and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

(2) Fraud or bad faith. If, after an award, the state purchasing agent or central purchasing office makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has acted fraudulently or in bad faith, the contract shall be canceled.

C. Relief not allowed: Except as provided in Subparagraph (b) of Paragraph (1) of Subsection B of this section, the state purchasing agent or central purchasing office shall not award money damages or attorneys' fees.

[1.4.1.88 NMAC - Rp, 1.4.1.88 NMAC, 6/21/2022]

1.4.1.89 MOTION FOR RECONSIDERATION:

A. Motion: A motion for reconsideration of a written determination issued pursuant to 1.4.1.87 NMAC of this rule may be filed by any party or by any using agency involved in the procurement. The motion for reconsideration

shall contain a detailed statement of the factual and legal grounds upon which reversal or modification of the determination is deemed warranted, specifying any errors of law made, or information not previously considered.

B. When to file: A motion for reconsideration shall be filed not later than seven calendar days after receipt of the written determination.

C. Response to motion: The state purchasing agent or central purchasing office shall promptly issue a written response to the motion for reconsideration. A copy of the written response shall be sent immediately by certified mail, return receipt requested, to each of the contractors, if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.

[1.4.1.89 NMAC - Rp, 1.4.1.89 NMAC, 6/21/2022]

1.4.1.90 DESIGNEE:

A. Designation: At any point during a protest proceeding, the state purchasing agent or central purchasing office may appoint a designee as defined in Section 13-1-51 NMSA 1978 to preside over the proceeding. The designee will have all of the powers described in 1.4.1.80 through 1.4.1.93 NMAC of this rule except the power to issue a written determination under 1.4.1.87 NMAC of this rule. The designee only has authority to recommend a resolution to the state purchasing agent or central purchasing office under 1.4.1.87 NMAC of this rule.

B. Who may be designated: Any person, other than the procurement officer, procurement manager or other person not directly involved in the procurement, may serve as a designee.

C. Recommended written determination: A designee shall present a recommended written resolution to the state purchasing agent or central purchasing office. No party may appeal from the

recommended resolution of the designee.

D. Action by state purchasing agent or central purchasing office: The state purchasing agent or central purchasing office shall approve, disapprove or modify the recommended resolution of the designee in writing. Such approval, disapproval or modification shall be the written determination required by 1.4.1.87 NMAC of this rule. Any party may file a motion for reconsideration of the written determination pursuant to 1.4.1.89 NMAC of this rule.

[1.4.1.90 NMAC - Rp, 1.4.1.90 NMAC, 6/21/2022]

1.4.1.91 FINAL DETERMINATION:

A. No motion for reconsideration: In those proceedings in which no motion for reconsideration is filed, the written determination issued pursuant to 1.4.1.87 NMAC of this rule shall be the final determination for purposes of the time limits for seeking judicial review under Section 13-1-183 NMSA 1978.

B. Motion for reconsideration: In those proceedings in which a motion for reconsideration is filed, the written response to the motion issued pursuant to 1.4.1.89 NMAC of this rule shall be the final determination for purposes of the time limits for seeking judicial review under Section 13-1-183 NMSA 1978. [1.4.1.91 NMAC - Rp, 1.4.1.91 NMAC, 6/21/2022]

1.4.1.92 COPIES OF COMMUNICATIONS:

A. Copies to be provided to parties: Each party to a protest proceeding shall certify that it has provided every other party with copies of all documents or correspondence addressed or delivered to the state purchasing agent or central purchasing office.

B. Ex parte communications: No party shall submit to the state purchasing agent or central purchasing office, ex parte,

any material, evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest.

[1.4.1.92 NMAC - Rp, 1.4.1.92 NMAC, 6/21/2022]

1.4.1.93 COUNTING

DAYS: In computing any period of time prescribed in 1.4.1.80 through 1.4.1.93 NMAC of this rule, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

[1.4.1.93 NMAC - Rp, 1.4.1.93 NMAC, 6/21/2022]

1.4.1.94 CHIEF PROCUREMENT OFFICER REGISTRATION AND CERTIFICATION:

A. Overview: This section applies to chief procurement officers in all state agencies and local public bodies.

(1) Statutory Authority. Under Section 9-17-5 NMSA 1978 and the Procurement Code, Sections 13-1-1 et seq NMSA 1978, the general services secretary has authority to promulgate rules and regulations relating to this program.

(2) Scope. The chief procurement officer registration, certification and recertification training program is a state wide program administered by the state purchasing agent. Each state agency and local public body shall provide to the state purchasing agent the name of and all changes to the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office. The state purchasing agent shall maintain a list of the names of chief procurement officers reported to the state purchasing agent by state agencies and local public bodies. The state purchasing agent shall make the list of approved chief procurement officers

available to the public through the web site of the purchasing division of the general services department and in any other appropriate form. It is a violation of statute if state agencies and local public bodies do not have a chief procurement officer listed on the state purchasing agent list before performing procurements. Section 13-1-98 NMSA 1978 shall not reduce the scope of duties, responsibilities or authority of the state purchasing agent, nor shall such exemptions exclude state agencies and local public bodies from the duties and responsibilities of providing the state purchasing agent the name of its certified chief procurement officer. All state agencies and local public bodies and their certified chief procurement officers are required to comply with all requirements under Sections 13-1-28 through 13-1-199 NMSA 1978 (amended 2013).

B. Definitions:

(1)

“Approves” or “approved”

means a chief procurement officer has successfully completed the certification or recertification training program administered by the state purchasing agent and attested to by the issuance of a certificate signed by the state purchasing agent.

(2)

“Conduct” or “conducting”

procurements means the act of preparing, advertising, processing, and awarding procurements of any kind, including, but not limited to, sole source, invitation to bid, request for proposals, and contracts under state price agreements.

(3)

“Certification program” means the initial certification process through passing an exam after completing course material and a test approved by the general services secretary.

(4)

“Recertification program” means training that will include affirmation of successfully completing course material approved by the general services secretary.

C. Mandatory identification of certified chief procurement officer: Each state

agency and local public body shall annually, on or before January 1st of each year, and within 15 calendar days every time thereafter upon a vacancy or extended absence of a certified chief procurement officer for more than two weeks, provide to the state purchasing agent the name of the state agency or local public body certified chief procurement officer and, if applicable, information identifying the state agency or local public body central purchasing office. Every state agency or local public body shall have a certified chief procurement officer on the state purchasing agent list to perform procurements. No agency shall conduct procurements until a certified chief procurement officer is approved by the state purchasing agent. Upon a vacancy or absence, the state agency or local public body shall have 90 days to replace its certified chief procurement officer.

In the event the initial 90 day period is to be exceeded, and upon good cause shown, to the satisfaction of the state purchasing agent, an additional 90 days may be granted to the state agency or local public body by the state purchasing agent to replace its certified chief procurement officer. Examples of good cause would include vacancies due to emergencies, death or resignation of a certified chief procurement officer. Until a certified chief procurement officer is reported to the state purchasing agent no procurements may be conducted and no duties, responsibilities, and obligations may be performed as detailed in Subsection F of 1.4.1.94 NMAC unless granted temporary authority by the state purchasing agent.

D. Registration of chief procurement officer with state purchasing agent: Each state agency or local public body is responsible for registering its chief procurement officer and ensuring the information on the state purchasing division website is current and correct. The certified chief procurement officer, that has been reported by the state agency or local public body to the state purchasing agent as provided

in Subsection C of 1.4.1.94 NMAC above, shall register with the state purchasing agent through the state purchasing division’s website. The state agency or local public body shall provide all the required identification information, including:

(1) certified chief procurement officer name with title, phone number and email address;

(2) agency or entity name with full address and registration date.

At the time of registering for the certification or recertification program, the applicant shall execute a statement of personal responsibility affirming:

(a)

the applicant is a current employee of a state agency or local public body and not employed as an independent contractor;

(b)

the applicant has not been convicted of a felony unless pardoned by the governor; and

(c)

any additional required information specified by the state purchasing agent.

E. Chief procurement officer certification: The state purchasing agent shall establish a certification and recertification program for all chief procurement officers including the initial certification, and recertification every two years, on or before the certification anniversary date for each certified chief procurement officer. In order to be certified or recertified, a chief procurement officer shall remain an employee of the state agency or local public body, must not be convicted of a felony or behavior unbecoming of a chief procurement officer with a record of performance that establishes good moral character and competency, and shall obtain such training as deemed appropriate by the secretary of the general services department and pass a certification or recertification program, as appropriate, approved by the secretary of the general services department. Subject to the provisions

of subsection J, the state purchasing agent may revoke a certification if shown that the chief procurement officer has not maintained the standards for a chief procurement officer. The secretary of the general services department reserves the right to add separate certifications and recertifications of specialized acquisitions under the procurement code as are deemed necessary or useful by the secretary.

F. Certified chief procurement officer duties, responsibilities and obligations: On and after July 1, 2015, only certified chief procurement officers may do the following, except that persons using procurement cards may continue to issue purchase orders and authorize small purchases:

(1) make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;

(2) issue purchase orders and authorize small purchases pursuant to the Procurement Code; and

(3) approve procurement pursuant to the Procurement Code.

G. Failure to identify and register a certified chief procurement officer: In the event that the state agency or local public body does not have a certified chief procurement officer identified and registered in conformance with Section 13-1-95.2 NMSA 1978, pursuant to Section 13-1-97 NMSA 1978, procurement acts by that state agency or local public body may be suspended at the discretion of the state purchasing agent.

H. Identification, registration and certification violations: Any procurement act performed by a state agency or local public body under the New Mexico procurement code that has not identified and registered its certified chief procurement officer in conformance with Section 13-1-95.2 NMSA 1978, may be deemed a procurement violation. For state agencies, such procurement violation(s) may also result in

a violation of the department of finance and administration's Model Accounting Practices.

I. Delegation or sharing of certified chief procurement officer duties: The sharing of a certified chief procurement officer through mutual execution of a memorandum of agreement by the state agency (agencies) or local public body(bodies) is allowed. A state agency or local public body wanting to delegate or share a certified chief procurement officer with another state agency or local public body shall: provide to the state purchasing agent for such sharing arrangement, information identifying the state agency or local public body central purchasing office, the name of the state agency or local public body shared certified chief procurement officer and the intergovernmental agreement supporting the arrangement. Chief procurement officers may only be employees of the state or a local public body and may not be third parties or temporary employees except as otherwise provided in this subsection.

J. Revocation or suspension of certification:

(1) The state purchasing agent may suspend or revoke certified chief procurement officer certification in whole or in part, based on any action or conduct deemed improper of a certified chief procurement officer, including but not limited to severity or frequency of procurement violations, non-compliance with the Governmental Conduct Act (Sections 10-16-1 through 10-16-18 NMSA 1978), lack of verification that the chief procurement officer has successfully completed the certification or recertification program established by the state purchasing agent; lack of verification of current employment by the reporting state agency or local public body and not employed as an independent contractor; lack of verification that the person has not been convicted of a felony and behavior unbecoming of a chief procurement officer with a record of performance that establishes competency.

(2) Due process procedures shall be initiated by the state purchasing agent after reasonable notice to the certified chief procurement officer involved as follows in this section. The state purchasing agent or his designee shall cause written notice of the proposed revocation or suspension of certification (the Action) to be sent by certified mail, return receipt requested, to the certified chief procurement officer involved. The notice shall contain the following statements:

(a) the action contemplated is for revocation or suspension of certified chief procurement officer certification;

(b) the reasons for the action, which shall include a summary of the certified chief procurement officer's conduct or performance/nonperformance of his duties to which the action relates;

(c) the action is brought pursuant to the provisions contained in Section 13-1-95.2 NMSA 1978 and the regulations promulgated thereunder;

(d) sufficient facts exist, unless rebutted, to support the proposed revocation or suspension of certification and that the state purchasing agent shall proceed to suspend or revoke certified chief procurement officer certification in whole or in part unless the certified chief procurement officer requests, in writing, a hearing within 15 consecutive calendar days from the day the certified chief procurement officer receives the notice of the proposed action;

(e) the address where the certified chief procurement officer's request for hearing shall be sent, and the name of the person to whom the request shall be sent; and

(f) that if the certified chief procurement officer fails to deliver a written request for a hearing to the person designated within the 15 days required in Subparagraph (d) of this Section, a final determination shall be made by the state purchasing agent;

(g) upon receipt of a timely request for hearing, the state purchasing agent will appoint a neutral hearing officer and any such hearing officer so appointed will conduct the hearing and recommend a final decision to the state purchasing agent. If no hearing officer can be appointed in timely fashion, the state purchasing agent shall then act as the hearing officer.

(3) If a hearing is requested, the hearing officer shall send written notice to the certified chief procurement officer of the time and the place of the hearing.

(4) Hearings, and any subsequent appeals, shall conform to the standards, requirements, and process set forth for protests under the procurement code, Sections 13-1-28 thru 13-1-199 NMSA 1978, and be as informal as may be reasonable and appropriate under the circumstances. However, in no event shall the hearing officer be required to adhere to formal rules of evidence or procedure. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the participants may be regarded and used as evidence at the hearing. The participants may stipulate the testimony that would be given by a witness as if the witness were present. The hearing officer may require evidence in addition to that offered by the participants. The state purchasing agent shall issue a written determination regarding revocation or suspension of certification following the hearing.

K. Reinstatement of certification:

(1) The state purchasing agent may reinstate the certified chief procurement officer certification:

(a) in whole or in part;

(b) temporarily or permanently; or

(c) may limit the scope of duties as the state purchasing agent deems appropriate.

(2) The state purchasing agent may require successful completion of recertification or proof of eligibility as a pre-condition for reinstatement. This may include successful completion of the certification program or recertification program.

(3) The state purchasing agent reserves the right to adopt additional remedies into the program as deemed appropriate.

L. Coordination by the state purchasing agent: The state purchasing agent may coordinate with the department of finance and administration regarding the reporting of decisions and actions under this section for state agencies, and with the local government division of the department of finance and administration for local public bodies.

M. Policies from the state purchasing agent: The state purchasing agent reserves the right to implement further policies to give full effect to the certified chief procurement officer statutes and this rule as required and necessary.

N. Limitations: Nothing in these rules shall be deemed to be a limit on the authority of the state purchasing agent to enact the purpose of these rules, nor a limit on other legal liability of certified chief procurement officer for their action or conduct.

[1.4.1.94 NMAC - Rp, 1.4.1.94 NMAC, 6/21/2022]

1.4.1.95 STATE USE ACT:

A. Procurement of services: In regard to the procurement of services, before utilizing any other procurement method allowed under the Procurement Code, a state agency or local public body shall first offer the procurement to the central non-profit agency under contract with the state. The central non-profit agency has the right of first refusal for any procurement of services provided that the service is stated on a list provided and published by the central non-profit agency and provided that the provider can meet the time requirements of the state agency.

B. Central non-profit agency: The central non-profit agency shall:

(1) publish the list of services available through the central non-profit agency on a website available to all state agencies and local public bodies;

(2) ensure that all service providers on this list meet the eligibility requirements to offer services under Section 13-1C-1 et. seq., NMSA 1978; and

(3) ensure that the prices offered to state agencies and local public bodies reflect the fair market value of such services in accordance with Section 13-1C-5 NMSA 1978;

(4) provided that, under Section 13-1C-6 NMSA 1978, services provided pursuant to and facilities covered by Section 22-14-27 NMSA 1978 are excluded from procurement through the central non-profit agency.

C. Procurement of services pursuant to Section 13-1C-1 et. seq., NMSA 1978 are exempt from the Procurement Code. [1.4.1.95 NMAC - Rp, 1.4.1.95 NMAC, 6/21/2022]

History of 1.4.1 NMAC:

Pre-NMAC History:

Laws of 1984, Chapter 65, Section 1 enacted the Procurement Code to apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction. To implement the Code, and in accordance with the statutory requirements applicable at the date and time, the subject and material found in this rule was first filed with the state records center and archives in 1984 as general services department (GSD) Procurement Code Regulations, GSD Rule No. 84-611, filed 11/21/1984; superseded by Procurement Code Regulations, GSD Rule No. 87-601, filed 12/16/1987; superseded by Procurement Code Regulations, GSD Rule No. 89-601, filed 12/01/1989; superseded by Procurement Code Regulations, GSD Rule No. 93-601, filed 09/21/1993;

superseded by 1 NMAC 5.2, filed 01/15/1998.

History of Repealed Material:

- 1.4.1 NMAC, Procurement Code Regulations (filed 11/01/2001) repealed 09/30/2005.
- 1.4.1 NMAC, Procurement Code Regulations (filed 09/16/2005) repealed 8/30/2013.
- 1.4.1 NMAC, Procurement Code Regulations (filed 8/13/2013) repealed 6/21/2022.

Other History:

GSD Rule No. 93-601 (filed 09/21/1993) was renumbered, reformatted and amended to 1 NMAC 5.2, Procurement Code Regulations, effective 01/15/1998.

1 NMAC 5.2, Procurement Code Regulations (filed 01/02/1998) was renumbered, reformatted, amended and replaced to 1.4.1 NMAC, Procurement Code Regulations, effective 11/15/2001.

1.4.1 NMAC, Procurement Code Regulations (filed 11/01/2001) was replaced by 1.4.1 NMAC, Procurement Code Regulations, effective 09/30/2005.

1.4.1 NMAC, Procurement Code Regulations (filed 09/16/2005) was replaced by 1.4.1 NMAC, Procurement Code Regulations, effective 8/30/2013.

1.4.1 NMAC, Procurement Code Regulations (filed 8/13/2013) was replaced by 1.4.1 NMAC, Procurement Code Regulations, effective 6/21/2022.

GENERAL SERVICES DEPARTMENT

TITLE 1 PUBLIC FINANCE
CHAPTER 4 EXPENDITURE OF PUBLIC FUNDS
PART 10 GOVERNING THE APPROVAL OF CONTRACTS FOR THE PURCHASE OF PROFESSIONAL SERVICES

1.4.10.1 ISSUING AGENCY: General Services Department (GSD).
 [1.4.10.1 NMAC - N, 6/21/2022]

1.4.10.2 SCOPE:

A. The contracts review bureau of the general services department shall review and approve all professional services contracts which result in expenditures greater than five thousand dollars (\$5,000), including applicable gross receipts tax, and all amendments to those contracts for all state agencies except as provided in Subsections B and C of 1.4.10.2 NMAC. Contracts expending public funds in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 as amended are included within the scope of this rule.

B. The following state agencies are currently exempt from submitting professional services contracts and amendments through the contracts review bureau of the general services department:

- (1) state agencies within the judicial branch of government as defined by the New Mexico Constitution, Article VI;
- (2) state agencies within the legislative branch of government as defined by the New Mexico Constitution, Article IV;
- (3) state educational institutions as defined by the New Mexico Constitution, Article XII, Section 11 and as set forth in Section 21-1-1 through 21-16A-1 et. seq. NMSA 1978;
- (4) the state fair for only those contracts exempted pursuant to Subsection H of Section 13-1-99 NMSA 1978;
- (5) the New Mexico public school insurance authority pursuant to Subsection F of Section 22-29-6 and 22-29-8 NMSA 1978 for contracts for procuring goods or services and paying for insurance or insurance-related services;
- (6) the New Mexico mortgage finance authority pursuant to Section 58-18-20 NMSA 1978; and

(7) other state agencies exempt by statute.

C. Pursuant to Section 6-5-9 NMSA 1978, the secretary of the department of finance and administration may exempt a state agency's contracts from the general services department contracts review bureau review and approval when the secretary of the department of finance and administration determines that efficiency or economy so requires. a state agency seeking an exemption must:

- (1) apply in writing to the secretary of the department of finance and administration; and
 - (2) meet all of the following requirements:
 - (a) issue its own warrants;
 - (b) be exempt from prior submission of vouchers or purchase orders to the financial control division of the department of finance and administration;
 - (c) receive the majority of its money from non-general fund sources;
 - (d) maintain pre-audit and post-audit fiscal accounting controls;
 - (e) maintain and operate its own administrative unit for procurement and controls its own encumbrance of funds available for professional service contracts;
 - (f) provide administrative control and review of professional services contracts through its own administrative unit; and
 - (g) employs in-house counsel to prepare, review, and approve professional services contracts for form and legal sufficiency and to advise the state agency with respect to all applicable laws and regulations; provided, however, that the attorney general shall also review and approve all contracts subject to Paragraph (1) of Subsection C of 1.4.10.10 NMAC of this rule prior to approval and execution by the state agency.
- [1.4.10.2 NMAC - N, 6/21/2022]

1.4.10.3 STATUTORY AUTHORITY:

A. Sections 13-1-118 and 13-1-125 NMSA 1978 authorize the general services department to review professional services contracts of state agencies as to form, legal sufficiency, and budgetary requirements if required by its regulations.

B. Section 6-5-3 NMSA 1978 provides that before any state agency enters into a contract expending public funds, the financial control division of the department of finance and administration shall determine the authority for such proposed expenditure. After the authority for the expenditure is determined, the appropriate fund shall be shown by the financial control division to be encumbered to the extent of the proposed expenditure. The financial control division may request, and the state agency shall provide, such documentation and other information as the financial control division deems necessary to justify the state agency's determination of authority. The financial control division may disapprove the proposed expenditure if it determines that the justification is inadequate or is not substantiated by law.

C. Section 6-5-6 NMSA 1978 requires the financial control division of the department of finance and administration to determine that the proposed expenditure does not exceed the state agency's appropriation, does not exceed the periodic allotment made to the state agency or the unencumbered balance of funds at its disposal. The state agency shall determine that a proposed expenditure is for a public benefit and purpose consistent with the related appropriation and is necessary to carry out the statutory mission of the state agency prior to committing the state to the transaction.

D. Subsection E of Section 9-1-5 and Subsection E of Section 9-17-5 NMSA 1978 provide that after notice and hearing, the secretary of the general services

department may make and adopt such reasonable administrative and procedural rules and regulations as necessary to carry out the duties of the general services department and its divisions.

[1.4.10.3 NMAC - N, 6/21/2022]

1.4.10.4 DURATION:

Permanent.

[1.4.10.4 NMAC - N, 6/21/2022]

1.4.10.5 EFFECTIVE DATE:

June 21, 2022 unless a later date is cited at the end of a section.

[1.4.10.5 NMAC - N, 6/21/2022]

1.4.10.6 OBJECTIVE:

The purpose of this rule is to establish the procedures state agencies must follow and the requirements state agencies must meet in drafting, entering into, and seeking approval of professional services contracts. These procedures ensure compliance with Sections 6-5-3, 6-5-6, 13-1-118 and 13-1-125 NMSA 1978 as amended.

[1.4.10.6 NMAC - N, 6/21/2022]

1.4.10.7 DEFINITIONS:

A. "Bureau" means the contracts review bureau of the general services department.

B. "Contract" means any agreement for the provision of professional services.

C. "Contract brief" means the bureau paper form or electronic version which shall accompany all professional services contracts and amendments submitted to the bureau.

D. "Contractor" as defined in Section 13-1-43 NMSA 1978 means any business having a contract with a state agency.

E. "Department or GSD" means the general services department.

F. "Form" means, at a minimum, that all contracts and amendments contain the provisions required by the bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance

measures when required and as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments.

G. "Legal sufficiency" means, at a minimum, that all contracts and amendments contain the provisions required by law and that all signatures required by the bureau have been obtained.

H. "Procurement" as defined by Section 13-1-74 NMSA 1978 means purchasing, renting, leasing, lease purchasing or otherwise acquiring items of personal property, services or construction and includes all procurement functions, including but not limited to, preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of the contract, and contract administration.

I. "Procurement Code" means Sections 13-1-28 to 13-1-199 NMSA 1978, as amended.

J. "Professional services" as defined by Section 13-1-76 NMSA 1978 means the services of architects, archaeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, and persons or businesses providing similar services, including information system resources professional services, and other such services which may be designated as professional services by a determination issued by the state purchasing agent or designee.

K. "Regulation" as defined by Section 13-1-80 NMSA 1978 means any rule, order, statement or policy, as amended, issued by a state agency or a local public body that affects persons not members or employees of the issuer.

L. "Retroactive approval to a contract or a contract amendment" means approval of a contract or contract amendment that was submitted to the bureau and approved by the GSD secretary

or designee pursuant to 1.4.10.13 NMAC of this rule after the contractor has begun work pursuant to a request to perform work from a state agency employee or public officer with authority to make such a request.

M. “Secretary GSD” means the secretary of the general services department.

N. “Sole source contract or amendment to sole source contract” means a contract or amendment which fulfills the requirements of Sections 13-1-118, 13-1-126 and 13-1-126.1 NMSA 1978, as amended.

O. “State agency” means any department, agency, commission, council, board, advisory board, committee, or institution of the state of New Mexico, and does not include local public bodies.
[1.4.10.7 NMAC - N, 6/21/2022]

1.4.10.8 DELEGATION OF APPROVAL AUTHORITY:

A. The bureau shall review all contracts and contract amendments for professional services with state agencies as to form and budgetary requirements.

B. The bureau shall consult with the department’s legal counsel as needed regarding any issues of legal sufficiency of a state agency’s contracts and contract amendments for professional services.

C. The GSD secretary shall delegate, in writing to certain members of the bureau, the authority to approve professional services contracts which result in expenditures greater than five thousand dollars (\$5,000), including gross receipts tax, and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.
[1.4.10.8 NMAC - N, 6/21/2022]

1.4.10.9 FORM AND SUBMISSION:

A. All contracts and subsequent amendments shall be in a form and contain such provisions and signatures as required by the

bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance measures when required and as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments.

B. All contracts and amendments shall:

(1) be accompanied by a contract brief being in such form and containing such information as may be required by the bureau;

(2) be accompanied by a document prescribed by the financial control division of the department of finance and administration showing that funds have been encumbered to the full extent of the contract, including any amendments to that contract; if the contract term includes more than one fiscal year, the contract must be accompanied by an encumbrance for the current fiscal year amount or, up to the total amount of the current appropriation available for that contract;

(3) be accompanied by a written request for approval from the secretary of the contracting state agency or designee if the contract is subject to Paragraph (1) of Subsection C of 1.4.10.10 NMAC of this rule; and

(4) comply with New Mexico law regarding indemnification and insurance.
[1.4.10.9 NMAC - N, 6/21/2022]

1.4.10.10 REVIEW PROCEDURES:

A. State agencies must submit to the bureau for review:

(1) sole source contracts;

(2) amendments to sole source contracts;

(3) retroactive approval to contracts; and

(4) retroactive approval to contract amendments.

B. Bureau review:

(1) The bureau shall review all contracts or contract amendments for form, budgetary requirements and compliance with the requirements of the bureau including those prescribed on the contract brief.

(2) No contract or contract amendment shall become binding or effective until signed and dated by a member of the bureau with contract approval authority.

C. Other review:
(1) Prior to the bureau’s review and at the bureau’s request, the attorney general shall review all contracts which may violate conflict of interest provisions of the Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978.

(2) The bureau may submit any contract or amendment to the attorney general or other legal counsel for review if the bureau is aware of legal issues concerning the contract or the amendment.
[1.4.10.10 NMAC - N, 6/21/2022]

1.4.10.11 SMALL PURCHASES: A contract for professional services having a value over five thousand dollars (\$5,000) excluding applicable gross receipts taxes, but not exceeding the amount set forth in Section 13-1-125 NMSA 1978 except for the services of architects, landscape architects engineers, or surveyors for state public works projects, may be procured in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978.
[1.4.10.11 NMAC - N, 6/21/2022]

1.4.10.12 SOLE SOURCE CONTRACT OR AMENDMENT TO SOLE SOURCE CONTRACT:

A. A contract may be awarded without competitive sealed proposals, regardless of the estimated cost, when a central purchasing office of a contracting state agency makes a written determination, signed by the secretary of the contracting state agency or designee, which states that a good-faith review of available

sources has been conducted and that there is only one source for the required professional services. The written determination and the dollar amount of the contract shall be submitted to the bureau for review and approval by the GSD secretary or designee and shall include the following information:

(1) a detailed, sufficient explanation of the reasons, qualifications, proprietary rights, or unique capabilities that make the prospective contractor a sole source;

(2) an explanation of the criteria developed and specified by the state agency as necessary to perform the contract and upon which the state agency reviewed available sources;

(3) a description of the procedures used by the state agency in conducting a good faith review of available sources, including without limitation, a narrative description of all steps taken by the state agency as evidence of the good-faith review performance such as:

(a) researching trade publications and industry newsletters;

(b) reviewing telephone books or other advertisements;

(c) reviewing current contract(s);

(d) contacting similar service providers; and

(e) reviewing the state purchasing agents vendor list; and.

(4) a list of all businesses contacted and an explanation of why those businesses could not perform the contract, or a reasonable explanation of why the state agency has determined that no businesses, besides the prospective contractor, exist.

B. The bureau must obtain written approval of the agency's sole source determination from the GSD secretary or designee prior to executing a sole source contract or amendment to a sole source contract.

[1.4.10.12 NMAC - N, 6/21/2022]

1.4.10.13 RETROACTIVE APPROVAL FOR A CONTRACT OR CONTRACT AMENDMENT:

A. The Procurement Code, Section 13-1-102, NMSA 1978, as amended, requires that all non-exempt procurement (Section 13-1-98 NMSA 1978) by state agencies shall be achieved by competitive sealed bids or competitive sealed proposals except for small purchases, sole source procurements, emergency procurements, existing contracts and procurements from antipoverty program business. For professional services, the proposal and procurement process are not complete until a written contract or contract amendment is signed by the agency and the contractor and any other signatory required by the bureau, and is approved by the bureau through the GSD secretary or designee.

B. For retroactive approval of contracts and contract amendments which fulfill all of the requirements of this rule and the Procurement Code, GSD will approve the date requested in writing by the agency on the brief accompanying the document as long as the requested approval date is within thirty days of the first day of each fiscal year.

C. For retroactive approval of contracts and contract amendments apart from the approval given pursuant to the provisions 1.4.10.13 NMAC of this rule, GSD may grant additional retroactive approval to a contract or contract amendment, based upon rare and exceptional circumstances, where all of the following conditions are met:

(1) the professional services performed without GSD's prior approval of the contract did not occur as the result of repeated agency mistakes or willful misconduct;

(2) the failure to obtain GSD's retroactive approval will prevent the state agency from fulfilling its statutory obligations;

(3) the state agency provides to GSD a written, factual, detailed explanation of the matters described in Paragraphs (1) and (2) of Subsection C of 1.4.10.13

NMAC, certified to be true by signature of the head of the state agency;

(4) the state agency requested, through a public officer or employee with authority to make such a request, the contractor to perform professional services that were then actually performed by the contractor in good faith reliance that it would be paid for those professional services.

D. The Procurement Code, Section 13-1-182 NMSA 1978, as amended, and the department of finance and administration's model of accounting practices ("MAPs") govern situations in which GSD has denied a request for retroactive approval of a contract or contract amendment due to the state agency's failure to meet the requirements of Subsections B or C of 1.4.10.13 NMAC of this rule.

[1.4.10.13 NMAC - N, 6/21/2022]

1.4.10.14 EMERGENCY PROCUREMENT: An emergency procurement of professional services may be made under the conditions provided in the Procurement Code. Records of any emergency procurement of professional services, including the written determination of the basis for the emergency procurement being relied on by the state agency as justification for the emergency procurement, shall be maintained by the state agency for a minimum of three years and shall be made available by the state agency to the financial control division upon request.

[1.4.10.14 NMAC - N, 6/21/2022]

1.4.10.15 COMPLIANCE: State agencies must comply with federal and state statutes, rules, regulations and policies and shall have their state agency's legal counsel review all contracts and contract amendments certifying in writing that they are legally sufficient prior to submission to the bureau. Wrongful or mistaken approval by the bureau shall not be a defense to an action brought by or against the state agency on a contract.

[1.4.10.15 NMAC - N, 6/21/2022]

1.4.10.16 RECORDS:
A. Record inspection, record retention and record destruction relating to contracts shall be conducted in accordance with the Inspection of Public Records Act, Sections 14-2-1 to 14-2-12 NMSA 1978; the Public Records Act, Sections 14-3-1 to 14-3-23 NMSA 1978; and with Section 13-1-128 NMSA pertaining to sole source and emergency procurement; and Section 13-1-116 NMSA 1978 of the Procurement Code.

B. The bureau will retain original contracts, any subsequent amendments, and contract briefs, whether in hard copy or electronic formats, in accordance with provisions of the Inspection of Public Records and Public Records Act. [1.4.10.16 NMAC - N, 6/21/2022]

1.4.10.17 RULE FILING:
 This rule shall be filed in accordance with the State Rules Act, Sections 14-4-1 to 14-4-11 NMSA 1978 and shall become effective upon publication in the New Mexico Register. [1.4.10.17 NMAC - N, 6/21/2022]

HISTORY OF 1.4.10 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: DFA 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services. Laws of 2019, Chapter 153, Section 6 transferred DFA's Rule 2.40.2 NMAC under the authority of the General Services Department. This new Rule 1.4.10 NMAC renumbers and therefore replaces the prior Rule pursuant to this law.

History of Repealed Material:
[RESERVED]

**HUMAN SERVICES
 DEPARTMENT
 MEDICAL ASSISTANCE
 DIVISION**

This is an amendment to 8.320.6 NMAC, Sections 8, 9, and 11-17, effective 7/1/2022.

8.320.6.8 [RESERVED]
MISSION STATEMENT: To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.320.6.8 NMAC - Rp, 8.320.6.8 NMAC, 7/1/2015; Repealed, 2/1/2020; A, 7/1/2022]

8.320.6.9 SCHOOL-BASED SERVICES FOR RECIPIENTS UNDER TWENTY-ONE YEARS OF AGE: MAD pays for medically necessary services for a MAP eligible recipient under twenty-one years of age when the services are part of the MAP eligible recipient's (eligible recipient's) individualized education program (IEP) or an individualized family service plan (IFSP), a section 504 accommodation plan pursuant to 34 CFR 104 Subpart D (504 plan), an individual health care plan (IHCP), or are otherwise medically necessary as appropriate for each covered service for treatment (correction, amelioration, or prevention of deterioration) of an identified medical condition.

[8.320.6.9 NMAC - Rp, 8.320.6.9 NMAC, 7/1/2015; A, 7/1/2022]

8.320.6.11 ELIGIBLE PROVIDERS:

A. Upon approval of a New Mexico MAD PPA by MAD or its designee, local education agencies (LEAs), regional educational cooperatives (RECs), and other state-funded educational agencies (SFEAs) that meet specified requirements are eligible to be reimbursed for furnishing services to an eligible recipient. The LEA, REC, or other SFEA must enter into a governmental services agreement (GSA) with HSD and abide by the terms and conditions of it.

B. The following individual service providers must be

employed by, or under contract to, the LEA, REC, or other SFEA when furnishing treatment and meet other specified qualification criteria:

- (1) physical therapists (PT);
- (2) physical therapy assistants working under the supervision of a MAD enrolled PT;
- (3) occupational therapists (OT);
- (4) occupational therapy assistants working under the supervision of a MAD enrolled licensed occupational therapist;
- (5) speech and language pathologists (SLP) and clinical fellows;
- (6) apprentices in speech-language (ASL) working under the supervision of a MAD enrolled licensed speech therapist; supervision for those providers listed in Paragraphs (1)-(6) above must adhere to the requirements of the practitioner's applicable licensing board;
- (7) audiologists;
- (8) licensed nutritionists or registered dietitians;
- (9) case managers meeting one of the following requirements:
 - (a) bachelor's degree in social work, counseling, psychology, nursing or a related health or social services field from an accredited institution;
 - (b) one year experience serving medically-at-risk children or adolescents; or
 - (c) a licensed registered (RN).
- (10) psychologists meeting one of the following requirements:
 - (a) psychologists (Ph.D., Psy.D., or Ed.D.); or
 - (b) master's level practitioners licensed by the New Mexico psychologist examiners board as psychologist associates or licensed by PED as school psychologists and working

under the supervision of a MAD enrolled licensed psychiatrist or a licensed psychologist (Ph.D., Psy.D., or Ed.D.) or a PED level 3 independent school psychologist, as applicable;

(c)

supervision of psychologist associates and school psychologists must adhere to the requirements of the practitioner’s applicable licensing board.

(11) social

work practitioners meeting one of the following requirements:

(a)

licensed independent social worker (LISW); or

(b)

licensed master social worker (LMSW) or licensed baccalaureate social worker (LBSW) and working under the supervision of a MAD enrolled licensed independent social worker (LISW) or licensed psychologist (Ph.D., Psy.D., Ed.D.) or other supervisor approved by the New Mexico board of social work examiners;

(i)

services provided by licensed master social workers (LMSW) and licensed baccalaureate social workers (LBSW) must be within the scope of their practice respectively and supervised and periodically evaluated;

(ii)

an eligible recipient receiving services from an LMSW or LBSW must be diagnosed by the practitioner’s supervisor; the diagnosis must be documented in the MAP eligible recipient’s record with the signature of the supervisor.

(12) licensed

counselors or therapists meeting one of the following requirements:

(a)

licensed professional clinical mental health counselor (LPCC); or

(b)

licensed marriage and family therapist (LMFT); or

(c)

licensed mental health counselor (LMHC) or licensed professional mental health counselor (LPC) and working under the supervision of a MAD enrolled licensed psychiatrist, a

licensed psychologist (Ph.D., Psy.D., or Ed.D.), licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), or licensed independent social worker (LISW);

(i)

supervision of licensed mental health counselors (LMHC) and licensed professional mental health counselors (LPC) must adhere to the requirements of the practitioner’s applicable licensing board;

(ii)

an eligible recipient receiving services from a LMHC or LPC must be diagnosed by the practitioner’s supervisor; the diagnosis must be documented in the eligible recipient’s record with the signature of the supervisor.

(d)

licensed associate marriage and family therapist (LAMFT); supervision of LAMFTs must adhere to the requirements of the practitioner’s applicable licensing board;

(13) licensed

psychiatric clinical nurse specialist (CNS);

(14) physicians

and psychiatrists licensed by the board of medical examiners; or

(15) registered

nurse (RN), licensed practical nurse (LPN) or unlicensed school personnel providing delegated nursing services in accordance with the New Mexico board of nursing under the supervision of a RN. Delegated nursing services must be delivered in accordance with Subsection B of 16.12.2.12 NMAC.

C. For a LEA, REC,

or other SFEA that employs a RN or a licensed practical nurse (LPN) not as a case worker, each is under the oversight of the department of health’s (DOH) district health officer, as provided by state statute (Section 24-1-4 NMSA 1978). A LPN must work under the supervision of a RN who is a PED licensed school nurse.

D. As applicable, each

provider must be licensed by the public education department (PED) when such licensure exists.

E. As applicable, each provider must be licensed by its specific regulation and licensing division (RLD)’s board of practice or by PED.

[8.320.6.11 NMAC - Rp, 8.320.6.11 NMAC, 7/1/2015; A, 2/1/2020; A, 7/1/2022]

8.320.6.12 PROVIDER RESPONSIBILITIES:

A. General

responsibilities:

(1) A provider

who furnishes services to an eligible recipient must comply with all terms and conditions of his or her MAD PPA and the MAD New Mexico administrative code (NMAC) rules.

(2) A provider

must verify that an individual is an eligible recipient at the time services are billed.

(3) A

provider must appoint a program liaison and backup alternate for each LEA, REC or other SFEA, who will be responsible for receiving and disbursing all communication, information and guidelines from HSD regarding the MAD school-based services program, including information on, but not limited to, direct services and administrative claiming.

B. Documentation

requirements:

(1) A provider

must maintain all records necessary to fully disclose the nature, quality, amount and medical necessity of services billed to a MAP eligible recipient who is currently receiving MAD services or has received MAD school-based services in the past that are or were part of the eligible recipient’s IEP, [or] IFSP, 504 plan, IHCP or other care plan. Payment for services billed to MAD that are not substantiated in the eligible recipient’s records are subject to recoupment. Documentation must be retained for at least six years from the date of payment or until ongoing audit issues are resolved, whichever is longer; see 8.302.2 NMAC.

(2) For services covered under this rule,

complete copies of the eligible recipient's IEP, [or] IFSP, 504 plan, IHCP or other care plan with the individualized treatment plan (ITP) portions of the IEP, [or] IFSP, 504 plan, IHCP or other care plan must be maintained as part of the required records. Those records must clearly indicate that the MAD school-based service is a part of the eligible recipient's IEP, [or] IFSP, 504 plan, IHCP or other care plan.

(3) Documents in the MAP eligible recipient's file must include:

(a) the IEP, IFSP, 504 plan, IHCP or other care plan with the ITP [~~or the IFSP with the ITP~~];

(b) evaluation performed by the provider or the annual and current present level of performance or other determination of medical necessity;

(c) annual PCP notification or documentation of a good faith effort for services provided through an IEP/IFSP;

(d) treatment notes that relate directly to the IEP, [or] IFSP, 504 plan, IHCP or other care plan goals and objectives specific to each MAP eligible recipient; and

(e) billing information recorded in units of time; see 8.302.2 NMAC.

C. Record availability: The provider must upon request promptly furnish to HSD, the secretary of the federal department of health and human services, or the state medicaid fraud control unit any information required in this rule, including the eligible recipient and employee records, and any information regarding payments claimed by the provider furnishing services. Failure to provide records on request may result in a denial of claims.

[8.320.6.12 NMAC - Rp, 8.320.6.12 NMAC, 7/1/2015; A, 7/1/2022]

8.320.6.13 COVERED SERVICES: MAD covers the following services when medically

necessary and rendered as part of an eligible recipient's IEP, [or] IFSP, 504 plan, IHCP or other care plan by specified providers in school settings.

A. For services in Subsections A - E of 8.320.6.13 NMAC, a provider must first develop and then update the eligible recipient's present level of performance for each of his or her IEP or IFSP cycles. 504 plans, IHCPs or other care plans should be reviewed annually to establish ongoing medical necessity for services. MAD requires the following elements be included in the provider's treatment notes:

(1) the specific activity provided to the MAP eligible recipient for each date of service billed;

(2) a description of the level of engagement and the ability of the eligible recipient for each date of service billed; and

(3) the outcomes of session on the impact on the eligible recipient's exceptionality for each date of service billed.

B. To be reimbursed for a MAD school-based service, all of the requirements in this subsection must be met.

(1) Services must be medically necessary and must meet the needs specified in his or her IEP, [or] IFSP, 504 plan, IHCP or other care plan. The services must be necessary for the treatment of the eligible recipient's specific identified condition.

(2) The ITP portion of the IEP, [or] IFSP, 504 plan, IHCP or other care plan must be developed in conjunction with the appropriate qualified PT, OT, SLP, audiologist, RN, or behavioral health provider listed in 8.320.6.11 NMAC.

(3) The LEA, REC or other SFEA must complete a MAD specified good faith effort to notify the eligible recipient's PCP of the services to be provided under an IEP or IFSP.

(4) Frequency and duration of services billed may not exceed those specified in the eligible recipient's IEP, [or] IFSP, 504 plan, IHCP or other care plan.

(5) Reimbursement is made directly to the LEA, REC, or other SFEA when therapy, licensed nutritionists or registered dietitians, transportation, case manager, or nurse providers furnish services under contract to the LEA, REC, or other SFEA.

C. Therapy services: MAD covers physical, occupational, audiological and speech evaluations, and therapy required for treatment of an identified medical condition that is part of an eligible recipient's ITP.

D. Nutritional assessment and counseling: MAD covers nutritional assessment and counseling when rendered by a licensed nutritionist or dietician for an eligible recipient who has been referred for a nutritional need when part of his or her ITP. A nutritional assessment consists of an evaluation of the nutritional needs of the eligible recipient based upon appropriate biochemical, anthropometric, physical, and dietary data, including a recommendation for appropriate nutritional intake.

E. Transportation services: MAD covers transportation services for an eligible recipient who must travel from his or her school to receive a covered service from a MAD provider when the service is unavailable in the school setting and when the service is medically necessary and are part of the eligible recipient's IEP or IFSP; see 8.324.7 NMAC. MAD covers transportation to and from the school on the date a medically necessary MAD school-based service is rendered in the school setting for an eligible recipient who has a disability.

(1) MAD school-based services are billed on the specific day on which transportation is rendered and are part of the ITP portion of his or her IEP or IFSP.

(2) The eligible recipient requires transportation in a vehicle adapted to serve his or her needs that are part of the ITP portion of his or her IEP or IFSP.

(3) Transportation occurs in a modified school bus for disabled students.

F. Case management: MAD covers school-based case management services rendered in school settings to an eligible recipient who is medically at risk when these services are part of the eligible recipient's ITP [~~of his or her IEP or HFSP~~]. Medically at risk refers to an eligible recipient who has a diagnosed physical condition which has high probability of impairing cognitive, emotional, neurological, social, or physical development.

(1) The service is developed in conjunction with a qualified case manager.

(2) MAD covers the following school-based case management services.

(a) The assessment of the eligible recipient's medical, social and functional abilities at least every six months, unless more frequent reassessment is indicated by the eligible recipient's condition.

(b) The development and implementation of a comprehensive case management plan of care that helps the eligible recipient retain or achieve the maximum degree of independence.

(c) The mobilization of the use of natural helping networks, such as family members, church members, community organizations, support groups, friends, and the school, if the eligible recipient is able to attend.

(d) Coordination and monitoring of the delivery of services, evaluation of the effectiveness and quality of the services, and revision of the case management plan of care as necessary.

(e) All services must be delivered to be eligible for MAD reimbursement.

(3) An eligible recipient has the freedom to choose a case management service provider. MAD will pay for only one case management provider to furnish services to an eligible recipient at any given time period. If an eligible recipient has a case manager or chooses to use a case manager who is

not employed or under contract to the LEA, REC or other SFEA, the LEA, REC or other SFEA must coordinate with the case manager in the development of the eligible recipient's ITP.

G. Nursing: MAD covers certain nursing services required for treatment of a diagnosed medical condition that qualifies an eligible recipient for an IEP [~~or HFSP~~], ~~IFSP or IHCP~~ when provided by a licensed RN or LPN. Nursing services require professional nursing expertise and are provided by a licensed RN or a LPN and must be provided in accordance with the New Mexico Nursing Practice Act and must be a covered MAD service. Delegated nursing services which are tasks in accordance with the New Mexico board of nursing that may be delegated by the RN to unlicensed school personnel.

Delegated staff may include, but is not limited to, school or contracted staff, such as health assistants, teachers, teacher assistants, therapists, school administrators, administrative staff, cafeteria staff, or personal care aides.

(1) The IHCP should be written by the RN in accordance with the NM DOH school health manual.

(2) Delegated nursing services must be delivered in accordance with Subsection B of 16.12.2.12 NMAC.

H. Behavioral health services: MAD covers counseling, evaluation and therapy required for treatment of an identified behavioral health condition that is part of an eligible recipient's ITP.

I. Telemedicine services: MAD covers school-based services provided via telemedicine; see 8.310.2 NMAC.

J. Administrative activities: MAD covers the cost of certain administrative activities that directly support efforts to provide health-related services to a MAP eligible recipient with special education [~~and~~] or health care needs. These administrative activities include, but are not limited to, providing information about

MAD services and how to access them; facilitating the eligibility determination process; assisting in obtaining transportation and translation services when necessary to receive health care services; making referrals for MAD reimbursable services; and coordinating and monitoring MAD covered medical services.

(1) Payment for an allowable administrative activity is contingent upon the following:

(a) the LEA, REC or other SFEA must complete a MAD PPA to become an approved school-based health services provider;

(b) the LEA, REC or other SFEA must enter into a GSA with HSD and agree to abide by the terms and conditions of the GSA;

(c) the LEA, REC or other SFEA must submit claims for allowable administrative activities in accordance with federal and state regulations, rules and guidelines.

(2) A provider or contractor coordination with the school or contractor or in consultation with principals, school counselors, or teachers are not billable as a service by the provider. The provider must consult with the school to determine if the school will include such activities in its contract with the provider or contractor. The school may not bill MAD separately for these services but can include the costs as administrative costs.

(3) Administrative claiming is subject to compliance reviews and audits conducted by HSD, the state medicaid fraud control unit and the Centers for Medicare and Medicaid Services (CMS). By signing the MAD PPA, the LEA, REC or other SFEA agrees to cooperate fully with HSD, the state medicaid fraud control unit and CMS in the performance of all reviews and audits and further agrees to comply with all review and audit requirements.

[8.320.6.13 NMAC - Rp, 8.320.6.13

NMAC, 7/1/2015; A, 2/1/2020; A, 7/1/2022]

8.320.6.14 INDIVIDUALIZED TREATMENT PLAN:

A. The ITP must specify:

- (1) the eligible recipient's objectives and goals; and
- (2) the duration, the frequency of the service for the eligible recipient.

B. The plan is developed by the LEA, REC or other SFEA in conjunction with the eligible recipient, his or her family, and applicable service providers.

C. The ITP is a plan of care agreed upon by the eligible recipient, his or her parents or legal guardians, the evaluating therapists, the IEP or IFSP committee, and the eligible recipient's teacher, all of whom are included in the IEP or IFSP. The ITP utilizes the eligible recipient's health history, medical and educational evaluations and recommendations by the PCP and other medical providers, as applicable. If medical needs are identified in the IEP or IFSP, the medical portion of the IEP or IFSP is the eligible recipient's ITP. The ITP must be incorporated into the IEP or IFSP.

D. For purposes of non-IEP/IFSP school-based services, the ITP may also be listed in a section 504 accommodation plan pursuant to 34 CFR 104 Subpart D, an individual health care plan, or other plan of care services that are otherwise determined to be medically necessary as appropriate for each covered service. [8.320.6.14 NMAC - Rp, 8.320.6.14 NMAC, 7/1/2015; A, 7/1/2022]

8.320.6.15 NON-COVERED SERVICES: MAD: school-based services billed in school settings are subject to the limitations and coverage restrictions that exist for other MAD services; see 8.301.3 NMAC. MAD does not cover the following services.

A. Services classified as educational.

B. Services to non-MAP eligible individuals.

C. Services billed by a practitioner outside his or her area of expertise.

D. Vocational training that is related solely to specific employment opportunities, work skills or work settings.

E. Services that duplicate services billed outside the school setting unless determined to be medically necessary and MAD or its designee gave prior authorization for the service.

F. Services not identified in the eligible recipient's IEP, [or] IFSP, 504 plan, IHCP or other care plan.

G. Transportation services listed below:

(1) transportation that a MAP eligible recipient would otherwise receive in the course of attending school;

(2) transportation for the eligible recipient with special education needs under the Individuals with Disabilities Education Act (IDEA) who rides the regular school bus to and from school with non-disabled children; and

(3) transportation of a minor aged child, such as a sibling of the eligible recipient who is simply accompanying the eligible recipient to a MAD service.

[8.320.6.15 NMAC - Rp, 8.320.6.16 NMAC, 7/1/2015; A, 7/1/2022]

8.320.6.16 PRIOR AUTHORIZATION AND UTILIZATION REVIEW:

Certain procedures or services identified in the UR instructions may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to UR at any point in the payment process. All services are subject to UR for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow

that contractor's instructions for authorization of services. A specific service may have additional prior authorization requirements listed in the service's prior authorization section. The prior authorization of a service does not guarantee that an individual is eligible for a MAD service. A provider must verify that an individual is eligible for a specific MAD service at the time the service is furnished and must determine if the eligible recipient has other health insurance. A provider who disagrees with the denial of a prior authorization request or other review decision can request a reconsideration.

[8.320.6.16 NMAC - Rp, 8.320.6.17 NMAC, 7/1/2015]

8.320.6.17 REIMBURSEMENT:

Reimbursement to the LEA, REC, or SFEA is not contingent upon billing a third party payer first when the eligible recipient has other insurance. MAD is generally the payer of last resort. However, if medical services are included in the eligible recipient's IEP, [or] IFSP, 504 plan, IHCP or other care plan, and an exception is created under 42 USE 1396b(c), 20 USC 1412(a) (12) and 34 CFR 300.142., and the services are otherwise covered by MAD, then MAD is authorized to pay for such services. The LEA, REC, or other SFEA must submit claims for reimbursement on the 837P electronic format or its successor unless it received written permission from MAD to bill on paper.

A. Interim payment to the LEA, REC or other SFEA for covered services are made at the MAD fee schedule for the specific service.

B. The LEA, REC or other SFEA will complete an annual cost report utilized to reconcile interim payments with actual costs in accordance with CMS approved methodology. The LEA, REC or other SFEA must participate in the CMS approved quarterly random moment time study (RMTS).

C. A MAD school-based service that is in the eligible recipient's IEP, [or] IFSP, 504 plan,

IHCP or other care plan must only be billed by the school. When the school utilizes a contractor to render the service, the school must submit the claim, not the contractor. It is the responsibility of the school to reimburse the contractor.
[8.320.6.17 NMAC - Rp, 8.320.6.18 NMAC, 7/1/2015; A, 7/1/2022]

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

The Office of Superintendent of Insurance held a hearing on 5/20/22 on proposed changes to 13.2.8 NMAC. Following the hearing and after considering the received commentary, on 6/3/22 the Superintendent adopted the hearing officer’s findings, conclusions and recommendations and repealed the existing rule of 13.2.8 NMAC, Credit for Reinsurance and replaced it with the new rule under the same part name, effective 7/1/2022.

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

**TITLE 13 INSURANCE
CHAPTER 2 INSURANCE
COMPANY LICENSING AND
OPERATION
PART 8 CREDIT FOR
REINSURANCE**

13.2.8.1 ISSUING
AGENCY: New Mexico Office of Superintendent of Insurance (“OSI”).
[13.2.8.1 NMAC – Rp, 13.2.8.1, 7/1/2022]

13.2.8.2 SCOPE: This rule applies to all domestic insurers.
[13.2.8.2 NMAC – Rp, 13.2.8.2, 7/1/2022]

13.2.8.3 STATUTORY AUTHORITY: Section 59A-2-9 NMSA 1978 and the Credit for Reinsurance Act (“CFR Act”), Sections 59A-12E-1 to 59A-12E-18 NMSA 1978.

[13.2.8.3 NMAC – Rp, 13.2.8.3, 7/1/2022]

13.2.8.4 DURATION:
Permanent.
[13.2.8.4 NMAC – Rp, 13.2.8.4, 7/1/2022]

13.2.8.5 EFFECTIVE DATE: July 1, 2022, unless a later date is cited at the end of a section.
[13.2.8.5 NMAC – Rp, 13.2.8.5, 7/1/2022]

13.2.8.6 OBJECTIVE: The purpose of this rule is to implement the Credit for Reinsurance Act (“CFR Act”), Sections 59A-12E-1 to 59A-12E-18 NMSA 1978.
[13.2.8.6 NMAC – Rp, 13.2.8.6, 7/1/2022]

13.2.8.7 DEFINITIONS:
As used in this rule:
A. “Annual financial statement” means the statement required by Section 59A-5-29 NMSA 1978.

B. “Beneficiary” means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator except that, if a court of law appoints a successor in interest to a domestic insurer for whose benefit a letter of credit qualified under 13.2.8.24 NMAC has been established, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver.

C. “Commissioner” means the individual or regulatory agency in a jurisdiction other than New Mexico who has jurisdiction over banking, financial services, the business of insurance, or other relevant business.

D. “Form” means a form, including any applicable instructions, that is posted on the official OSI website or, if the form is generated by an agency or entity other than OSI, an official form to be obtained from such other agency or entity. Forms AR-1, CR-1, CR-F,

CR-S and RJ-1 as referenced in this rule will be posted on the official OSI website.

E. “Grantor” means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

F. “Jurisdiction” means any state, district or territory of the U.S. and any lawful national government.

G. “Liabilities” means the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and shall include:

(1) for business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

(a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(b) reserves for losses reported and outstanding;

(c) reserves for losses incurred but not reported;

(d) reserves for allocated loss expenses; and

(e) unearned premiums; or

(2) for business ceded by domestic insurers authorized to write life, health and annuity insurance:

(a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(b) aggregate reserves for accident and health policies;

(c) deposit funds and other liabilities without life or disability contingencies; and

(d) liabilities for policy and contract

claims.

H. “Mortgage-related security” means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the SVO and that either:

(1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the secretary of housing and urban development pursuant to 12 U.S.C.A. Section 1703; or

(2) is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments,

or notes meeting the requirements of Subparagraph (1)(a) of this Subsection.

I. “NAIC” means the national association of insurance commissioners.

J. “Obligations” means:

(1) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(2) reserves for reinsured losses reported and outstanding;

(3) reserves for reinsured losses incurred but not reported; and

(4) reserves for allocated reinsured loss expenses and unearned premiums.

K. “OECD” means the organization for economic cooperation and development.

L. “Promissory note” when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

M. “Qualified U.S. financial institution” has the meaning given in Subsection E of Section 59A-12E-2 NMSA 1978.

N. “Reciprocal jurisdiction” means a jurisdiction, as designated by the superintendent pursuant to Subsection D of 13.2.8.16 NMAC, that meets one of the criteria set forth in Subsection B of 13.2.8.16 NMAC.

O. “Solvent scheme of arrangement” means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer’s home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer’s home jurisdiction.

P. “Substantially similar standards” means credit for reinsurance standards which the superintendent determines are equal to or exceed the standards of the Credit for Reinsurance Act and this rule.

Q. “Statutory financial statement” means quarterly, annual or other financial statements required by state law.

R. “SVO” means the securities valuation office of the NAIC.

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

[13.2.8.7 NMAC – Rp, 13.2.8.7, 7/1/2022]

13.2.8.8 CREDIT FOR REINSURANCE - REINSURER LICENSED IN THIS STATE:

Pursuant to Paragraph (1) of Subsection D of Section 59A-12E-3 NMSA 1978, the superintendent will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

[13.2.8.8 NMAC – Rp, 13.2.8.8, 7/1/2022]

13.2.8.9 CREDIT FOR REINSURANCE - ACCREDITED REINSURERS:

A. Pursuant to Paragraph (1) of Subsection D of Sections 59A-12E-3 and 59A-12E-5 NMSA 1978, the superintendent will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer shall:

(1) File a properly executed Form AR-1 as evidence of its submission to this

state's jurisdiction and to this state's authority to examine its books and records;

(2) File with the superintendent a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(3) File annually with the superintendent a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(4) Maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain the affirmative approval of the superintendent upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

B. If the superintendent determines that the assuming insurer has failed to meet or maintain any of these qualifications, the superintendent may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the superintendent, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the superintendent.

[13.2.8.9 NMAC – Rp, 13.2.8.9, 7/1/2022]

13.2.8.10 CREDIT FOR REINSURANCE - REINSURER DOMICILED IN ANOTHER STATE:

A. Pursuant to Paragraph (2) of Subsection D of

Section 59A-12E-3 NMSA 1978, the superintendent will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

(1) Is domiciled in (or, in the case of a U.S. branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this rule;

(2) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(3) Files a properly executed Form AR-1 with the superintendent as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this Section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

[13.2.8.10 NMAC – Rp, 13.2.8.10, 7/1/2022]

13.2.8.11 CREDIT FOR REINSURANCE - REINSURERS MAINTAINING TRUST FUNDS:

A. Pursuant to Sections 59A-12E-3 and 59A-12E-4 NMSA 1978, the superintendent will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in Subsection E of Section 59A-12-2 NMSA 1978, for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the superintendent substantially the same information as that required to be reported on the NAIC annual

statement form by licensed insurers, to enable the superintendent to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except as provided in Paragraph (2) of this subsection.

(2) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the superintendent with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(3) The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(a) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date

on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;

(b) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the U.S.; and

(c)

In addition to these trusts, the group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

(4) The

incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of rule and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the superintendent:

(a)

an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(b)

if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(5)

The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000

(calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC) and which has continuously transacted an insurance business outside the U.S. for at least three years immediately prior to making application for accreditation, shall:

(a)

consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(b)

maintain a joint trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and

(c)

file a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

(6) Within 90

days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the superintendent an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. Credit for

reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the superintendent of the state where the trust is domiciled or the superintendent of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the superintendent of every state in which the ceding

insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(1) contested

claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the U.S.;

(2) legal title

to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns and successors in interest;

(3) the trust

shall be subject to examination as determined by the superintendent;

(4) the trust

shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(5) no later

than February 28 of each year the trustee of the trust shall report to the superintendent in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

D. Notwithstanding

any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the superintendent with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the superintendent with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(1) The assets

shall be distributed by and claims shall be filed with and valued by

the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(2) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the superintendent with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(3) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.
[13.2.8.11 NMAC – Rp, 13.2.8.11, 7/1/2022]

13.2.8.12 INVESTMENT OF TRUST ASSETS:

A. Assets deposited in trusts established pursuant to Subsections A and B of Section 59A-12E-3 NMSA 1978 and this Section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a qualified U.S. financial institution as defined in Paragraph (1) of Subsection E of Section 59A-12E-2 NMSA 1978, clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by such qualified U.S. financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent of total investments. No more than twenty percent of the total of the investments in the trust may be foreign investments authorized under Subparagraph (e) of Paragraphs (1) or (3) of this subsection or the equity interest requirements of Subsection B or Subsection D of 13.2.8.12 NMAC,

and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of Subsections A and B of Section 59A-12E-3 NMSA 1978 shall be invested only as follows:

(1) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) the U.S. or by any agency or instrumentality of the U.S.;

(b) a state of the U.S.;

(c) a territory, possession or other governmental unit of the U.S.;

(d) an agency or instrumentality of a governmental unit referred to in Subparagraphs (b) and (c) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

(e) the government of any other country that is a member of the organization for economic cooperation and development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the NAIC.

(2) Obligations that are issued in the U.S., or that are dollar denominated

and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

(a) are rated A or higher (or the equivalent) by a securities rating agency recognized by the securities valuation office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) have been designated as class one or class two by the securities valuation office of the NAIC;

(3) Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the organization for economic cooperation and development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the NAIC.

(4) An investment made pursuant to the provisions of Paragraph (1), (2) or (3) of this subsection shall be subject to the following additional limitations:

(a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent of the assets of the trust;

(b) an investment in any one mortgage-

related security shall not exceed five percent of the assets of the trust;

(c)

the aggregate total investment in mortgage-related securities shall not exceed twenty-five percent of the assets of the trust; and

(d)

preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under Paragraphs (2)(a) and (2)(c) of this subsection but shall not exceed two percent of the assets of the trust.

B. Equity Interests.

Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

(1) its

obligations and preferred shares, if any, are eligible as investments under this Subsection; and

(2) the equity

interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the financial industry regulatory authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

C. Investments

in common shares of a solvent institution organized under the laws of a country that is a member of the organization for economic cooperation and development are permissible, if:

(1) All its

obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(2) The

equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the organization for economic cooperation and development.

D. An investment in

or loan upon any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent of the assets in the trust.

E. Obligations

issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the NAIC.

F. Investment

companies.

(1) Securities

of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

(a)

invests at least ninety percent of its assets in the types of securities that qualify as an investment under Paragraphs (1) through (3) of Subsection D of 13.2.8.11 NMAC or invests in securities that are determined by the superintendent to be substantively similar to the types of securities set forth in Paragraphs (1) through (3) of Subsection D of 13.2.8.11 NMAC; or

(b)

invests at least ninety percent of its assets in the types of equity interests that qualify as an investment under Subsection (A) of this section.

(2)

Investments made by a trust in investment companies under this rule subsection shall not exceed the following limitations:

(a) an

investment in an investment company qualifying under Subparagraph (1) (a) of this section shall not exceed ten

percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent of the assets in the trust; and

(b) an

investment in an investment company qualifying under Subparagraph (1)(b) of this section shall not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection A of this section.

G. Letters of credit.

(1) In order

for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the superintendent), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(2) The

trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

H. A specific security

provided to a ceding insurer by an assuming insurer pursuant to 13.2.8.18 NMAC shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this Section.

[13.2.8.12 NMAC – N, 7/1/2022]

13.2.8.13 CREDIT FOR REINSURANCE – CERTIFIED REINSURERS:

A. Pursuant to Sections 59A-12E-7 through 59A-12E-9 NMSA 1978, the superintendent will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this Section or 13.2.8.14 NMAC. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the superintendent. The security shall be in a form consistent with the provisions of Sections 59A-12E-7 through 59A-12E-9 and Section 59A-12E-16 NMSA 1978 and 13.2.8.19 through 13.2.8.26 NMAC. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

Ratings Security	Required
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

B. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

C. The superintendent will require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

D. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the superintendent. The one-year deferral period is contingent upon the certified reinsurer

continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (1) Line 1: Fire;
- (2) Line 2: Allied lines;
- (3) Line 3: Farmowners multiple peril
- (4) Line 4: Homeowners multiple peril;
- (5) Line 5: Commercial multiple peril;
- (6) Line 9: Inland marine;
- (7) Line 12: Earthquake; and
- (8) Line 21: Auto physical damage.

E. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

F. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this Section. [13.2.8.13 NMAC – Rp, 13.2.8.12, 7/1/2022]

13.2.8.14 CERTIFICATION PROCEDURE:

A. The superintendent will post notice on the OSI website promptly upon receipt of any application for certification, including

instructions on how members of the public may respond to the application. The superintendent will not take final action on the application until at least 30 days after posting the notice required by this paragraph.

B. The superintendent will issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with 13.2.8.13 NMAC. The superintendent will publish a list of all certified reinsurers and their ratings.

C. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(1) the assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the superintendent pursuant to 13.2.8.15 NMAC;

(2) the assuming insurer shall maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with Subsection E, Paragraph (8) of this section. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000;

(3) the assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the superintendent. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the superintendent in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (a) Standard & Poor’s;
- (b) Moody’s investors service;
- (c) Fitch ratings;
- (d) A.M. Best company; or
- (e) any other nationally recognized statistical rating organization.

D. The certified reinsurer shall comply with any other requirements reasonably imposed by the superintendent.

E. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(1) The certified reinsurer’s financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The superintendent will use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody’s	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB- B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(2) the business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(3) for certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

(4) for certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers);

(5) the reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers’ Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(6) regulatory actions against the certified reinsurer;

(7) the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Paragraph (8) below;

(8) for certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the superintendent will consider audited financial statements for the last two years filed with its non-U.S. jurisdiction supervisor;

(9) the liquidation priority of obligations to a ceding insurer in the certified reinsurer’s domiciliary jurisdiction in the context of an insolvency proceeding;

(10) a certified reinsurer’s participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The superintendent shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(11) Any other information deemed relevant by the superintendent.

F. Based on the analysis conducted under Paragraph (5) of Subsection E of 13.2.8.14 NMAC of a certified reinsurer’s reputation for prompt payment of claims, the superintendent may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the superintendent will, at a minimum, increase the security the certified reinsurer is required to post by one rating level under Paragraph (1) of Subsection E of 13.2.8.14 NMAC if the superintendent finds that:

(1) more than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed \$100,000 for each cedent; or

(2) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds \$50,000,000.

G. The assuming insurer shall submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of this state, appointment of the superintendent as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The superintendent shall not certify any assuming insurer that is domiciled in a jurisdiction that the superintendent has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

H. The certified reinsurer shall agree to meet applicable information filing requirements as determined by the superintendent, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under the Inspection of Public Records Act, Chapter 14, Article 4 NMSA 1978, and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(1) notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefor; annually, Form

CR-F or CR-S, as applicable;

(2) annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Paragraph (3) below;

(3) annually, the most recent audited financial statements, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last two years filed with the certified reinsurer's supervisor;

(4) at least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(5) a certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(6) Any other information that the superintendent may reasonably require.

I. Change in rating or revocation of certification. In the case of a downgrade by a rating agency or other disqualifying circumstance, the superintendent shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of Paragraph (1) of Subsection E of 13.2.8.14 NMAC.

(1) The superintendent shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the superintendent to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(2) If the rating of a certified reinsurer is upgraded by the superintendent,

the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the superintendent shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the superintendent, the superintendent shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(3) Upon revocation of the certification of a certified reinsurer by the superintendent, the assuming insurer shall be required to post security in accordance with 13.2.8.18 NMAC in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with 13.2.8.11 and 13.2.8.12 NMAC, the superintendent may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the superintendent to be at high risk of uncollectibility.

[13.2.8.14 NMAC – Rp, 13.2.8.14, 7/1/2022]

13.2.8.15 QUALIFIED JURISDICTIONS: If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the superintendent determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the superintendent will publish notice

and evidence of such recognition in an appropriate manner. The superintendent may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

A. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the superintendent will evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The superintendent will determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the superintendent as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with the superintendent with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the superintendent, include but are not limited to the following:

- (1) the framework under which the assuming insurer is regulated;
- (2) the structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;
- (3) the substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;
- (4) the form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used;
- (5) the domiciliary regulator's willingness to cooperate with U.S. regulators in general and the superintendent in

particular;

- (6) the history of performance by assuming insurers in the domiciliary jurisdiction;
- (7) any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the superintendent has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards;
- (8) any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the international association of insurance supervisors or successor organization; and
- (9) any other matters deemed relevant by the superintendent.

B. A list of qualified jurisdictions shall be published through the NAIC committee process. The superintendent will consider this list in determining qualified jurisdictions. If the superintendent approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the superintendent will provide thoroughly documented justification with respect to the criteria provided under Paragraphs (1) to (9) of this subsection.

C. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of certification issued by an NAIC accredited jurisdiction.

- (1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the superintendent has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR- 1 and

such additional information as the superintendent requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the superintendent of any change in its status or rating within 10 days after receiving notice of the change.

(3) The superintendent may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subsection I of 13.2.8.14 NMAC.

(4) The superintendent may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the superintendent suspends or revokes the certified reinsurer's certification in accordance with Subsection I of 13.2.8.14 NMAC, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

E. Mandatory funding clause. In addition to the clauses required under 13.2.8.27 NMAC, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The superintendent will comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

[13.2.8.15 NMAC – Rp, 13.2.8.15, 7/1/2022]

13.2.8.16 CREDIT FOR REINSURANCE—RECIPROCAL JURISDICTIONS:

A. In accordance with Sections 59A-12E-10 through 59A-12E-12 and Subsections (A) through (D) of Section 59A-12E-13 NMSA 1978, the superintendent will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal Jurisdiction, and that meets the other requirements of this rule.

B. A reciprocal jurisdiction shall be one of the following:

(1) a non-U.S. jurisdiction that is subject to an in-force covered agreement with the U.S., each within its legal authority, or, in the case of a covered agreement between the U.S. and the European Union, is a member state of the European Union. For purposes of this Subsection, a “covered agreement” is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(2) a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(3) a qualified jurisdiction, as determined by the superintendent pursuant to Section 59A-12E-8 and Subsection A of Section 59A-12E-9 NMSA 1978 and Subsections A and B of 13.2.8.15 NMAC, and Paragraph (1) of Subsection C of 13.2.8.15 NMAC which is not otherwise described in Paragraph (1) or (2) of this Subsection and which the superintendent determines meets all of the following additional requirements:

(a) provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

(b) does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to rule by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

(c) recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the superintendent of this state or the superintendent of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; provided, that nothing in this subparagraph shall enhance or limit the authority of the superintendent with respect to the group-wide supervision of insurance holding company systems pursuant to the Insurance Holding Company Law, Chapter 59A, Article 37 NMSA 1978, the rules implementing that law, Title 13, Ch. 2, Part 2 NMAC, Insurance Holding Companies, or other applicable state law; and

(d) provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and

their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the superintendent in accordance with a memorandum of understanding or similar document between the superintendent and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

C. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the following conditions:

(1) the assuming insurer shall be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction;

(2) the assuming insurer shall have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in Paragraph (10) of this subsection, according to the methodology of its domiciliary jurisdiction, in the following amounts:

(a) no less than \$250,000,000; or

(b) if the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(i) minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250,000,000; and

(ii) a central fund containing a balance of the equivalent of at least \$250,000,000;

(c) the assuming insurer shall have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(i)

if the assuming insurer has its head office or is domiciled in a Reciprocal Jurisdiction as defined in Paragraph (1) of Subsection B of 13.2.8.16 NMAC, the ratio specified in the applicable covered agreement;

(ii) if the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in Paragraph (2) of Subsection B of 13.2.8.16 NMAC, a risk-based capital (RBC) ratio of three hundred percent of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

(iii) if the assuming insurer is domiciled in a reciprocal jurisdiction as defined in Paragraph (3) of Subsection B of 13.2.8.16 NMAC, after consultation with the Reciprocal Jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the superintendent determines to be an effective measure of solvency.

(3) The assuming insurer shall agree to and provide adequate assurance, in the form of a properly executed Form RJ-1, of its agreement to the following:

(a) the assuming insurer shall agree to provide prompt written notice and explanation to the superintendent if it falls below the minimum requirements set forth in Paragraph (2) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law; and

(b) the assuming insurer shall consent in writing to the jurisdiction of the courts of this state and to the appointment of the superintendent as agent for service of process.

(i) The superintendent may also require that such consent be provided and included in each reinsurance agreement under the superintendent's jurisdiction.

(ii) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to

agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

(4) The assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

(5) Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

(6) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the superintendent and to provide one hundred percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of Sections 59A-12E-7 through 59A-12E-9 and Section 59A-12E-16 NMSA 1978 and 13.2.8.19 through 13.2.8.26 NMAC.

(7) The assuming insurer shall agree in writing to meet the applicable information filing requirements as set forth in Paragraph (8) of this subsection.

(8) The assuming insurer or its legal successor shall provide, if requested by the superintendent, on behalf of itself and any legal predecessors, the following documentation to the superintendent:

(a) for the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

(b) for the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

(c) prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the U.S.; and

(d) prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in Paragraph (9) of this subsection.

(9) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(a) more than fifteen percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the superintendent;

(b) more than fifteen percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and

which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or

(c)

the aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement.

(10) The

assuming insurer's supervisory authority shall confirm to the superintendent on an annual basis that the assuming insurer complies with the requirements set forth in Paragraph (2) of this Subsection.

(11) Nothing

in this provision precludes an assuming insurer from providing the superintendent with information on a voluntary basis.

D. The superintendent will timely create and publish a list of reciprocal jurisdictions.

E. A list of reciprocal jurisdictions is published through the NAIC Committee Process. The superintendent's list shall include any Reciprocal Jurisdiction as defined in Paragraphs (1) and (2) of Subsection B of 13.2.8.16 NMAC, and shall consider any other reciprocal jurisdiction included on the NAIC list. The superintendent may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, rule, or in accordance with criteria published through the NAIC Committee Process.

F. The superintendent may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, rule, or in accordance with a process published through the NAIC **Committee Process, except that the superintendent** shall not remove from the list a reciprocal jurisdiction that meets the criteria of Paragraph (1) or Paragraph (2) of Subsection B of 13.2.8.16 NMAC. Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded to

an assuming insurer domiciled in that jurisdiction shall be allowed if otherwise allowed pursuant to the CFR Act and this rule.

G. The superintendent will timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

H. If an NAIC accredited jurisdiction has determined that the conditions set forth in Subsection C of this section have been met, the superintendent has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The superintendent may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of Subsection C.

I. When requesting that the superintendent defer to another NAIC accredited jurisdiction's determination, an assuming insurer shall submit a properly executed Form RJ-1 and additional information as the superintendent may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

J. If the superintendent determines that an assuming insurer no longer meets one or more of the requirements under this section, the superintendent may revoke or suspend the eligibility of the assuming insurer for recognition under this section, and:

(1) while an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with 13.2.8.18 NMAC; and

(2) if an

assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the superintendent and consistent with the provisions of 13.2.8.18 NMAC.

K. Before denying statement credit or imposing a requirement to post security with respect to Subsection J of this Section or adopting any similar requirement that will have substantially the same regulatory impact as security, the superintendent will:

(1) communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in Subsection C of this Section;

(2) provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(3) after the expiration of 90 days or less, as set out in Paragraph (2) above, if the superintendent determines that no or insufficient action was taken by the assuming insurer, the superintendent may impose any of the requirements as set out in this subsection; and

(4) provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

L. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may

obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

M. Nothing in this section shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

N. Nothing in this section shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

[13.2.8.16 NMAC– Rp, 13.2.8.16, 7/1/2022]

13.2.8.17 CREDIT FOR REINSURANCE REQUIRED

BY LAW: Pursuant to Subsection E of Section 59A-12E-13 NMSA, the superintendent will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Sections 59A-12E-3 through 59A-12E-13 NMSA 1978, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or rule of that jurisdiction.

[13.2.8.17 NMAC – Rp, 13.2.8.13, 7/1/2022]

13.2.8.18 ASSET OR REDUCTION FROM LIABILITY FOR REINSURANCE CEDED TO AN UNAUTHORIZED ASSUMING INSURER

NOT MEETING THE REQUIREMENTS OF SECTIONS 13.2.8.8 THROUGH 13.2.8.17

NMAC:

A. Pursuant to Section 59A-12E-6 NMSA 1978, the superintendent will allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Sections 59A-12E-3 through 59A-12E-15 NMSA 1978 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the

ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the U.S. subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified U.S. financial institution as defined in Paragraph (2) of Subsection E of Section 59A-12E-2 NMSA 1978. This security may be in the form of any of the following:

- (1) cash;
- (2) securities

listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(3) clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified U.S. institution, as defined in Paragraph (1) of Subsection E of Section 59A-12E-2 NMSA 1978, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

- (4) any other form of security acceptable to the superintendent.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of 13.2.8.27 NMAC and the applicable portions of 13.2.8.19 through 13.2.8.26 NMAC have been satisfied.

[13.2.8.18 NMAC – Rp, 13.2.8.14,

7/1/2022]

13.2.8.19 REQUIRED CONDITIONS FOR TRUST AGREEMENTS QUALIFIED UNDER SECTION 18 OF 13.2.8 NMAC:

A. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified U.S. financial institution as defined in Paragraph (2) of Subsection E of Section 59A-12E-2 NMSA 1978.

B. The trust agreement shall create a trust account into which assets shall be deposited.

C. All assets in the trust account shall be held by the trustee at the trustee’s office in the U.S.

D. The trust agreement shall provide that:

(1) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(2) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(3) it is not subject to any conditions or qualifications outside of the trust agreement; and

(4) it shall not contain references to any other agreements or documents except as provided for in Subsections J and K of this section.

E. The trust agreement shall be established for the sole benefit of the beneficiary.

F. The trust agreement shall require the trustee to:

(1) receive assets and hold all assets in a safe place;

(2) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or

signature from the grantor or any other person or entity;

(3) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(4) notify the grantor and the beneficiary within 10 days of any deposits to or withdrawals from the trust account;

(5) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(6) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

E. The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

F. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

G. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the superintendent), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of

credit will otherwise expire without being renewed or replaced.

H. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct.

I. Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(1) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(2) to make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(3) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution as defined

in Paragraph (2) of Subsection E of Section 59A-12E-2 NMSA 1978 apart from its general assets, in trust for such uses and purposes specified in Paragraphs (1) and (2) above, as may remain executory after such withdrawal and for any period after the termination date.

J. Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section 18 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for:

(a) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(b) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(2) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(3) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain

unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in Subparagraphs (a) and (b) of Paragraph (1) above as may remain executory after withdrawal and for any period after the termination date.

K. Either the reinsurance agreement or the trust agreement shall stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. bank and payable in U.S. dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph shall be included in the reinsurance agreement.

[13.2.8.19 NMAC – Rp, 13.2.8.15, 7/1/2022]

13.2.8.20 PERMITTED CONDITIONS FOR TRUST AGREEMENTS QUALIFIED UNDER SECTION 18 OF 13.2.8 NMAC:

A. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written

notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

B. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time-to-time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

C. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Paragraph (2) of Subsection A of 13.2.8.21 NMAC.

D. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

E. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

[13.2.8.20 NMAC – Rp, 13.2.8.16, 7/1/2022]

13.2.8.21 ADDITIONAL CONDITIONS APPLICABLE TO

REINSURANCE AGREEMENTS FOR TRUST AGREEMENTS QUALIFIED UNDER SECTION 18 OF 13.2.8 NMAC:

A. A reinsurance agreement may contain provisions that:

(1) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(2) require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(3) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(4) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer's share under the specific reinsurance agreement

of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(ii)

the assuming insurer’s share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(iii)

any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(b) to

make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

B. The reinsurance agreement also may contain provisions that:

(1) give the

assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(a)

the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(b)

after withdrawal and transfer, the current fair market value of the trust account is no less than one hundred-two percent of the required amount.

(2) provide for

the return of any amount withdrawn in excess of the actual amounts required for Paragraph 4 of Subsection A of this section, and for interest payments at a rate not in excess of the prime rate of interest on such amounts;

(3) permit

the award by any arbitration panel or

court of competent jurisdiction of:

(a)

interest at a rate different from that provided in Paragraph (2) of this subsection;

(b)

court or arbitration costs;

(c)

attorney’s fees; and

(d)

any other reasonable expenses.

[13.2.8.21 NMAC – Rp, 13.2.8.17, 7/1/2022]

13.2.8.22 FINANCIAL REPORTING APPLICABLE TO REINSURANCE AGREEMENTS FOR TRUST AGREEMENTS QUALIFIED UNDER SECTION 18 OF 13.28.8 NMAC:

A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

[13.2.8.22 NMAC – Rp, 13.2.8.19, 7/1/2022]

13.2.8.23 FAILURE TO IDENTIFY BENEFICIARY APPLICABLE TO REINSURANCE AGREEMENTS FOR TRUST AGREEMENTS QUALIFIED UNDER SECTION 18 OF 13.2.8 NMAC:

The failure of any trust agreement to specifically identify the beneficiary as defined in Paragraph B of 13.2.8.7 NMAC shall not be construed to affect any actions or rights that the superintendent may take or possess pursuant to the provisions of the laws of this state.

[13.2.8.23 NMAC – Rp, 13.2.8.21, 7/11/2022]

13.2.8.24 LETTERS OF CREDIT APPLICABLE TO REINSURANCE AGREEMENTS FOR TRUST AGREEMENTS QUALIFIED UNDER SECTION 18 OF 13.2.8 NMAC:

A. The letter of credit shall be clean, irrevocable, unconditional and issued or confirmed by a qualified U.S. financial institution as defined in Paragraph (1) of Subsection E of Section 59A-12E-2 NMSA 1978. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in Subsection A of 13.2.8.27 NMAC.

B. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

C. The letter of credit shall contain a statement to the effect that the obligation of the qualified U.S. financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

D. The term of the letter of credit shall be for at least one year and shall contain an “evergreen clause” that prevents the expiration of the letter of credit without due notice from the issuer. The “evergreen clause” shall provide for a period of no less than 30 days’ notice prior to expiration date or nonrenewal.

E. The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the

International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the U.S. of a qualified U.S. financial institution.

F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of Publication 600 or any other successor publication, occur.

G. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified U.S. financial institution as described in Subsection A of this section, then the following additional requirements shall be met:

(1) the issuing financial institution shall formally designate the confirming qualified U.S. financial institution as its agent for the receipt and payment of the drafts; and

(2) the “evergreen clause” shall provide for 30 days’ notice prior to expiration date for nonrenewal.

[13.2.8.24 NMAC – Rp, 13.2.8.22, 7/1/2022]

13.2.8.25 REINSURANCE AGREEMENT PROVISIONS FOR LETTERS OF CREDIT QUALIFIED UNDER SECTION 18 OF 13.2.8 NMAC:

A. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:

(1) require the assuming insurer to provide letters of credit to the ceding insurer and

specify what they are to cover;

(2) stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer’s share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(ii) the assuming insurer’s share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(b) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(3) All of the provisions of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

B. Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer’s entire obligations under the reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer’s share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and

deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in Subparagraph (a) of Paragraph (2) of Subsection A of 13.2.8.25 NMAC as may remain after withdrawal and for any period after the termination date.

C. Nothing contained in Subsection A of this section shall preclude the ceding insurer and assuming insurer from providing for:

(1) an interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Paragraph (2) of Subsection A of this section; or

(2) the return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

[13.2.8.25 NMAC – Rp, 13.2.8.23, 7/1/2022]

13.2.8.26 OTHER SECURITY: A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the U.S. subject to withdrawal solely by the ceding insurer and under its exclusive control.

[13.2.8.26 NMAC – Rp, 13.2.8.24, 7/1/2022]

13.2.8.27 REINSURANCE CONTRACT: Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections (8) through (16), or Section (18) of this rule or otherwise in compliance with Sections 59A-12E-3 through 59A-12E-15 NMSA 1978 after the adoption of this rule unless the reinsurance agreement:

A. includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to Chapter 59A, Article 41 of the Insurance Code.

B. includes a provision pursuant to Sections 59A-12E-3 through 59A-12E-15 NMSA 1978 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the U.S., has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and

C. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer. [13.2.8.27 NMAC – Rp, 13.2.8.25, 7/1/2022]

13.2.8.28 SEVERABILITY: If any provision of this rule, or the application of the provision to any person or circumstance, is held invalid, the remainder of the rule, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected. [13.2.8.28 NMAC - Rp, 13.2.8.27, 7/1/2022]

History of 13.2.8 NMAC: 13.2.8 NMAC - Credit For Reinsurance, filed 7/1/1997; Recompiled 11/30/2001 was repealed and replaced by 13.2.8 NMAC - Credit For Reinsurance, effective 7/24/2018. 13.2.8 NMAC – Credit for Reinsurance, filed 7/24/2018 was repealed and replaced by 13.2.8 NMAC – Credit for Reinsurance, effective 7/1/2022.

WORKFORCE SOLUTIONS, DEPARTMENT OF

TITLE 11 LABOR AND

WORKERS COMPENSATION CHAPTER 1 LABOR GENERAL PROVISIONS PART 6 HEALTHY WORKPLACES

11.1.6.1 ISSUING AGENCY: Labor Relations Division (LRD) of the New Mexico Department of Workforce Solutions (NMDWS). [11.1.6.1 NMAC – N, 07/01/2022]

11.1.6.2 SCOPE: Employers and employees within the state of New Mexico. [11.1.6.2 NMAC – N, 07/01/2022]

11.1.6.3 STATUTORY AUTHORITY: Section 50-17-9 NMSA 1978 authorizes the labor relations division of the workforce solutions department to coordinate implementation and enforcement of the Healthy Workplaces act and to promulgate appropriate rules to implement that act. [11.1.6.3 NMAC – N, 07/01/2022]

11.1.6.4 DURATION: Permanent. [11.1.6.4 NMAC – N, 07/01/2022]

11.1.6.5 EFFECTIVE DATE: July 1, 2022, unless a later date is cited at the end of a section. [11.1.6.5 NMAC – N, 07/01/2022]

11.1.6.6 OBJECTIVE: To implement the complaint process articulated in Sections 50-17-1 NMSA 1978 through 50-17-12 NMSA 1978, including a process for investigating and resolving complaints alleging violations of the Healthy Workplaces Act. [11.1.6.6 NMAC – N, 07/01/2022]

11.1.6.7 DEFINITIONS: All definitions contained in Section 50-17-2 NMSA 1978 are incorporated herein by reference. Additionally, as used in these rules:

A. “Frontloading” means when an employer elects to grant employees earned sick leave the employee could accrue within the year.

B. “Calendar year” means January 1st of any year through December 31st of that same year.

C. “Complainant” means an individual who believes they have been adversely impacted by violations of the Healthy Workplaces Act or these rules or an individual who was subjected to any of the retaliatory actions prohibited by the Act and files a complaint with the division alleging such violations.

D. “Foreseeable” means an employee is aware of the need to use earned sick leave seven or more days before such use.

E. “Good cause” means a substantial reason, one that affords a legal excuse, or a legally sufficient ground or reason.

F. “Violation(s)” means any violation of the Healthy Workplaces Act or these rules, including retaliation. [11.1.6.7NMAC – N, 07/01/2022]

11.1.6.8 ACCRUAL AND USAGE

A. An employer may voluntarily frontload earned sick leave to an employee; however, the employer may not recoup any used frontloaded leave through payroll deductions even if the employee signs a written agreement authorizing the employer to do so or if the employee is separated before accruing the frontloaded leave.

B. Hours worked in excess of 40 hours per seven-day work week do not accrue earned sick leave at a rate greater than one hour of earned sick leave for every 30 hours worked unless an employer chose a higher accrual rate for its employees or if required under the terms of any applicable collective bargaining agreement.

C. An employer cannot deem an employee’s hours to be “cut” to a lower number due to taking earned sick leave. The employer must pay the employee all earned sick leave used according to the employee’s regularly scheduled hours. If the number of hours that the employee works fluctuate from week to week, the employer shall use the

average number of hours worked by the employee during the preceding two weeks when paying earned sick leave.

D. Per diem employees may use earned sick leave for hours they were scheduled to work or for hours they would have worked absent a need to use earned sick leave. For per diem employees or employees with indeterminate shift lengths (e.g., a shift whose length is defined by employer needs), an employer shall base the hours of earned sick leave used upon the hours the employer had a replacement employee for the same shift. If this method is not possible, the hours of earned sick leave shall be based on the hours worked by the employee when the employee most recently worked the same shift.

E. Earned sick leave must be paid on the same scheduled payday as regular wages.

F. Employers shall retain records documenting hours worked by employees, sick leave accrued or earned by employees and earned sick leave taken by employees. All records shall be maintained for a minimum of 48 months from the date the record was created. Employers shall produce these records for inspection upon request by the division.

G. Employers must provide employees with an accurate year-to-date written summary of earned sick leave accrued and used at least once every calendar quarter. This may be done electronically, including by email, website, mobile application or other reasonable method. If employers include this information on pay records or earnings statements provided to employees according to their normal pay schedule, employers are deemed in compliance with this provision.

H. Tipped Employees: Employees who are ordinarily paid less than the full minimum wage due to a "tip credit" must receive the full state or local minimum wage (whichever is greater) when using earned sick leave.

I. Salaried Employees: When using earned sick leave, salaried employees

must receive their regular salary converted to an hourly rate based on the employee's regular work week and weekly salary amount. For example, someone who normally earns a weekly salary of \$1,000 and whose normal work week consists of 40 hours, would be entitled to be paid \$25 per hour for any earned sick leave used (\$1,000 divided by 40). If the individual normally works 30 hours per week, then their hourly rate would be \$33.33 for any earned sick leave used (\$1,000 divided by 30). For a salaried employee whose work hours fluctuate from week to week, the hourly rate would be determined by dividing their weekly salary by 40.

J. Employees paid on task, piece or commission basis must receive the greater of their hourly or salary rate or the state or local minimum wage.

K. Employers are not required to pay an employee for sick leave accrued or earned pursuant to the requirements of the Healthy Workplaces Act that was not used upon the employee's termination, resignation, retirement, or other separation from employment.

L. Employers are not required to permit more than 64 hours of unused earned sick leave to carry over year-to-year.

M. If an employer requires an employee to provide documentation when the employee's use of earned sick leave results in an absence of two or more consecutive workdays, the employee shall be allowed 14 days from the date they return to work to provide such documentation.

N. Employers may elect a different 12-month period for benefits to be used for employees covered by a collective bargaining agreement than for employees not covered by a collective bargaining agreement.
[11.1.6.8 NMAC – N, 07/01/2022]

11.1.6.9 COMPLIANCE MEASURES: Compliance assurance measures available to the division include the following:

A. Investigations of

alleged violations of the Healthy Workplaces Act upon complaints filed by individuals;

B. interviews of employers, their managers and employees and any other witness who may have relevant information;

C. requests for production of records and other information from employers;

D. administrative subpoenas for records and other information from employer, or for the taking of depositions from employers, their managers and other potential witnesses;

E. audits of employer records of the kind described in Section 50-17-9 NMSA 1978;

F. education and outreach efforts regarding the requirements of the Healthy Workplaces Act; and **G.** directed Investigations: When the division has credible information about alleged violations of the Healthy Workplaces Act that affect multiple employees working for an employer, the director may, in their sole discretion, direct a comprehensive, workplace-wide investigation into the earned-sick-leave practices of that employer. All the investigatory and compliance tools available to the division by law can be used in a directed investigation into alleged violations of the Healthy Workplaces Act. If a directed investigation results in a finding of violations of the Act, the division may, in its sole discretion, file a civil action to enforce compliance with the Act, including payment of any earned sick leave payment owed, damages and attorney's fees.

[11.1.6.9 NMAC – N, 07/01/2022]

11.1.6.10 NOTICE BY EMPLOYERS:

A. Employers shall give written or electronic notice to an employee at the commencement of employment of the employee's rights to earned sick leave; the manner in which sick leave is accrued and calculated; the terms of use of earned sick leave as guaranteed by the Healthy Workplaces Act; that

retaliation against employees for using sick leave is prohibited; the employee's right to file a complaint with the division if earned sick leave accrual or use is denied or if the employee is retaliated against; and all means of enforcing the Healthy Workplaces Act. This notice must be in English, Spanish or any other language that is the first language spoken by at least ten percent of the employer's workforce, as requested by the employee.

B. Employers shall display a poster containing the information required in Section A, above, in a conspicuous and accessible place in each establishment where employees are employed. The poster should be in English, Spanish and in any language that is the first language spoken by at least ten percent of the employer's workforce. [11.1.6.10 NMAC – N, 07/01/2022]

11.1.6.11 COMPLAINTS: Individuals may file complaints alleging violations of the Healthy Workplaces Act or these rules, including retaliation, with the division.

A. Complaints must be submitted using a division-approved form.

B. Complainants may complete the form on their own or have an LRD employee assist in completing the form based on the complainant's statements in-person or by telephone. If the division provides assistance in completing the form by telephone, the division shall mail or email the unsigned form to the complainant to be reviewed, approved, signed, and submitted to the division for filing. The complaint form does not need to be notarized. The complainant may attach additional information or documentation supporting the complaint, but this is not a requirement.

C. Upon receipt of the completed complaint form, the division will:

(1) review the complaint to determine whether the

division has jurisdiction;

(2) determine if more information from the complainant is needed; and

(3) interview the complainant, if necessary, to clarify any discrepancies, omissions, or errors in the complaint form, and obtain additional information regarding the complaint.

D. If a complainant is represented by an attorney, the attorney shall submit a written notice of the representation to the division of said representation and shall also indicate in that notice whether the division may communicate with the complainant directly without the attorney being present. If the attorney fails to indicate anything in this regard, it will be assumed the division is authorized to communicate directly with the complainant without the attorney being present.

E. The complaint form will give the complainant the opportunity to choose to correspond with the division by email or regular mail. If the complainant does not make a choice, the correspondence with the complainant will be by regular mail.

F. The division shall send complainants written notification summarizing the status of the investigation by the complainant's chosen correspondence method no less frequently than every 90 days starting from the date the complaint is received by the division.

G. The division shall provide limited English proficient (LEP) complainants, employers and witnesses with free language assistance services according to the NMDWS language access plan throughout the complaint process. [11.1.6.11 NMAC – N, 07/01/2022]

11.1.6.12 JURISDICTION: The division's authority is limited to the enforcement of the laws of the state of New Mexico. The division does not have authority to enforce the laws of any other state. The division may close a complaint that alleges violations of the Healthy Workplaces Act for work performed outside the

state of New Mexico, including work performed entirely on tribal land. [11.1.6.12 NMAC – N, 07/01/2022]

11.1.6.13 DEADLINE FOR FILING A COMPLAINT: All complaints alleging violations of the Healthy Workplaces Act must be filed with the division within three years of when the last alleged violation occurred. The division will accept complaints for investigation in which any portion of the alleged violation falls within the three-year time limit. [11.1.6.13 NMAC – N, 07/01/2022]

11.1.6.14 CONFIDENTIALITY: The division will maintain the complainant's identity as confidential unless disclosure is necessary to facilitate investigation or resolve the complaint or is otherwise required by law. Prior to disclosing the complainant's identity and to the extent practicable, the division will notify the complainant before any such disclosure. [11.1.6.14 NMAC – N, 07/01/2022]

11.1.6.15 DISCLOSURE OF COMPLAINTS: The division may close any complaint alleging violations of the Healthy Workplaces Act after the initial screening with no further investigation if the division determines that it does not have jurisdiction, it is unable to identify complainant's employer after reasonable efforts have been made, or if no portion of the alleged violations falls within a three-year time period. Upon closure, the division will send the complainant a letter setting forth the reasons for closure. [11.1.6.15 NMAC – N, 07/01/2022]

11.1.6.16 NOTICE OF COMPLAINT TO EMPLOYER: Within 10 business days of receipt of the complaint, the division shall send the employer a copy of the complaint form, any supporting documentation received from the complainant, and a blank response form. The initial letter shall be mailed to the last known address of the employer. The notice to the employer will give the

employer the opportunity to choose to receive correspondence from the division by email or regular mail, but if the employer does not make a choice, the correspondence will be sent by regular mail.

[11.1.6.16 NMAC – N, 07/01/2022]

11.1.6.17 EMPLOYER

REPRESENTATION: If an employer is represented by an attorney at any time during the investigation, the attorney shall submit a written notice to the division of representation and shall also indicate in that notice whether the division may communicate with the employer directly without the attorney being present. If the attorney fails to indicate anything in this regard, it will be assumed that the division is authorized to communicate directly with the employer without the attorney being present.

[11.1.6.17 NMAC – N, 07/01/2022]

11.1.6.18 RESPONSE

BY EMPLOYER: The employer shall respond in writing to the initial letter regarding the complaint within 10 business days of receipt. The employer shall also provide the division with true and accurate copies of the records that are required to be maintained by the Healthy Workplaces Act with respect to the complainant(s). The employer shall produce any other records related to the complaint requested by the division. The employer may provide other records of its choosing in responding to the complaint but this is not a requirement. In its discretion, the division may grant an employer a reasonable extension to respond to the initial letter if requested by the employer in writing specifically setting forth the good cause upon which the request for an extension is based.

[11.1.6.18 NMAC – N, 07/01/2022]

11.1.6.19 REQUESTS FOR ADDITIONAL INFORMATION:

In its discretion, the division may interview the employer and other witnesses to obtain additional

information relevant to the investigation and may issue an administrative subpoena to compel production of records necessary to conduct the investigation if such records are not voluntarily provided by the employer.

[11.1.6.19 NMAC – N, 07/01/2022]

11.1.6.20 REPLY BY

COMPLAINANT: If the employer disputes the alleged violation(s) and submits relevant documentary evidence, the division shall allow the complainant an opportunity to submit a written reply to the employer's response along with additional documentation. The complainant has 10 business days from the date of the complainant's receipt of the employer's response to submit the reply. In its discretion, the division may interview the complainant and other witnesses to obtain additional information relevant to the investigation.

[11.1.6.20 NMAC – N, 07/01/2022]

11.1.6.21 SETTLEMENT

BY PARTIES: At any stage of the investigation, the division may schedule a settlement meeting between the parties. The division may inform the parties of its preliminary conclusions based on the evidence reviewed, including any actual or statutory damages owed to the complainant for violations of the Healthy Workplaces Act, as found by the division. If a settlement is reached, it shall be reduced to writing and signed by the complainant and the employer. After the settlement is signed by both parties, the division will close the investigation and advise the parties in writing that the case is close to include the date the three-year statute of limitations expires.

[11.1.6.21 NMAC – N, 07/01/2022]

11.1.6.22

ADMINISTRATIVE DECISION:

The division shall complete its investigation of a complaint and issue a written decision if a settlement is not reached, or if a settlement is reached but the employer fails to comply with the terms of the

settlement, and a party submits a written request to the division to reopen prior to the expiration of the three year time limit outlined in NMAC 11.1.6.13. After completing its investigation the division shall issue an administrative decision on the complaint. The decision shall:

A. be issued within 180 days from the date the complaint was received;

B. be in writing and set forth findings of facts and conclusions of law, including a calculation of damages owed, if any;

C. inform the parties that if they disagree with the decision, there is no right of administrative appeal;

D. inform the parties whether the division will file a civil action to enforce its administrative decision; and

E. inform complainants of their private right of action pursuant to Subsection B of Section 50-17-10 NMSA 1978.

[11.1.6.22 NMAC – N, 07/01/2022]

11.1.6.23 CIVIL ACTIONS

BY THE DIVISION: Although the division may, in its sole discretion, bring a civil action for violations of the Healthy Workplaces Act, the division will do so only in cases that it deems appropriate based on its enforcement priorities, including but not limited to, repeat violations by a particular employer or problematic industries where systemic and/or abusive practices have been identified through investigation by the division. The division's decision on whether to bring a civil action under the Healthy Workplaces Act is final and not subject to any right of appeal or review.

[11.1.6.23 NMAC – N, 07/01/2022]

11.1.6.24 SUBPOENA

POWERS: The division may issue a subpoena compelling any witness, including but not limited to the employer and the complainant, to appear for the taking of a deposition or a recorded statement under oath, and for the production of any documents relevant to the complaint

at the time that the deposition or recorded statement is taken. A recorded statement may be taken before a qualified court stenographer, but it may also be recorded digitally or on audio tape or video tape.

[11.1.6.24 NMAC – N, 07/01/2022]

11.1.6.25 EMPLOYER

RECORDS: Section 50-17-7 NMSA 1978 requires employers to keep records documenting hours worked by employees and earned sick leave taken by employees for the 48-month period immediately preceding the date the record was created. If the division finds, during the course of its investigation, the employer did not maintain and produce the required records, or that the records are inaccurate or incomplete, the division may base its calculation of damages owed on other reasonable, credible evidence, including but not limited to the complainant's estimates.

[11.1.6.25 NMAC – N, 07/01/2022]

11.1.6.26 CONFLICTS

WITH STATE LAW: In the event any of the rules and regulations set forth herein conflict with any applicable state law, the state law shall control.

[11.1.6.26 NMAC – N, 07/01/2022]

11.1.5.27 CIVIL

ACTIONS: The division may close a complainant's file and take no further action if the complainant files a separate civil action against the employer in a court of competent jurisdiction asserting the same legal claims that are the subject of the division's investigation.

[11.1.6.27 NMAC – N, 07/01/2022]

11.1.6.28 REOPENING AN

INVESTIGATION: A complainant or employer may request in writing a reopening of the investigation of a complaint upon a showing of good cause for doing so. Examples of good cause include, but are not limited to, failure of an employer to comply with the terms of the settlement, or the discovery of new, previously undisclosed evidence that would have changed the result of the previous

determination. Except in the case of unfulfilled settlement terms, the division's determination of whether good cause to reopen exists is final and shall not be subject to any right of appeal or other review. All requests for reopening must be received by the division before the three-year time limit referenced in NMAC 11.1.6.13 expires. Reopening requests received after the three-year period expires will not be considered. Upon reopening, the division may pursue any investigatory steps available under the law and pursuant to these regulations and may affirm, modify, or reverse, in whole or in part, any previous decision issued.

[11.1.6.28 NMAC – N, 07/01/2022]

11.1.6.29 STANDARD OPERATING PROCEDURES:

The division may adopt standard operating procedures to provide additional instructions for its employees in the performance of their duties and responsibilities.

[11.1.6.29 NMAC – N, 07/01/2022]

History of 11.1.6 NMAC: [RESERVED]

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.1.2 NMAC, Sections 12, 13, 14 and 17 effective 06/21/2022.

11.1.2.12 PREDETERMINATION OF WAGE RATES:

A. Not later than [July 31] May 31 of each year, labor organizations and their signatory employers shall submit to the director signed copies of their current collective bargaining agreements that will be in effect during any portion of the following calendar year. Each labor organization or signatory employer submitting a collective bargaining agreement shall include a separate list that sets forth the wage and fringe rates as well as the apprenticeship contributions for

all trades covered by the collective bargaining agreement, listed by type A, B, C, and H construction project, as identified in Section 11.1.2.10 NMAC above. In addition, interested parties may submit to the director for consideration, no later than [July 31] May 31 of each year, collective bargaining agreements, interested party wage and fringe rate survey data, other written data collected during the preceding 12 month period, personal opinions and arguments supporting changes to the prevailing wage rates and prevailing fringe benefit rate determination. Submissions must be made as provided in the following subparagraphs:

(1) Collective bargaining agreements submitted to the director must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury, and which:

(a) certifies that the agreement filed is fully executed and in effect, unless it is a signed original agreement or photocopy thereof, or a printed copy of a fully executed agreement showing the names of the signatory parties or associations except in the case of a printed agreement the director may require certification; and

(b) names or otherwise identifies all New Mexico counties within the jurisdiction of the local union or unions signatory to the agreement;

(2) Interested parties wishing submit information for employees not covered by a collective bargaining agreement must provide the following information to the director: name and address of the employer or interested party, the number of hours worked by workers in each classification, the classification of each worker, the hourly rate actually paid each worker, the project type, the fringe benefit rate actually paid each worker, and, if practical, the counties in which work was performed. The information filed with the division must be

accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury. The director shall consider any information provided during the 12 month period preceding ~~[July 31]~~ May 31 of each year. Information from sources other than applicable collective bargaining agreements shall only be considered consistent with the provisions of the PWMWA.

B. In setting the general prevailing wage rate, the director shall give due regard to information obtained during the director's determination of the prevailing wage rates and the prevailing fringe benefit rates and may consider the written data, personal opinions, and arguments of interested parties where no applicable collective bargaining agreement is submitted.

C. If there are no collective bargaining agreements that exist in the locality on which the director can rely in setting the prevailing wages and fringe benefits, the director shall determine the prevailing wage rates and prevailing fringe benefit rates in the nearest and most similar neighboring locality and use the rates from the adjoining locality where a collective bargaining agreement exists and is in effect.

D. In order to protect the privacy of employees with respect to whom any wage information pertains, except pursuant to lawful process or to the exercise of the director's enforcement obligation under the PWMWA, neither the labor and industrial commission nor the director or any member of the director's staff, shall disclose to any person, an employee's social security number or date of birth with respect to whom wage information is received, submitted, or otherwise in the possession of the director, without having received prior written consent of the employee.

E. In order to protect the privacy of employees with respect to whom any wage information pertains, except pursuant to lawful process or to the exercise of the

director's enforcement obligations under the Public Works Minimum Wage Act, neither the labor and industrial commission nor the director or any member of the director's staff, shall disclose to any person the employee's social security number or date of birth with respect to whom wage information is received, submitted, or otherwise in the possession of the director without having received the prior written consent of the employee.

[11.1.2.12 NMAC- Rp, 11.1.2.12 NMAC, 12/30/2016; A, 11/10/2020; A, 06/21/2022]

11.1.2.13 PROCEDURE FOR ADOPTION OF WAGE RATES:

A. When the director has determined the proposed prevailing wage and fringe benefit rates applicable in the state for public works projects in accordance with 11.1.2.12 NMAC, the proposed prevailing wage and fringe benefit rates shall be subject to a public hearing before the secretary or a hearing officer designated by the secretary.

B. The time, date and place of said public hearing will be established at the discretion of the secretary. Notice of the subject matter, the action proposed to be taken, the time, date and place of the public hearing, the manner in which interested persons may present their views, and the method by which copies of the proposed rates may be obtained, shall be published once at least 30 days prior to the hearing date in a newspaper of general circulation. Such notice shall also be mailed or emailed by the director to all known interested parties at least 30 days prior to the hearing date along with a copy of the proposed rates. ~~[Interested parties shall include without limitation the state highway department, incorporated cities and counties and their respective school boards or authorities, state institutions of higher learning and other contracting agencies which with regular frequency undertake public works projects subject to the~~

~~Act, and all other persons (including labor organizations, contractors and contractor associations) who make written request to the director to receive notice as provided in this section.]~~ Any objections to the proposed prevailing wage rates may be communicated to the director by an interested party either orally at such public hearing or in writing delivered to the director or the director's designee on or before the date of such public hearing.

C. The director shall consider fully all data, views, or arguments submitted in support of or in opposition to the proposed prevailing wage and fringe benefit rates before deciding to approve, modify or reject the prevailing wage and fringe benefit rates proposed by the director for public works projects.

D. The adoption of wage and fringe benefit rates by the director shall constitute an "action" which shall be appealable to the labor and industrial commission, sitting as the appeals board, pursuant to Subsection A of Section 13-4-15 NMSA 1978, and as described in 11.1.2.17 NMAC.

(1) Consistent with the right of appeal granted to any interested person by Section 13-4-15, NMSA 1978, the director shall not adopt the issued wage rates for 15 days following their issuance, while an appeal, if any, to the labor and industrial commission, sitting as the appeals board, is pending, or before the effective date of the decision by the labor and industrial commission pursuant to Subsection D of 11.1.2.17 NMAC.

(2) The labor and industrial commission is designated, pursuant to Section 9-26-6, NMSA 1978, to hear appeals of the adoption of wage rates and shall conduct such appeals and render its decision pursuant to the procedures described in 11.1.2.17 NMAC.

E. The adopted prevailing wage rates shall not be effective until they have been filed in accordance with the State Rules Act. [11.1.2.13 NMAC- Rp, 11.1.2.13

NMAC, 12/30/2016; A, 11/10/2020; A, 06/21/2022]

11.1.2.14 EFFECTIVE DATE OF WAGE RATES:

A. The wage and fringe benefit rates [~~become effective once they are adopted and published, in accordance with 11.1.2.13 NMAC.~~] are effective as of January 1 following adoption and publication.

B. If an appeal is filed pursuant to Subsection D of 11.1.2.13 NMAC, then the director shall adopt the wage rates, as modified by the labor and industrial commission, following expiration of the stays provided by Paragraph (2) of Subsection D of 11.1.2.13 NMAC.

C. Except as provided in Subsection D of 11.1.2.14 NMAC, each discrete public works project shall be governed by one wage and fringe rate decision, which shall remain effective for the duration of the project.

D. New wage rate decisions shall be issued for all contracts on which bids have not been submitted before the date on which a new wage determination becomes effective provided that any such new decision shall not supersede any previously issued decision unless such new decision is received by the contracting agency at least 10 days prior to the date on which bids are to be submitted. Wage and fringe rate corrections or changes to decisions rendered shall not be issued without allowing the requesting agency at least 10 days' notice before the date bids are to be submitted.

E. All decisions will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the director.

F. The procurement of services pursuant to state price agreements or other methods that serve to establish long-term pre-determination of the price of services shall alter the obligations of contracting agencies and contractors to adhere to the requirements of the PWMWA and these regulations. [11.1.2.14 NMAC - Rp, 11.1.2.14

NMAC, 12/30/2016; A, 11/10/2020; A, 06/21/2022]

11.1.2.17 PROCEDURE FOR DISPOSITION OF APPEALS:

A. Purpose and scope: The regulations contained in this part set out the procedures by which appeals may be filed, and by which the labor and industrial commission, sitting as the appeals board, hears and decides appeals pursuant to Section 13-4-15 NMSA 1978. The intent of this part is to clarify and implement the responsibilities and rights of all interested parties as set out in the Public Works Minimum Wage Act, Sections 13-4-11 through 13-4-17 NMSA 1978

B. Filing the appeal:
(1) The notice of appeal shall, consistent with Subsection A of Section 13-4-15 NMSA 1978, be filed with the director within 15 days after a determination, finding, rule, or regulation has been issued or any other action taken, and notice of the action has been given pursuant to Section 16 of 11.1.2 NMAC of these rules and regulations or otherwise. [~~The filing of the notice of appeal shall immediately stay the effectiveness of the determination, finding or action appealed from which the appeal was taken until the appeal is resolved and a written decision is prepared and served by the labor and industrial commission.~~]

(2) The appellant shall, within 10 days after filing the appeal, file with the labor and industrial commission, in care of the office of the director, a concise statement of all determinations, findings or actions of the director with which the appellant disagrees and from which the appeal is taken, and a brief setting forth the reasons and authorities on which the appeal is based

(3) Within 10 days after the filing of the statement and brief, the director shall file a response setting forth the director's justification and authorities relied upon for the determination, findings, or action being appealed from which the appeal is being taken.

(4) Any interested person other than the appellant, directly affected by the determination, finding or action of the director, such as, contractors, contracting agencies, labor organizations and contractors' associations, may intervene and file a statement and brief, and may participate in the hearing conducted by the labor and industrial commission.

(5) The commission shall furnish copies of the statements, briefs, and answers filed in the appeal to the attorney general, and may request the attorney general to appoint independent counsel to represent it at the hearing.

C. Conducting the hearing:

(1) The hearing shall be conducted by the commission within 40 days after the filing of the appeal.

(2) The commission shall decide all matters brought before it by a quorum which shall consist of two members. Prior to a hearing, the commission shall designate a chairman who shall conduct the meetings and rule on the admissibility of all evidence submitted by and objections of any participant.

(3) The commission shall not be required to follow strict rules of evidence and shall have authority to admit any evidence which it concludes has probative value, but irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(4) The commission shall make its decision as to the validity or invalidity of the determination, finding, or action of the director based on substantial evidence on the whole record made before it. The appellant shall present his case first, subject to opportunity to present evidence in rebuttal.

(5) The appellant shall present evidence first, any interested party shall present its evidence next and after the director has presented evidence in support of the determination, findings or action

that is the subject of the appeal, the appellant shall have the opportunity to present evidence in rebuttal of any evidence presented by the director or any interested person.

(6) Each party shall be given an opportunity by the commission to make a closing statement in support of the position of the party regarding the determination, findings, or action that is the subject of the appeal.

(7) The commission may adjourn, continue, or reschedule the hearing on the appeal as deemed necessary to afford all parties a fair and reasonable opportunity to be heard.

D. Decision by the labor and industrial commission:

(1) The commission shall, pursuant to Subsection C of Section 13-4-15 NMSA 1978, enter and file its decision, containing a concise statement of the principal reasons upon which the decision is based including findings of fact and conclusions of law within 10 days after the close of the hearing and promptly mail copies of the decision and statement to the participants of the hearing.

(2) The effective date of [the] a decision by the commission concerning violations of the Public Works Minimum Wage Act shall be stayed for 30 days from the date of the filing of the decision to allow any party the opportunity to file an appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

~~[E. — In the event of an appeal to the district court, the decision of the commission shall be further stayed pending a review and determination by the court.]~~

[11.1.2.17 NMAC - Rp, 11.1.2.16 NMAC, 12/30/2016; A, 11/10/2020; A, 06/21/2022]

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF**

This is an amendment to 11.3.300 NMAC, Section 314 effective 06/21/2022

11.3.300.314 FRAUDULENT CLAIMS:

A. Claimant Fraud:
(1) Subsection F of Section 51-1-38 NMSA of the Unemployment Compensation Law provides: “Notwithstanding any other provision of the Unemployment Compensation Law, including the provisions of Subsection J of Section 51-1-8 NMSA 1978, if any individual claiming benefits or waiting period credits shall, in connection with such claim, make any false statement or representation, in writing or otherwise, knowing it to be false or shall knowingly fail to disclose any material fact in order to obtain or increase the amount of a benefit payment, such claim shall not constitute a valid claim for benefits in any amount or for waiting period credits but shall be void and of no effect for all purposes. The entire amount of the benefits obtained by means of such claim shall be, in addition to any other penalties provided herein, subject to recoupment by deduction from the claimant’s future benefits or they may be recovered as provided for the collection of past due contributions in Subsection B of Section 51-1-36 NMSA 1978.” The terms used in, Section 51-1-38 NMSA 1978 mean:

(a) “False” means a statement contrary to fact.
(b) “Knowingly” means the person making the statement, at the time it was made, knew the statement to be false or should have known it to be false because the person had no reasonable basis for believing it to be true.
(c) “Knowingly fails to disclose any material fact” means the claimant deliberately withholds information which the claimant knows should be disclosed to the department.
(d) “Material fact” means the fact affects

the eventual outcome of a transaction. A fact which, if known, would result in a determination adverse to the claimant is a material fact. A fact is not material if the failure to disclose it or the intentional misstatement of it would not cause injury. A fact which, if known, would not cause a denial or reduction of benefits or disqualification from receipt of benefits is not a material fact.

(e) “With intent to obtain benefits” means the claimant intended the statement to assist the claimant to obtain benefits. In the absence of facts to indicate otherwise, when concealment of a material fact by willful misstatement or nondisclosure occurs in connection with a claim for benefits, it is assumed that the claimant’s intent was to obtain or increase the amount of a benefit payment. When facts are established which indicate a different intent, the conclusions as to the claimant’s intent shall be based on consideration of all the facts and not merely an assumption.

(2) Claimants who inadvertently make a mistake or omission on the basis of information previously given them by the department, cannot reasonably be expected to understand their responsibility and shall not be subject to the provisions of Subsection D of Section 51-1-38 NMSA 1978.

(3) The department shall impose an administrative penalty pursuant to Subsection A of Section 51-1-38 NMSA 1978 for each week that a claimant knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. Administrative penalties shall be imposed as follows:

(a) for each week of unreported or underreported earnings, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of 52 weeks, from the date of the determination [or the date the claimant is next determined eligible for benefits];

(b) for each false statement on separation, eligibility, refusal of work and other issues, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of 52 weeks, from the date of the determination [~~or the date the claimant is next determined eligible for benefits~~]; and

(c) In any case where a claimant fraudulently obtained or increased benefits in two or more separate offenses, the claimant shall forfeit all benefit rights for 52 weeks from the date of the determination [~~or the date the claimant is next determined to be eligible for benefits~~].

(4) The department shall demand immediate repayment of any overpayment established pursuant to Subsection D of Section 51-1-38 NMSA 1978. A warrant of levy and lien shall be filed in all cases where the overpayment is not repaid immediately. Recovery of the overpayment may be by any means permitted by law. Recovery of fraudulent overpayments may include court awarded costs. The court costs awarded by the court shall be added to the overpayment and shall be collected in the same manner as the underlying overpayment.

(5) Restitution of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the department from requesting criminal proceedings against such claimant.

(6) The department shall impose a civil penalty pursuant to Subsection B of Section 51-1-38 NMSA 1978 upon every claimant who knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. The total amount of the penalty shall be twenty-five percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact. The department shall apply the penalty as follows:

(a) an amount equal to the first fifteen percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact shall be deposited in the "unemployment compensation fund" set forth in Section 51-1-19 NMSA 1978.

(b) an amount equal to the remaining ten percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact shall be deposited in the Employment Security Department Fund.

(7) Any payments received from a claimant for repayment for any overpayment and civil penalty shall be applied first to the principal amount of the overpayment and any payment in excess of the principal amount of the overpayment shall be applied to pay the civil penalty.

B. Employer Fraud:
(1) Subsection D of Section 51-1-38 NMSA 1978 provides: "In addition to the penalty pursuant to subsection C of this section, any employing unit or officer or agent of an employing unit that makes a false statement or representation knowing it to be false or that knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any claimant eligible for benefits under the Unemployment Compensation Law shall be required to pay a civil penalty in an amount not to exceed \$10,000 as determined by rule established by the department. The penalty shall be collected in a manner provided in Subsection B of Section 51-1-36 NMSA 1978 and distributed to the fund."

(2) When imposing a civil penalty upon employers found to have made a false statement or representation knowing it to be false or to have knowingly failed to disclose a material fact to prevent or reduce the payment of benefits to any claimant eligible for

benefits under the Unemployment Compensation Law, the department shall adhere to the following guidelines:

(a) an initial violation shall subject the employer to a maximum penalty of \$500.00;

(b) a second violation within a period of three years of the previous violation shall subject the employer to a penalty that is no less than \$500.00 and no more than \$1,000.00;

(c) a third violation within a period of three years of the most recent violation shall subject the employer to a penalty that is no less than \$1,000.00 and no more than \$2,000.00;

(d) a fourth or subsequent violation within a period of three years of the most recent violation shall subject the employer to a penalty that is no less than \$2,000.00 and no more than \$10,000.00.

(3) The department shall demand immediate repayment of any civil penalty established pursuant to Subsection D of Section 51-1-38 NMSA 1978. A warrant of levy and lien shall be filed in all cases where the civil penalty is not repaid immediately. Recovery of the civil penalty may be by any means permitted by law. Recovery of the civil penalty may include court awarded costs. The court costs awarded by the court shall be added to the civil penalty.

(4) Payment of the civil penalty due to fraudulent misrepresentation or failure to disclose a material fact by any employing unit or officer or agent of an employing unit shall not preclude the department from requesting criminal proceedings against such employing unit or officer or agent of an employing unit.

[11.3.300.314 NMAC - Rp, 11.3.300.314 NMAC, 11/1/2018; A, 06/21/2022]

Other Material Related to Administrative Law

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
ACTING SECRETARY DAVID
R. SCRASE, M.D.**

June 15, 2022

**Public Health Emergency Order
Clarifying that Current Guidance
Documents, Advisories, and
Emergency Public Health Orders
Remain
in Effect; and Amending Prior
Public Health Emergency Orders
to
Impose Certain Public Health
Measures**

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). While vaccines are the most effective method to prevent the spread of COVID-19, masks, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID- 19 Test Results to the New Mexico Epidemiology and Response Division;

B. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;

C. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19;

D. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine; and

E. December 2, 2021 Amended Public Health Emergency Order Requiring All School Workers Comply with Certain Health Requirements and Requiring Congregate Care Facility Workers, Hospital Workers, and Employees of the Office of the Governor Be Fully Vaccinated and Receive Booster Vaccines.

3. The May 16, 2022 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose Certain Public Health Measures is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 30, 2022;

WHEREAS, confirmed cases in the United States have risen to more than 81 million and confirmed COVID-19 infections in New Mexico have risen to over 547,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 1,000,000 Americans and over 7,800 New Mexicans;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant

to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE,
I, David R. Scrase, M.D.,
 Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

I HEREBY DIRECT AS FOLLOWS:

(1) Unless a healthcare provider instructs otherwise, all individuals ages 2 years and older shall wear a mask or multilayer cloth face covering in all public hospitals, profit or nonprofit private hospitals, general hospitals, special hospitals, nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, State correctional facilities, juvenile justice facilities, residential treatment centers, the New Mexico State Veterans' Home, and community homes except

when eating or drinking. Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the New Mexico Environment Department when there is an occurrence of a rapid response. The New Mexico Environment Department shall monitor when an entity has four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to the Environment Department so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall continue to adhere to the face covering requirements contained in the New Mexico Public Education Department's "COVID-19 Response Toolkit for New Mexico's Public Schools", available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, until the school district, governing local education agency, or private educational institution elects otherwise. Public and private educational institutions shall adhere to the other COVID-Safe Practices requirements for in-person instruction contained in the COVID-19 Response Toolkit for New Mexico's Public Schools

and may operate up to maximum capacity. Public and private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the COVID-19 Response Toolkit for New Mexico's Public Schools.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through June 15, 2022.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, Section 12-10A-19.

ATTEST:
DONE AT THE EXECUTIVE OFFICE

THIS 15TH DAY OF JUNE 2022
WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/ S /

**MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

/ S /

**DAVID R. SCRASE, M.D.
ACTING SECRETARY OF THE
NEW MEXICO DEPARTMENT
OF HEALTH**

**End of Other Material
Related to Administrative
Law**

2022 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXIII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 11
Issue 2	January 13	January 25
Issue 3	January 27	February 8
Issue 4	February 10	February 22
Issue 5	February 24	March 8
Issue 6	March 10	March 22
Issue 7	March 24	April 5
Issue 8	April 7	April 19
Issue 9	April 21	May 3
Issue 10	May 5	May 24
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Issue 20	October 13	October 25
Issue 21	October 27	November 8
Issue 22	November 17	November 29
Issue 23	December 1	December 13
Issue 24	December 15	December 27

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