

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 60 PUBLIC ACCOUNTANTS
PART 4 FIRM PERMIT, PEER REVIEW REQUIREMENTS, AND BUSINESS NAME
PROHIBITIONS

16.60.4.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board.
[16.60.4.1 NMAC - Rp 16 NMAC 60.11.1, 2/14/2002]

16.60.4.2 SCOPE: General Public - All certified public accountant (CPA) and registered public accountant (RPA) business entities seeking authority to practice as a CPA or RPA firm.
[16.60.4.2 NMAC - Rp 16 NMAC 60.11.2, 2/14/2002]

16.60.4.3 STATUTORY AUTHORITY: 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.
[16.60.4.3 NMAC - Rp 16 NMAC 60.11.3, 2/14/2002]

16.60.4.4 DURATION: Permanent.
[16.60.4.4 NMAC - Rp 16 NMAC 60.11.4, 2/14/2002]

16.60.4.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.
[16.60.4.5 NMAC - Rp 16 NMAC 60.11.5, 2/14/2002]

16.60.4.6 OBJECTIVE: To prescribe requirements for firm permit application, renewal and reinstatement, business name prohibitions and peer review program implementation, administration and oversight.
[16.60.4.6 NMAC - Rp 16 MAC 60.11.6, 2/14/2002]

16.60.4.7 DEFINITIONS: [RESERVED]
[16.60.4.7 NMAC - Rp 16 NMAC 60.11.7, 2/14/2002]

16.60.4.8 FIRM PERMIT APPLICATION, RENEWAL, REINSTATEMENT AND NOTIFICATION REQUIREMENTS:

A. Pursuant to Subsection B of Section 12 and Subsections A, B, E, F and L of Section 13 of the act, any CPA or RPA acting as the sole proprietor, partner, shareholder or member of a legal business entity who performs or offers to perform accountancy for a client or potential client by holding themselves out to the public must obtain a firm permit to be granted authority to practice public accountancy as a CPA or RPA firm. Pursuant to Subsection I of Section 13 of the act, each office of the firm within New Mexico must obtain a firm permit. All firm permit applications for initial issue, renewal, or reinstatement shall be made on board-prescribed forms and meet all information and fee requirements to be considered complete and filed with the board.

B. Renewal requirements: Deadline for receipt of firm permit renewal applications is no later than prior to the expiration date printed on the firm permit. The board shall send firm permit renewal notices to firm permit holders no less than 30 days prior to the renewal deadline date.

C. Reinstatement requirements:

(1) Reinstatement due to non-renewal/expiration: Requests to reinstate a firm permit that lapsed or expired as a result of non-renewal shall be made on board-prescribed forms and meet all board-prescribed requirements for reinstatement including the current year's renewal fee and peer review program requirements. This rule shall not apply to firms whose permits lapsed or expired for a period of three years or more.

(2) Reinstatement applications for relief from disciplinary penalties: A firm whose permit to practice has been subject to board disciplinary action may apply to the board for modification of the board action after completion of all requirements contained in the board's original order:

(a) the application shall be in writing and substantiate the reasons constituting good cause for the relief sought; and

(b) shall be accompanied by at least two supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since the board action was imposed.

D. Action by the board: An application pursuant to Section 21 of the act will be processed by the board upon the basis of the application materials submitted, supplemented by such additional inquiries the board

may require. At the board's discretion, a hearing may be held on an application following procedures the board may find suitable for the particular case.

(1) The board may impose appropriate terms and conditions for firm permit reinstatement or modification of board disciplinary action.

(2) In considering a reinstatement application, the board may consider:

(a) all activities of the applicant since the disciplinary penalty from which relief is sought was imposed;

(b) the offense for which the applicant was disciplined;

(c) the applicant's activities during the time the firm permit was in good standing;

(d) the applicant's rehabilitative efforts;

(e) restitution to damaged parties in the matter for which the penalty was imposed;

and

(f) the applicant's general reputation for trust and professional probity.

(3) No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court imposed probation or parole.

E. Notification requirements: A firm registered pursuant to Section 13 of the act shall file written notification with the board of any of the following events concerning the practice of public accountancy within this state within 30 days of occurrence:

(1) formation of a new firm;

(2) change in legal form or name of a firm;

(3) firm termination;

(4) establishment of a new branch office, (register by obtaining a new firm permit for the new branch office, pursuant to Subsection I of Section 61-28B-13, NMSA 1978) or the closing or change of address of a branch office in this state; or

(5) the occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the act or these rules.

F. Unregistered firm compliance with applicable compliance assurance requirements: Any firm not required to register in this state, but which provides attest services as permitted under section Subsection C and D of Section 13 of the Act, shall maintain records as prescribed by 16.60.4.10 NMAC regarding its participation in a comparable compliance assurance program for any period in which the firm provided attest services in this state and shall provide copies of such records upon this board's written request; provided, however, the board shall not make such a request except upon probable cause and in accordance with the firm mobility regulations.

G. Electronic signature will be acceptable for applications submitted pursuant to 16.60.1 NMAC through 16.60.5 NMAC.

[16.60.4.8 NMAC - Rp 16 NMAC 60.4.11, 2/14/2002; A, 4/29/2005; A, 5/15/2006; A, 6/30/2008; A, 9/15/2015; A, 10/1/2020; A, 12/12/2021]

16.60.4.9 FIRM BUSINESS NAMES PROHIBITIONS:

A. Misleading firm names: A firm name or trade name is misleading pursuant to Section 19 of the act if, among other things, the firm name or trade name:

(1) is not the lawful and registered name of the firm;

(2) implies the existence of a corporation when the firm is not a corporation such as through the use of the words "corporation", "incorporated", "Ltd.", "professional corporation", or an abbreviation thereof as part of the firm name if the firm is not incorporated or is not a professional corporation;

(3) implies the existence of a partnership when there is not a partnership such as by use of the term "partnership", "limited liability partnership", the abbreviation "LLP", "limited liability company", or the abbreviation "LLC" if the firm is not such an entity;

(4) includes the name of an individual who is not a CPA if the title "CPAs" is included in the firm name or trade name, except as provided for in Subsection B of 16.60.4.9 NMAC;

(5) includes information about or indicates an association with persons who are not members of the firm, except as permitted pursuant to Section 14(i) of the Uniform Accountancy Act;

(6) includes the terms "& company", "& associate", or "group", but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other licensee;

(7) contains any representation that would be likely to cause a reasonable person to have a false or unjustified expectation of favorable results or capabilities, through the use of a false or unjustified statement of fact as to any material matter;

(8) claims or implies the ability to influence a regulatory body or official;
(9) includes the name of an owner whose certified public accountant license has been revoked for disciplinary reasons by the board, whereby the licensee has been prohibited from practicing public accountancy or prohibited from using the title CPA or holding himself out as a certified public accountant for more than 90 days after revocation of the license.

B. Permissible firm names: The following types of CPA firm names are not in and of themselves misleading and are permissible:

- (1) a firm name or trade name that includes the names of one or more former or present owners;
- (2) a firm name or trade name that excludes the names of one or more former or present owners;
- (3) a firm name or trade name that uses the “CPA” title as part of the firm name when all named individuals are owners of the firm who hold such title or are former owners who held such title at the time they ceased to be owners of the firm;
- (4) a firm name or trade name that includes the name of a non-CPA owner if the “CPA” title is not a part of the firm name.

C. Name of firm formed as a single member limited liability company (LLC): A firm which is organized as a single member LLC under the Limited Liability Company Act, Sections 53-19-1 to 53-19-74 NMSA 1978, or similar acts of other states may be required by the applicable LLC act to include the word “company” or “Co.” in its name. For purposes of compliance with the act, the firm name shall not include more than one person’s name and shall not include “and”, “&” or a similar term with respect to “company” or “Co.” in a manner which would imply that there was more than 1 owner of the firm.

D. Network firms: A network firm as defined in the AICPA code of professional conduct in effect July 1, 2011 may use a common brand name, or share common initials, as part of the firm name. Such a firm may use the network name as the firm’s name, provided it also shares one or more of the following characteristics with other firms in the network:

- (1) common control, as defined by generally accepted accounting principles in the United States, among the firms through ownership, management, or other means;
- (2) profits or costs, excluding costs of operating the association, costs of developing audit methodologies, manuals and training course, and other costs that are immaterial to the firm;
- (3) common business strategy that involves ongoing collaboration among the firms whereby the firms are responsible for implementing the association’s strategy and are held accountable for performance pursuant to that strategy;
- (4) significant part of professional resources;
- (5) common quality control policies and procedures that participating firms are required to implement and that are monitored, as defined by peer review standards, by the association.

[16.60.4.9 NMAC - Rp 16 NMAC 60.4.10, 2/14/2002; A, 6/30/2008; A, 1/17/2013]

16.60.4.10 PEER REVIEW REQUIREMENTS:

A. Participation: A firm seeking to obtain or renew a firm permit to provide accounting and auditing services in New Mexico must be enrolled in a peer review program and undergo a peer review pursuant to Section 6.60.4.10 B of the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], Peer review program objectives are established pursuant to Section 13L of the act to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. Emphasis is on education, including appropriate education programs or remedial procedures that may be recommended or required where reporting does not comply with appropriate professional standards.

- (1) Firms contracting to perform audits of state agencies as defined in the audit act must also comply with peer review standards applicable to those audits.
- (2) Participation is required of each firm registered with the board who provides accounting or auditing services pursuant to Subsection 13L of the act.

B. Timing of peer reviews:

(1) Each holder of a board-issued firm permit shall enroll in a board approved peer review program and arrange, schedule, complete and allow time for the sponsoring organization to consider their peer reviews for acceptance prior to the June 30 renewal period.

(a) Firms need to ensure that their peer review year ends and corresponding due dates allow for compliance with Subsection 13E of the act.

(b) Firms may need to consider changing their current peer review year ends and the timing of when their peer reviews are performed in order to comply.

(2) When a firm performs its first engagement requiring its initial peer review, the firm shall be enrolled in a board approved peer review program by the report date of the first engagement, and the due date ordinarily will be 18 months from the report date of that engagement.

(a) The initial peer review must report on the firm's practice for a full year.

(b) The requirements of Subsection 13L of the act regarding permit renewal are initially applicable to the firm the first June 30 renewal period after the 18 month due date.

(c) Hardship Exceptions: The board may make exceptions to the requirements set out in this section for hardships. All hardship requests must be in writing, setting forth detailed reasons for the request, and must be submitted no later than six months prior to expected completion date of the peer review.

(4) The board may grant extensions up to 180 days from the original due date in order for the firm to comply with the peer review requirements in Subsection 13E and 13L of the act. All requests for extensions shall be submitted to the board in writing by the firm no later than 30 days prior to renewal date and should include any extensions approved by the sponsoring organization. The board may recognize extensions granted by the sponsoring organization. The board has the authority at its sole discretion to grant any reasonable extensions that it deems necessary and extensions are ordinarily granted for the following reasons:

(a) health;

(b) military service; or

(c) other good cause clearly outside the control of the firm.

C. Hardship Exceptions: The board may make exceptions to the requirements set out in this section for hardships. All hardship requests must be in writing, setting forth detailed reasons for the request, and must be submitted no later than six months prior to expected completion date of the peer review.

D. Exemptions: A firm which does not perform accounting or auditing engagements, including but not limited to audits, reviews, compilations, attestations, forecasts, or projections is exempt from the peer review program and shall re-certify annually to the board as to this exempt status as part of the firm permit renewal process. A previously exempt firm which begins providing the above described services must initiate and complete a review within 18 months of the date the services were first provided.

E. Reporting to the board: Firms are required to submit a copy of the following documents related to its most recently accepted peer review to the board:

(1) peer review report which has been accepted by the sponsoring organization;

(2) the firm's letter of response (accepted by the sponsoring organization), if applicable;

(3) the acceptance letter from the sponsoring organization;

(4) letter(s) signed by the firm acknowledging that the firm agrees to take any actions required by the sponsoring organization, if applicable;

(5) the completion letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable.

(6) Upon request of the board, any correspondence from the sponsoring organization regarding the scheduling or completion of a peer review.

F. Submission of documents: the above documents shall be submitted by the firm to the board via mail, or electronically or digitally as follows:

(1) The documents in Paragraph (1) through (3) of Subsection E of 16.60.4.10 NMAC shall be submitted within 30 days of the sponsoring organization's acceptance.

(2) The documents in Paragraph (4) of Subsection E of 16.60.4.10 NMAC within 30 days from the date the letter is signed by the firm, or with submission of firm renewal application, whichever occurs first.

(3) The documents in Paragraph (5) of Subsection E of 16.60.4.10 NMAC shall be submitted to the board within 30 days of the date of the letter.

(4) The documents in Paragraph (6) of Subsection E of 16.60.4.10 NMAC shall be submitted to the board within 30 days of receiving the documents by the firm or upon request by the board.

(5) If the firm cannot submit the documents in Paragraphs (1) through (5) of Subsection E of 16.60.4.10 NMAC within the stated timeframe or, at the maximum, 180 days after the scheduled due date of the peer review, the firm must submit a letter to the board via mail, electronically or digitally explaining its failure to comply. The board may take disciplinary action for failure to comply.

(6) Firms may also satisfy this document submission requirement by having the sponsoring organization make the documents described in Paragraphs (1) through (5) of Subsection E of 16.60.4.10 NMAC

available to the board within the stated time frames via the AICPA facilitated state board access (FSBA) secure website process.

G. Additional information to be provided by firms or the sponsoring organization, upon request by the board, shall provide written permission for the sponsoring organization to provide information to the board. Permission may be granted annually on the firm renewal form. Such information may include the following (or similar) types of objective information about a firm's review, if known:

- (1) the date the review is or was scheduled to take place;
- (2) the name of the reviewing firm, team captain or review captain;
- (3) if the field work on the peer review has commenced;
- (4) the date the exit conference was expected to or did occur;
- (5) a copy of any extension approval letters;
- (6) whether the peer review working papers have been received by the sponsoring organization;
- (7) whether a must select engagement was included in the scope of engagements reviewed;
- (8) if a technical review is in progress;
- (9) whether the review has been presented to a report acceptance body (RAB);
- (10) the date the review is expected to be presented to the report acceptance body;
- (11) if the firm is going through fair procedures to determine whether it is cooperating with the peer review.

H. Approved peer review sponsoring organizations, programs and peer review standards:

(1) The board shall approve sponsoring organizations, peer review program(s) and standards.
(2) The board adopts the American institute of certified public accountants (AICPA) as an approved sponsoring organization and its peer review program and the New Mexico society of CPAs (NMSCPA) or its successor and other peer review programs administered by entities fully involved in the administration of the AICPA peer review program. These organizations are not required to submit a plan of administration to the board for approval. The board may approve other sponsoring organizations and peer review programs.

(3) Any board approved peer review program and any peer reviewer performing a peer review under this section shall utilize standards for performing and reporting on peer reviews by a recognized national accountancy organization whose standards are generally accepted by other regulatory authorities in the United States, including but not limited to the AICPA *Standards for Performing and Reporting on Peer Review*.

(4) The board may terminate its approval of a sponsoring organization for cause following notice and opportunity for hearing. For purposes of this paragraph, "cause" includes but is not limited to failure to maintain an ongoing compliance with the requirements.

(5) For an organization, not specifically identified in these rules as board-approved, to receive board approval for its peer review program and standards, the organization must submit evidence to the satisfaction of the board. At a minimum, the evidence shall include the standards, procedures, guidelines, oversight process, training materials and related documents used to administer, perform, and accept peer reviews. The board has the authority to request any other documents/ information from an organization about its peer review program in determining whether to grant approval.

(6) For firms required to be registered with an inspected by the public company accounting oversight board (PCAOB), the board approves the PCAOB's inspection process for reviewing practices subject to its authority (which are not included in the scope of peer review programs). Firms receiving inspections under the PAOB are also required to meet the peer review requirements under a board-approved peer review program that covers the portion of the firm's practice not subject to the PCAOB inspection process, should the firm have such a practice.

I. Authority and function of peer review oversight committee:

(1) The board may appoint up to five individuals licensed in this or another state to a peer review oversight committee to monitor programs administered by the sponsoring organization and report periodically to the board. Peer review oversight committee members shall not be current members of the board or perform any enforcement related work for regulator or governmental bodies, professional organizations (including but not limited to an AICPA ethics committee, AICPA joint trial board or state professional ethics committee) or similar groups or subgroups, including consultants and other similar arrangements for the board; and may be removed or replaced by the board at its discretion.

(2) Each committee member shall annually sign a confidentiality statement indicating they will not divulge any information to the board or any other person or entity that would identify any firm, licensee, or peer reviewer/reviewing firm.

(3) The peer review oversight committee may conduct oversight of approved sponsoring organization to provide reasonable assurance that the program it is administering is complying with the minimum standards for performing and reporting on peer reviews. The committee shall report to the board any modifications to the sponsoring organization and shall make the recommendations regarding their continued approval.

(a) Oversight procedures to be performed by the peer review oversight committee may consist of, but are not limited to, the following activities:

(i) visit the sponsoring organization for the approved peer review program;

(ii) review the sponsoring organization's procedures for administering the program;

(iii) meet with the sponsoring organization's RAB during consideration of peer review documents;

(iv) review the sponsoring organization's compliance with their programs.

(b) The peer review oversight committee shall verify that firms comply with peer review requirements as follows:

(i) verification may include review of the peer review report, the firm's response to the matters discussed in the peer review report, and the acceptance letter outlining any additional corrective or monitoring procedures, and the letter(s) signed by the sponsoring organization notifying the firm that required actions have been appropriately completed;

(ii) any other actions deemed necessary by the peer review oversight committee to assure compliance with peer review standards.

J. Disciplinary action:

(1) The board shall take disciplinary action against a firm for failure to comply with peer review requirements. Actions may include, but are not limited to, remedial and corrective procedures, fines, and denial of firm registration.

(2) In the event a firm is unwilling or unable to comply with established standards, or a firm's professional work is so egregious as to warrant disciplinary action, the board shall take appropriate action to protect the public interest.

(3) Peer review documents must be submitted to the board office in accordance with Subsection F of 16.60.4.10 NMAC.

(a) For each day the firm is delinquent in submitting the documents, the board may assess a fine of \$10 per day not to exceed \$1,000.

(b) If peer review documents are submitted more than 100 days late, a notice of contemplated action may be issued against all licensees listed on the most recent firm permit renewal application as owners of the firm.

(4) Requests for extensions must be submitted no later than 30 days prior to renewal date as required by Paragraph (4) of Subsection B of 16.60.4.10 NMAC.

K. Privileged information: A report, statement, memorandum, transcript, funding record, or working paper prepared for and an opinion formulated in connection with any positive enforcement or peer review is privileged information held by the sponsoring organization and may not be subject to discovery, subpoena, or other means of legal compulsion for release to any person and is not admissible as evidence in any judicial or administrative proceeding except for a board hearing.

L. In the event a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered to be the succeeding firm, if any. The succeeding firm shall retain its peer review status and the review due date.

[16.60.4.10 NMAC - Rp 16 NMAC 60.11.8 & 16 NMAC 60.11.9, 2/14/2002; A, 6/15/2004; A, 12/30/2005; A, 6/30/2008; A, 9/15/2015; A, 10/1/2016]

16.60.4.11 [RESERVED]

[16.60.4.11 NMAC - Rp 16 NMAC 60.4.10 through 60.4.16, 2/14/2002; A, 1/15/2004; A, 9/15/2015; Repealed, 10/1/2016]

HISTORY OF 16.60.4 NMAC:

History of Repealed Material:

16 NMAC 60.4, Public Accountants - Certification; Experience Requirements and Procedures, filed 9/27/1995 and 16 NMAC 60.11, Public Accountants - Peer Review Requirements, filed 2/27/1998, repealed effective 2/14/2002.

Other History:

16 NMAC 60.4, Public Accountants - Certification; Experience Requirements and Procedures, filed 9/27/1995 and 16 NMAC 60.11, Public Accountants - Peer Review Requirements, replaced by 16.60.4 NMAC, Firm Permit, Peer Review Requirements, and Business Name Prohibitions, effective 2/14/2002.