

NMAC

Transmittal Form



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Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐ (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes ☐ No ☒ Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes ☐ No ☐ Public domain ☐

Specific statutory or other authority authorizing rulemaking:

Audit Act, Section 12-6-12 NMSA 1978

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

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Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:

This is the annual update to 2.2.2 NMAC, promulgated pursuant to Section 12-6-12 NMSA 1978, to correct references, correct grammatical and formatting errors, update citations, add clarification regarding the schedule of expenditures of federal awards (SEFA) and require a SOC-3 audit report of the statewide human resources accounting reporting system (SHARE). An independent analysis was not done by the Office of the State Auditor (OSA).

Reasons for any change between the published proposed rule and the final rule:

Non-substantive, immaterial grammatical and formatting changes were made. An oral comment at the public hearing pointed out an error in the published proposed amendment to 2.2.2.10(K)(5) NMAC. The commenter stated that as written, the published proposed amendment would have required a reconciliation between SEFA expenditures and total expenditures, which is incorrect. A minor technical correction was made in the final amendment to correct this error. Regarding the published proposed amendment to 2.2.2.10(S)(3) NMAC, a written comment from Department of Finance and Administration (DFA) was received during the public comment period that objected to the sentence "Essentially, a SOC-3 audit is a redacted version of a SOC-2." This sentence was deleted from the final amendment because it was not necessary as "SOC-3 audit" is a term of art that is defined in audit professional standards.

Reasons for not accepting substantive arguments made through public comment:

A written comment received during the public comment period made several substantive arguments requesting changes to the audit requirements applicable to public housing authorities. The published proposed amendment did not propose any changes to the audit requirements for public housing authorities. Thus the entirety of this written comment was not accepted because it was outside the scope of this rulemaking proceeding. In a written comment DFA made substantive arguments proposing changes to report due dates under 2.2.2.9(A)(1)(C) NMAC; notice requirements under 2.2.2.9(A)(5) NMAC; and exit conference and related confidentiality issues under 2.2.2.10(M)(3) NMAC. The proposed published amendment did not contain any substantive proposed amendment to these provisions therefore DFA's proposed changes were not accepted because they were outside the scope of this rulemaking proceeding. In a written comment DFA stated several objections citing cybersecurity and privacy concerns regarding the published proposed amendment to 2.2.2.10(S)(2) NMAC and 2.2.2.10(S)(3) NMAC requiring a SOC-3 audit report of SHARE. These arguments were not accepted, as the commenter seems to have misunderstood the differences between a SOC-2 audit report and a SOC-3 audit report. Per Section 12-6-5 NMSA 1978, OSA is required to make publicly available each annual or special audit and examination made. A SOC-2 audit is a special audit under Section 12-6-5 NMSA 1978, however the report is not suitable for public release because it may contain information that could expose system vulnerabilities. In contrast, professional audit standards state that a SOC-3 audit report is designed for general use. Unlike a SOC-2 report, a SOC-3 report does not include a description of the system, so the detailed controls within the system are not disclosed. In addition, the SOC-3 report does not include a description of the service auditor's tests of controls and the results thereof. Thus, a SOC-3 audit report does not reveal system vulnerabilities. Accordingly, a SOC-3 audit report is suitable for public release pursuant to Section 12-6-5 NMSA 1978.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

RICKY A. BEJARANO

Check if authority has been delegated

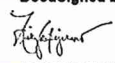
☒

Title:

NEW MEXICO DEPUTY STATE AUDITOR

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:

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5/16/2025