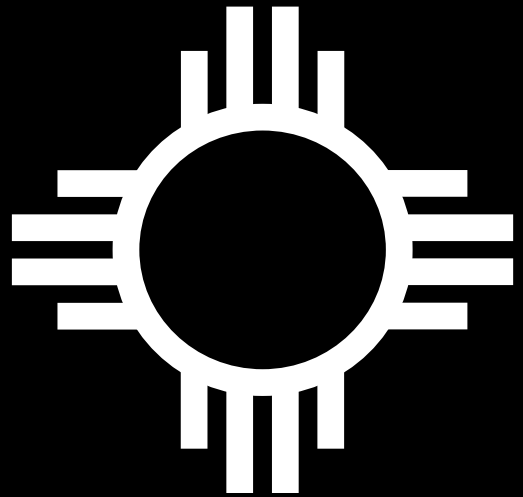


**NEW
MEXICO
REGISTER**

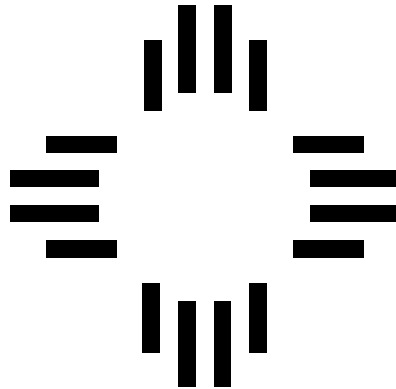


Volume XIV
Issue Number 8
April 30, 2003

New Mexico Register

Volume XIV, Issue Number 8

April 30, 2003



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2003

COPYRIGHT © 2003
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XIV, Number 8

April 30, 2003

Table of Contents

Notices of Rulemaking and Proposed Rules

Albuquerque/Bernalillo County Air Quality Control Board	
Notice of Hearing and Regular Meeting	175
Environmental Improvement Board	
Notice of Public Hearing to Consider Proposed Revision of Hazardous Waste Management Regulations, 20.4.1 NMAC	175
Notice of Public Meeting and Notice of Public Hearing	176
Labor, Department of	
Employment Security Division	
Notice of Public Hearing for Rulemaking	177
Job Training Division	
Notice of Public Hearing for Rulemaking	177
Public Records, Commission of	
Notice of Regular Meeting and Notice of Rulemaking	178
Public Safety, Department of	
Training and Recruiting Division	
Law Enforcement Academy	
Notice of NM Law Enforcement Academy Board Meeting and Public Hearing	178
Taxation and Revenue Department	
Notice of Hearing and Proposed Rules	178
Water Quality Control Commission	
Notice of Public Meeting and Public Hearing to Consider Proposed Amendments to Add an Open Meetings Resolution, and to Amend 20.6.2 NMAC - Water Quality Regulations	181

Adopted Rules and Regulations

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 by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Auditor, Office of the State		
2.2.2 NMAC	R	Requirements for Contracting and Conducting Audits of Agencies
2.2.2 NMAC	N	Requirements for Contracting and Conducting Audits of Agencies
Children, Youth and Families Department		
Office of the Secretary		
8.8.5 NMAC	N	Privacy Office
Protective Services Division		
8.10.8 NMAC	A	Permanency Planning
8.10.9 NMAC	A	Independent Living Program
8.11.3 NMAC	Rn & A	Adult Protective Services Investigation
8.11.4 NMAC	Rn & A	Adult Services
Energy, Minerals and Natural Resources Department		
Oil Conservation Division		
19.15.8 NMAC	Rn	Gas Proration and Allocation
19.15.10 NMAC	Rn	Oil Purchasing and Transporting
Game and Fish, Department of		
19.31.8 NMAC	A	Big Game and Turkey
19.30.8 NMAC	Rn & A	Guide and Outfitter Registration
Mining Commission		
19.10.2 NMAC	A	Fees
Retiree Health Care Authority		
2.81.11 NMAC	A	Establishing Subsidy Levels on the Basis of Years of Creditable Service

Other Material Related to Administrative Law

Water Quality Control Commission

Water Quality Control Commission on Proposed Scheduling Order and Hearing Guidelines for the Triennial Review of Surface Water Quality Standards	233
---------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

The New Mexico Register
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00, except the first subscription from each New Mexico state agency may be ordered at \$85.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On June 11, 2003, at 5:15 PM, the Albuquerque / Bernalillo County Air Quality Control Board (Board) will hold two public hearings in the City Council / County Commission Chambers of the Albuquerque / Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearings will address:

Proposal to amend 20.11.100 NMAC, Motor Vehicle Inspection - Decentralized.

The purpose of the first hearing is to receive testimony on proposed changes to the Motor Vehicle Inspection - Decentralized regulation. The proposed regulation changes include:

- * A requirement that effective January 1, 2004 emission testing be conducted with BAR97 OBDII capable analyzers certified to meet program specifications including the ability to transmit test data electronically.
- * The replacement of the visible tamper check for oxygen sensors with a functional pressurized gas cap check.
- * The extension of the new car exemption from testing to two registration cycles (up to four years).
- * The exemption of dedicated alternative fueled vehicles from testing.
- * A requirement that diesel vehicles be tested at change of ownership.
- * A requirement that vehicles defined as 'gross polluters' be repaired to reduce emissions below that threshold prior to being granted a waiver or time extension.
- * A requirement that vehicles in model years with inspection failure rates exceeding 25% (currently 1975 - 1985) be tested at each registration renewal.
- * A requirement that vehicles commuting into the program area 60 or more days per year comply with the biennial test requirement and that employers with controlled access parking and large employers with 250 or more employees certify compliance.
- * The creation of an additional category of Air Care stations known as 'Test by

appointment only' stations.

* A revision of the Notice of Violation point system to provide a probationary period for new Air Care inspectors and to adjust the maximum points allowed proportionate with the volume of tests conducted.

Immediately after the Part 100 hearing closes, a second hearing will be held during which the Board will be asked to place the newly-adopted regulation into the State Implementation Plan for air quality (SIP). Following these two hearings, the Board will hold its regular monthly meeting during which the Board is expected to consider approval of the proposed regulation and incorporating the newly-adopted regulation into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written notice of intent to: Attn: June Hearing Record, Mr. Glen L. Dennis, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person at 1500 Broadway NE, in advance of the hearing. The notice of intent shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on June 3, 2003. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to gdennis@cabq.gov and shall include the

required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, A/BCGC, 768-2600 (Voice); 768-2617 (FAX); or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF HAZARDOUS WASTE MANAGEMENT REGULATIONS, 20.4.1 NMAC

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on July 1, 2003 at 9:30 a.m. at the New Mexico State Capitol Building, room 317, at the corner of Don Gaspar and Paseo de Peralta, Santa Fe, New Mexico. The purpose of the hearing is to consider proposed revisions to Hazardous Waste Management Regulations, 20.4.1 NMAC. The New Mexico Environment Department is the proponent of the amendments to the regulations.

The amendments are for the purpose of updating the Hazardous Waste regulations to bring them into conformity with federal regulations up through July 1 of 2002, so that the Environment Department can obtain required authorizations from the EPA for its Hazardous Waste Management Program. The current regulations adopt federal regulations up through July 1 of 1999. With amendments, the federal regulations would be adopted up through July 1 of 2002. In addition, the Hazardous Waste Management Program will include a Used Oil component to assure the appropriate management of used oil pursuant to federal regulations. In addition, 40 CFR Sections 260.20 and 260.22 will be incorporated by

reference. The sections that would be amended include the following:

20.4.1.5 NMAC - Effective Date. The proposed amendment changes the effective date to reflect adoption of these amendments.

20.4.1.100 NMAC - Adoption of 40 CFR Part 260. The proposed amendments will adopt 40 CFR Part 260, through July 1, 2002.

20.4.1.101 NMAC - Modifications and Exceptions. The proposed amendments will include 40 CFR sections 260.20 and 260.22 as adopted sections.

20.4.1.200 NMAC - Adoption of 40 CFR Part 261. The proposed amendments will adopt 40 CFR Part 261, through July 1, 2002.

20.4.1.300 NMAC - Adoption of 40 CFR Part 262. The proposed amendments will adopt 40 CFR Part 262, through July 1, 2002.

20.4.1.400 NMAC - Adoption of 40 CFR Part 263. The proposed amendments will adopt 40 CFR Part 263, through July 1, 2002.

20.4.1.401 NMAC - Omissions. Non-substantive technical amendments.

20.4.1.500 NMAC - Adoption of 40 CFR Part 264. The proposed amendments will adopt 40 CFR Part 264, through July 1, 2002.

20.4.1.501 NMAC - Omissions. Non-substantive technical amendments.

20.4.1.600 NMAC - Adoption of 40 CFR part 265. The proposed amendments will adopt 40 CFR Part 265, through July 1, 2002.

20.4.1.601 NMAC - Omissions. Non-substantive technical amendments.

20.4.1.700 NMAC - Adoption of 40 CFR Part 266. The proposed amendments will adopt 40 CFR Part 266, through July 1, 2002.

20.4.1.800 NMAC - Adoption of 40 CFR Part 268. The proposed amendments will adopt 40 CFR Part 268, through July 1, 2002.

20.4.1.801 NMAC - Omissions. Non-substantive technical amendments.

20.4.1.900 NMAC - Adoption of 40 CFR Part 270. The proposed amendments will adopt 40 CFR Part 270, through July 1, 2002.

20.4.1.901 NMAC - Permitting Procedures. Non-substantive technical amendments.

20.4.1.1000 NMAC - Adoption of 40 CFR Part 273. The proposed amendments will adopt 40 CFR Part 273, through July 1, 2002.

20.4.1.1002 NMAC - Adoption of 40 CFR Part 279. The proposed amendments will adopt 40 CFR Part 279, Used Oil Standards, through July 1, 2002.

20.4.1.1103 NMAC - Reserved. Non-substantive technical amendments.

20.4.1.1107 NMAC - Availability of Materials Incorporated By Reference. Change of address.

The purpose of these amendments is to update the state hazardous waste management regulations to the extent that they adopt federal regulations, so that New Mexico's Hazardous Waste Program will remain in compliance with federal authorization requirements. The amendments also include 40 CFR Part 279 (Used Oil Standards) and 40 CFR sections 260.20 and 260.22 for the first time. Following approval of these amendments, the Department intends to submit the revisions to the Environmental Protection Agency to obtain an updated federal authorization of its Hazardous Waste Program.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2150 Santa Fe, NM, 87505. Copies of the proposed revisions may be obtained by contacting Geraldine Madrid-Chavez at (505) 827-2425 or by email at Geraldine_Chavez@nmenv.state.nm.us or by visiting the Department's web site at www.nmenv.state.nm.us. Follow the links to the Hazardous Waste Bureau's page. Written comments regarding the proposed revisions may be addressed to Ms. Madrid-Chavez at the above address, and should reference docket number EIB 03-02.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Hazardous Waste Act, Chapter 74, Article 4 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person for whom the witness(es) will testify;

- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;

- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and

- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on June 20, 2003, and should reference the name of the regulation, the date of the hearing, and docket number EIB 03-02. Notices of intent to present technical testimony should be submitted to:

Geraldine Madrid-Chavez
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150
Santa Fe, NM 87502

Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by June 15, 2003. Mr. Hawley can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access his number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

THE NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF PUBLIC MEETING AND NOTICE OF PUBLIC HEARING

The New Mexico Environmental Improvement Board will hold a public meeting on July 1, 2003 beginning at 9:30 a.m. at the New Mexico State Capitol, Room 317, Santa Fe, New Mexico. Contact Geraldine Madrid-Chavez (505) 827-2425 for a copy of the proposed agenda, which will be available after June 20, 2003, at the Environment Improvement Board's office, Room S-2054, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502.

The Board will hold a public hearing during the meeting to consider In The Matter of Petition to Amend Air Quality Control Regulation 20.2.72.219 NMAC, Docket Number EIB-02-01. The Petition seeks to amend 20.2.72.219 NMAC, which governs technical amendments to air quality permits, by adding provisions which would authorize certain permit revisions which incorporate air pollution control equipment or permit conditions limiting the potential emission rate for a facility to be treated as technical permit revisions. A copy of the petition and the proposed regulatory change may be obtained from the Environmental Improvement Board's office, Room S-2054, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502. Contact Geraldine Madrid-Chavez, (505) 827-2425, with questions concerning the hearing on this petition.

The hearing will be conducted in accordance with the Environmental Improvement Board's Rulemaking Procedures, 20 NMAC 1.1, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other specific statutory procedures that may apply.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons desiring to present technical testimony must file with the Board, a written notice of intent to do so. The notice of intent shall:

- * Identify the party for whom the witness will testify;
- * Identify each technical witness the party intends to present and state the qualifications of that witness, including a description of their education and work background;
- * Summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony;
- * Include the text of any recommended modifications to the proposed regulatory change;
- * List and describe, or attach, all exhibits anticipated to be offered by that

person at the hearing.

The deadline for the notice of intent is June 20, 2003. Notices of intent must be filed in the office of the Board and should state the date and title of the hearing, and the case number. Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

The Board may reconvene a meeting at the end of the hearing to take action on the Petition.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by May 30, 2003 at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2850 (TDD) or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779).

**NEW MEXICO
DEPARTMENT OF LABOR
EMPLOYMENT SECURITY
DIVISION**

**NEW MEXICO DEPARTMENT OF
LABOR
NOTICE OF PUBLIC HEARING FOR
RULEMAKING**

The New Mexico Department of Labor, Employment Security Division, will hold a public hearing for rule-making on proposed amendments to the Employment Security Division Rules Parts 100, 200, 300, 400 and 500 concerning the Unemployment Compensation Law and general procedures of the department. The purpose of the amendments is to amend the rules to address changes in the unemployment compensation law mandated by legislation passed in the 2003 legislative session and make other appropriate amendments. Copies of the preliminary proposed revisions are available for review in the Office of the General Counsel of the New Mexico Department of Labor, 401 Broadway, NE, Albuquerque, NM. Persons interested in reviewing the draft may submit a request a copy by phone, mail, e-mail or telefax to Rebecca E. Wardlaw, Office of the General Counsel, New Mexico Department of Labor, P. O. Box 1928, Albuquerque, NM 87103, rwardlaw@state.nm.us, phone (505) 841-8489; fax (505) 841-9024.

A Public Hearing will be held on May 13, 2003, at 9:00 a.m., in the Tiwa Building conference room, located at 401

Broadway, Albuquerque, New Mexico. Interested persons may submit comments in writing prior to the hearing or may appear at the hearing and make oral presentations. The Secretary of the New Mexico Department of Labor will fully consider all written and oral submissions. Unless the Secretary acts affirmatively to incorporate changes or requests received prior to or at the public hearing, except as described in particular sections, the rules as described in this notice shall become effective at midnight on June 30, 2003. Interested persons, who have a disability or who require some accommodation in attending the public hearing or having the proposed rule communicated to them, should submit a written request identifying the disability and type of accommodation needed to Rebecca E. Wardlaw, Office of the General Counsel, New Mexico Department of Labor, P. O. Box 1928, Albuquerque, NM 87103, or fax to 505-841-9024. If such a request is not made at least 24 hours in advance of the public hearing, the availability of the accommodation on-site cannot be assured.

**NEW MEXICO
DEPARTMENT OF LABOR
JOB TRAINING DIVISION**

**NOTICE OF PUBLIC HEARING FOR
RULEMAKING**

The New Mexico Department of Labor Job Training Division (NMDOL JTD) State Administrative Entity (SAE), State Planning, Policy and Technical Assistance (SPPTA) Bureau will hold a public hearing for rule-making on replacement of four (4) and proposal of three (3) SAE WIA Rules as follows:

11.2.6 NMAC WORKFORCE INVESTMENT ACT (WIA) ONE-STOP DELIVERY SYSTEM. This rule replaces existing issuance and provides guidance and direction to assure conformance and timelines.

11.2.9 NMAC WORKFORCE INVESTMENT ACT (WIA) SANCTIONS AND CORRECTIVE ACTIONS AND LIABILITY. This rule replaces existing issuance and provides parameters, limitations and the process for WIA compliance.

11.2.14 NMAC WORKFORCE INVESTMENT ACT (WIA) STATEWIDE AND LOCAL GOVERNANCE. This rule replaces existing issuances pertaining to the same subject and provides local WIA areas with guidance and direction for WIA board and council administration.

11.2.18 NMAC WORKFORCE INVESTMENT ACT (WIA) YOUTH SERVICES

SYSTEM. This rule replaces existing issuance and provides direction, guidance and identifies allowable activities.

11.2. 20 NMAC WORKFORCE INVESTMENT ACT (WIA) STATE OF NEW MEXICO RAPID RESPONSE PROCEDURE. This rule provides information and instructions for how the State will utilize State set-aside funds and will provide services during mass lay-offs.

11.2.23 NMAC WORKFORCE INVESTMENT ACT (WIA) SUPPORTIVE SERVICES. This rule provides local areas and WIA Subrecipients with guidance and sample forms for services.

11.2.31 NMAC COORDINATION WITH THE WORKFORCE INVESTMENT ACT (WIA) VIRTUAL ONE-STOP SYSTEM. This rule provides direction for coordination of all Partners on the use of the One-Stop System.

The Public Hearing will be held on Monday, June 2, 2003 at 9:00 a.m. in the Aspen Plaza conference room located at 1596 Pacheco Street, Room 201, Santa Fe, New Mexico. Interested persons who have a disability and require some accommodation in attending the public hearing or having the rules communicated to them, should submit a written request identifying the disability and the type of accommodations needed to: Ms. Carol Szpakowski, New Mexico Department of Labor, Job Training Division, P.O. Box 4218, Santa Fe, NM 87502. If such request is not made in advance, the availability of accommodation on-site cannot be guaranteed.

Inquiries or requests for copies of the policies referred to above, may be addressed to the Job Training Division by calling Ms. Szpakowski at (505) 827-1636 in Santa Fe.

**NEW MEXICO
COMMISSION OF
PUBLIC RECORDS**

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, May 6, 2003, at 9:00 A.M. The meeting will be held at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Elizabeth Bachicha

at 476-7902 by April 29, 2003. Public documents including the agenda and minutes can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

- Amend**
 1.18.760 NMAC E R R D S
 Adult Parole Board
 1.18.765 NMAC E R R D S
 Juvenile Parole Board

- New**
 1.13.1 NMAC G e n e r a l
 Provisions [Open Meetings Act]

**NEW MEXICO
DEPARTMENT OF
PUBLIC SAFETY
TRAINING AND RECRUITING
DIVISION
Law Enforcement Academy**

**NOTICE
NM LAW ENFORCEMENT
ACADEMY BOARD MEETING AND
PUBLIC HEARING**

The New Mexico Law Enforcement Academy Board will hold its next regularly scheduled Board meeting on Thursday, June 12th, 2003, at 10:00 a.m., at the Red River Conference Center, 101 West River St., Red River, NM 87558.

Retired Officer Certification as well as other law enforcement matters will be on the meeting agenda.

Copies of proposed plans, standards, requirements, or rules may be obtained by calling (505) 827-9255. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Darrel Hart, (505) 827-9255, as soon as possible. Public documents can be provided in various accessible formats.

Please contact Darrel Hart if additional information is needed.

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The Department proposes to adopt the following regulations:

18.18.4.1 through 16 NMAC
 Section 66-2-17 NMSA 1978 M o t o r
 Vehicle Code
*(Parental Responsibility Act
 Compliance)*

18.19.5.11 NMAC Section 66-5-
 14 NMSA 1978
*(Contracting Driver's Knowledge and Skill
 Tests)*

18.19.5.12 NMAC Section 66-5-
 2 NMSA 1978
*(Proof of Identification Number, Identity
 and Residency)*

The Department also proposed to repeal 18.19.5.13 NMAC *(Foreign Nationals May apply for Licensure) to Section 66-5-2 NMSA 1978 of the Motor Vehicle Code and 18.19.5.104 NMAC (Commercial Driver's License - Disqualification Pursuant to Parental Responsibility Act - Hearings) to Section 66-5-59 NMSA 1978 of the Motor Vehicle Code.*

The proposals were placed on file in the Office of the Secretary on April 16, 2003. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final regulation, if filed, will be filed as required by law on or about June 30, 2003.

A public hearing will be held on the proposals on Thursday, June 5, 2003, at 9:30 a.m. in the 1st floor auditorium of the Harold Runnels Bldg., 1190 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0908. Comments on the proposals regulation are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before June 5, 2003.

**TITLE 18: TRANSPORTATION
AND HIGHWAYS
CHAPTER 18: MOTOR VEHICLE
ADMINISTRATION
PART 4: P A R E N T A L
RESPONSIBILITY ACT COMPLIANCE**

18.18.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[18.18.4.1 NMAC - N, XXX]

18.18.4.2 **SCOPE:** This Part applies to all persons subject to the Motor Vehicle Code.

[18.18.4.2 NMAC - N, XXX]

18.18.4.3 **STATUTORY AUTHORITY:** The Taxation and Revenue Department, Motor Vehicle Division, adopts this Rule pursuant to the Parental Responsibility Act, Section 40-5A-1 et seq., NMSA 1978, Section 9-11-6.2, NMSA 1978, and Sections 66-2-16(E) and 66-2-17, NMSA 1978.

[18.18.4.3 NMAC - N, XXX]

18.18.4.4 **DURATION:** Permanent.

[18.18.4.4 NMAC - N, XXX]

18.18.4.5 **EFFECTIVE DATE:** XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[18.18.4.4 NMAC - N, XXX]

18.18.4.6 **OBJECTIVE:** The objective of this Part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code and Parental Responsibility Act.

[18.18.4.6 NMAC - N, XXX]

18.18.4.7 **DEFINITIONS:** The terms defined in Section 18.18.4.7 NMAC apply throughout Title 18, Chapter 18, Part 4.

A. "HSD" means the state of New Mexico human services department;

B. "MVD" means the motor vehicle division of the state of New Mexico taxation and revenue department;

C. "certificate of compliance" means a certified statement from HSD stating that a licensee is in compliance with a judgment and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings;

D. "notice of intent to suspend driver's license and right to a hearing" means a written statement that MVD intends to suspend or not renew a driver's license, the basis for the proposed suspension, and the process afforded a licensee by MVD or HSD; and

E. "license" means an individual driver's license or a commercial driver's license.

F. All other terms in Title

18, Chapter 18, Part 4 shall have the same meaning as they have in the Parental Responsibility Act or the Motor Vehicle Code, except that the term "board" shall mean the MVD or its designate.

[18.18.4.7 NMAC - N, XXX]

18.18.4.8 **MVD ACTION:** If a licensee is not in compliance with a valid judgment and order for support or is not in compliance with a subpoena or a warrant relating to paternity or child support proceedings, MVD shall:

A. deny the renewal of a license;

B. suspend the license; or

C. deny any application

for a license.

[18.18.4.8 NMAC - N, XXX]

18.18.4.9 **CERTIFIED LIST:** Upon receipt of an HSD-certified list of obligors not in compliance, MVD shall match the certified list against the current list of MVD licensees. If a listed MVD licensee appears on the HSD-certified list of obligors not in compliance, then MVD shall mail to a licensee or licensees a notice of proposed non-renewal or suspension. By the end of the month in which the certified list is received, MVD shall report to HSD the names of MVD licensees who are on HSD's certified list of obligors and any action MVD has taken in connection with such licensees.

[18.18.4.9 NMAC - N, XXX]

18.18.4.10 **NOTICE:** Prior to taking any action specified in Section 18.18.4.8 NMAC, MVD or HSD shall mail to the licensee a written notice stating that MVD has grounds to take MVD action, and that MVD shall suspend or deny a license or renewal unless the licensee:

A. files a timely written request for hearing protesting the proposed suspension or denial within thirty (30) days from the date the notice is mailed; or

B. provides MVD, within thirty (30) days from the date the notice is mailed, with a certificate of compliance from HSD.

[18.18.4.10 NMAC - N, XXX]

18.18.4.11 **HEARINGS:** The licensee may request a hearing by filing a written request for hearing protesting the proposed non-renewal or suspension of the license. In the request for hearing, the licensee shall provide the licensee's name; any one of either the social security number, the individual tax identification number (ITIN), or the acceptable substitute for a social security number or ITIN; the action in dispute; the grounds for protest, and the affirmative action requested.

A. The request for hearing must be filed within thirty (30) days from the date the notice is mailed. The request may be mailed to Parental Responsibility Hearings, P.O. Box 630, Santa Fe, New Mexico 87504-0630 or by delivering the request in person to the Legal Services Bureau, Joseph M. Montoya Building, 1100 S. St. Francis Drive, Suite 1100, Santa Fe, New Mexico.

B. The secretary of the New Mexico taxation and revenue department or the secretary's delegate shall appoint a hearing officer who shall set the matter for hearing within ninety (90) days from the date of the request. MVD or HSD will notify the licensee of the hearing ten (10) days prior to the date of the hearing. The notice shall be mailed to the address listed on the request for hearing or, if no return address is listed, then to the licensee's last known address as shown on MVD records.

C. The hearing officer shall make and preserve a record of the proceedings.

D. A licensee may appear at a hearing on the licensee's own behalf or be represented by an attorney.

E. All hearings will be conducted telephonically. The hearing officer may at the hearing officer's discretion specify an in-person hearing.

F. Hearings shall be closed to the public except upon request of the licensee and may be postponed or continued at the discretion of the hearing officer.

G. In all hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

H. In hearings before the hearing officer, the Rules of Civil Procedure for the district courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, or require written expositions of the case as the circumstances justify, and shall render a decision according to the law and the evidence presented and admitted.

I. The hearing officer, within thirty (30) days of the hearing, shall issue a decision granting or denying the relief requested or granting such part thereof as seems appropriate and shall inform the licensee of the licensee's right to and the requirements for perfection of, an appeal to the district court and of the consequences of a failure to appeal.

[18.18.4.11 NMAC - N, XXX]

18.18.4.12 **ISSUES:** The issues to be decided at the hearing are limited to whether:

A. the licensee is in compliance with a judgment and order for support;

B. the licensee is in compliance with a subpoena or warrants relating to paternity or child support proceedings; or

C. the licensee is the person whose name appears on the certified list sent to MVD from HSD.

[18.18.4.12 NMAC - N, XXX]

18.18.4.13 **EVIDENCE AND PROOF:**

A. In any hearing under Title 18, Chapter 18, Part 4, relevant evidence shall be limited to the following:

(1) a valid certificate of compliance, if one has been issued between the date of the notice and the hearing date;

(2) evidence of compliance with a judgment or order of support, subpoena or warrant relating to paternity or child support proceedings to rebut the absence of a certificate of compliance in cases in which the licensee has cured any non-compliance with a judgment or order of support, subpoena or warrant after the notice date but before the date of hearing, and

(3) evidence that the licensee is not the same person as the person whose name appears on the certified list of obligors sent to MVD by HSD.

B. In lieu of a hearing, a licensee may present a valid certificate of compliance to any MVD field office and pay all applicable fees and have the license reinstated.

[18.18.4.13 NMAC - N, XXX]

18.18.4.14 **ORDER:** An order entered under Title 18, Chapter 18, Part 4 solely because the licensee is not in compliance with the judgment and order for support or not in compliance with a subpoena or a warrant relating to paternity or child support proceedings, the order shall provide that the license is to be reinstated upon presentation of a subsequent certificate of compliance to MVD and payment of applicable fees. MVD may order additional reasonable conditions necessary to compel compliance with MVD requirements for reapplication or reinstatement of lapsed licenses.

[18.18.4.14 NMAC - N, XXX]

18.18.4.15 **APPEALS:** All appeals shall be filed in accordance with Section 39-1-1.1 NMSA 1978 and Rule 1-074 of the Rules of Civil Procedure for the district courts.

[18.18.4.15 NMAC - N, XXX]

18.18.4.16 **FEES:** MVD shall charge a twenty-five dollar (\$25.00) fee to defray the cost of conducting the hearing.

[18.18.4.16 NMAC - N, XXX]

18.19.5.11 **CONTRACTING DRIVER'S KNOWLEDGE AND SKILL TESTS:**

A. Under Subsection C of Section 66-5-14 NMSA 1978, the department is permitted to contract for certain testing of individuals applying for driver's licenses. Any contract entered into may provide that all or only some of the individuals applying for driver's licenses are to be tested by the contractor. Any contract entered into may be limited to testing at certain field offices or within certain political subdivisions or geographic areas.

B. Only the following persons are eligible to enter into contracts authorized under Subsection C of Section 66-5-14 NMSA 1978:

(1) Public educational institutions; and

(2) Commercial driving schools licensed by the state highway and transportation department pursuant to the Driving School Licensing Act and regulations thereunder.

C. Any contract entered into will specify an expiration date, provided the department may terminate the contract prior to its expiration date.

18.19.5.12 **[FOREIGN NATIONALS APPLYING FOR DRIVER'S LICENSES:**

~~A. Persons who are not citizens of the United States (foreign nationals) and who are ineligible for a social security number may apply for a driver's license, other than a commercial driver's license, by providing proof of identity, proof they are living in New Mexico and proof they are in the United States legally or in compliance with United States immigration and naturalization service (INS) regulations.~~

~~B. Examples of acceptable proof of the applicant's identity include but are not limited to:~~

~~(1) valid passport issued by country of citizenship;~~

~~(2) valid documentation issued by INS such as, I-551 "resident alien" card, I-151 "alien registration receipt" card, I-688 "temporary resident" card, or I-797 "notice of action" or~~

~~(3) matricula consular issued by the Mexican consulate in Albuquerque~~

~~C. Examples of acceptable proof that the applicant is living in New Mexico include but are not limited to:~~

~~(1) documents such as utility bills, rental agreements, current student identification cards, and employment payroll receipts, or~~

~~(2) matricula consular issued by the Mexican consulate in Albuquerque.~~

~~D. Examples of acceptable documents proving the applicant is in the United States legally or in compliance with INS regulations include but are not limited to:~~

~~(1) valid passport issued by country of citizenship, a visa issued by the United States, and valid documentation issued by INS showing legal status, or~~

~~(2) INS document titled I-797 "notice of action".~~

~~E. In lieu of a social security number the motor vehicle division will use the applicant's unique identifying number in the document evidencing immigration status.—~~

~~F. The motor vehicle division may require foreign nationals applying for a driver's license to provide a certified copy of their driving record with an English language translation of the certified copy from the jurisdiction where the foreign national is currently or was previously licensed.~~

~~G. Section 18.19.5.12 NMAC becomes effective within thirty days of the effective date of the provisions of Section 66-5-9(B) NMSA 1978.]~~

PROOF OF IDENTIFICATION NUMBER, IDENTITY AND RESIDENCY:

A. Applicants for a New Mexico driver's license, other than a commercial driver's license, must provide documentary proof of their identification number, identity and residency.

B. Applicants must produce documentary proof of a social security number, individual tax identification number (ITIN), or an acceptable substitute for a social security number or ITIN.

(1) The applicant's social security card, or any of the following documents containing the applicant's social security number, will provide sufficient documentary proof of the applicant's social security number: a driver's license; a government-issued photo-identification card; a military identification card; an identification card from an educational institution; an original employment payroll receipt; tax forms such as a W-2, W-4, W-8, W-9 or other IRS official documents; a medical card; or a statement from a financial institution.

(2) The applicant's letter from the IRS issuing the ITIN, or tax forms or other IRS official documents using the applicant's ITIN, will provide sufficient documentary proof of the applicant's ITIN.

(3) The following may be accepted as a substitute for a social security

number or ITIN:

(a) a valid passport issued by country of citizenship;

(b) valid documentation issued by the INS such as an I-551 "resident alien" card, I-151 "alien registration receipt" card, I-688 "temporary resident" card, or an I-797 "notice of action"; or

(c) a matricula consular issued by the Mexican consulate in Albuquerque.

C. Applicants must produce one of the following documents as proof of identity: original birth certificate; certified copy of birth certificate; valid passport issued by country of citizenship; Indian census card; matricula consular issued by the Mexican consulate in Albuquerque; current driver's license from another state or country.

D. Applicants must provide two of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico: a rental agreement or purchase agreement; any original government-issued document; a utility bill; an insurance bill; a bank statement; a check book; an employment pay stub; a local property tax statement; proof of a minor child enrolled in a public or private school; a voter registration card; a library card; original documents from a New Mexico community service organization; original documents from a city, county, state or federal government service organization attesting to the fact that the applicant is a New Mexico resident; a matricula consular issued by the Mexican consulate in Albuquerque.

E. The motor vehicle division may require foreign nationals applying for a driver's license to provide a certified copy of their driving record with an English language translation of the certified copy from the jurisdiction where the foreign national is currently or was previously licensed.

18.19.5.13 ~~[FOREIGN NATIONALS MAY APPLY FOR LICENSURE: The motor vehicle division will consider persons who are not citizens of the United States but who meet the requirements of Section 18.19.5.12 NMAC as residents of this state for purposes of requiring and issuing driver's licenses, other than commercial driver's licenses.] [RESERVED]~~

18.19.5.104 ~~[COMMERCIAL DRIVER'S LICENSE DISQUALIFICATION PURSUANT TO PARENTAL RESPONSIBILITY ACT HEARINGS:~~

A. ~~Requests for hearing must be in writing and must be made within ten days after receipt of notification of disqualification. Incomplete requests or requests received after this time will not be~~

~~honored. Timeliness of the request shall be determined either by the date of personal delivery to the department's headquarters in Santa Fe or, if mailed, by the postmark date of the envelope containing the request delivered through the U.S. postal service.~~

~~B. The department will notify the driver or the driver's agent by certified mail of the time and place scheduled for the hearing. This notice will be directed to the address contained on the request for hearing or, if no return address is indicated, to the address last given the division pursuant to Section 66-5-22 NMSA 1978.~~

~~C. The secretary shall designate a hearing officer to conduct the hearings, continue hearings, receive evidence and issue decisions on behalf of the department. Only hearing officers designated by the secretary may conduct hearings on a disqualification of a commercial driver's license pursuant to the Parental Responsibility Act.~~

~~D. The hearing shall be strictly limited to the issue of whether the obligor named by the human services department is the same person whose commercial driver's license has been disqualified.~~

~~E. This regulation is applicable to disqualifications by the human services department under the Parental Responsibility Act on or after August 1, 1995.] [RESERVED]~~

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC MEETING AND PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO ADD AN OPEN MEETINGS RESOLUTION, AND TO AMEND 20.6.2 NMAC – WATER QUALITY REGULATIONS

The New Mexico Water Quality Commission will hold a public meeting beginning on June 10, 2003 at 9:00 a.m. in room 317 at the State Capitol Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe New Mexico. Immediately following the meeting, hearings will be held to consider an Open Meetings Resolution and to consider proposed amendments to Sections 20.6.2.7 and 20.6.2.3103 NMAC. The amendments are to the toxic pollutant criteria and water quality standards of the Water Quality Control Commission Regulations. The proposed amendments will add 2,6 DNT, HMX, RDX, TNT, manganese, MTBE and perchlorate to the

Commission's toxic pollutant listing, and will change the existing groundwater standard for Uranium from 5 mg/L to 0.007 mg/L. The New Mexico Environment Department is the proponent of the proposed amendments.

The proposed amendments to the toxic pollutant criteria and water quality standards may be viewed on the Department's web site at www.nmenv.state.nm.us or during regular business hours by contacting Geraldine Madrid-Chavez, Commission Secretary, 1190 St. Francis Drive, Room N-2054, Santa Fe, New Mexico (505) 827-2425. The current Open Meetings Act Resolution is also available for review by contacting the Commission Secretary.

The hearings will be conducted in accordance with NMSA 1978, Section 74-6-6, the Guidelines for Water Quality Control Commission Regulation Hearings, and other specific statutory procedures that may apply. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings is available on the Department's web site or may be from the commission secretary at the address and phone number above.

All interested persons will be given a reasonable opportunity at the hearings to submit relevant evidence, data, views and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the hearings.

Persons desiring to present technical testimony at the hearings must file with the Commission a written notice. The written notice shall:

- * identify the person for whom technical testimony will be presented;
- * identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- * summarize or include a copy of the direct testimony of each technical witness;
- * state the anticipated duration of the testimony of each witness;
- * include the text of any recommended modifications to the proposed amendment; and
- * list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

The deadline for filing written notices shall be May 27, 2003, at 5:00 p.m. Written notices must be filed in the Commission's office and should reference 20.6.2 NMAC or Open Meetings Resolution and the date

of the hearing.

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. translator or sign-language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by May 20, 2003, at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2844. (TDD or TTY users please access the number via the New Mexico Relay Network, Albuquerque TDD users: (505)275-7333; outside of Albuquerque: 1-800-659-1779 (voice); TTY users: 1-800-659-8331) Copies of the proposed amendment will be available in alternative forms, e.g. audiotape, if requested by May 20, 2003.

The Commission may deliberate and rule on the proposed amendments at the close of the hearings.

**End of Notices and
Proposed Rules Section**

Adopted Rules and Regulations

NEW MEXICO OFFICE OF THE STATE AUDITOR

The Office of the State Auditor is repealing 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies* effective April 30, 2003. It will be replaced with 2.2.2 NMAC, *Requirements for Contracting and Conducting Audit of Agencies*, which will become effective April 30, 2003.

NEW MEXICO OFFICE OF THE STATE AUDITOR

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

2.2.2.1 ISSUING AGENCY: Office of the State Auditor, 2113 Warner Circle, Santa Fe, NM 87505-5499
[2.2.2.1 NMAC - Rp 2.2.2.1 NMAC, 4-30-03]

2.2.2.2 SCOPE: All agencies covered under the Audit Act and any independent public accountants interested in conducting financial and compliance audits of agencies of the state of New Mexico.
[2.2.2.2 NMAC - Rp 2.2.2.2 NMAC, 4-30-03]

2.2.2.3 STATUTORY AUTHORITY: The Audit Act Section 12-6-12, requires the state auditor to promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with auditing standards generally accepted in the United States of America. The regulations become effective upon filing in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978). The Audit Act (12-6-1 through 12-6-14, NMSA 1978) provides the state auditor authority to conduct financial and compliance audits in accordance with governmental auditing, accounting and financial reporting standards, local, state and federal laws, rules, and regulations. The Audit Act also gives the state auditor the authority to perform special audits of the financial affairs and transactions of an agency, in whole or in part, in situations deemed necessary.
[2.2.2.3 NMAC - Rp 2.2.2.3 NMAC, 4-30-03]

2.2.2.4 DURATION :

Permanent
[2.2.2.4 NMAC - Rp 2.2.2.4 NMAC, 4-30-03]

2.2.2.5 EFFECTIVE DATE: April 30, 2003, unless a later date is cited at the end of a Section.
[2.2.2.5 NMAC - Rp 2.2.2.5 NMAC, 4-30-03]

2.2.2.6 OBJECTIVE: The objective is to establish procedures and requirements for the contracting and conducting of state governmental audits.
[2.2.2.6 NMAC - Rp 2.2.2.6 NMAC, 4-30-03]

2.2.2.7 DEFINITIONS:

A. "Agency" means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; and school districts; any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority and every office or officer of any entity listed in Subsections A through C of Section 12-6-2, NMSA 1978.

B. "Auditor" means state auditor or independent public accountant

C. "AICPA" means American institute of certified public accountants

D. "CHE" means commission on higher education

E. "CFR" means Code of Federal Regulations

F. "CPE" means continuing professional education

G. "COSO" means committee on sponsoring organizations of treasury commission

H. "DFA" means department of finance and administration

I. "FCD" means financial control division

J. "FDIC" means federal deposit insurance corporation

K. "FDS" means financial data schedule

L. "GAAP" means accounting principles generally accepted in the United States of America

M. "GAGAS" means generally accepted governmental auditing standards

N. "GASB" means governmental accounting standards board

O. "GAAS" means auditing standards generally accepted in the United States of America

P. "GSD" means general services department

Q. "HUD" means U.S. department of housing and urban development

R. "IPA" means independent public accountant

S. "IRC" means Internal Revenue Code

T. "NCUSIF" means national credit union shares insurance fund

U. "NMAC" means New Mexico Administrative Code

V. "NMSA" means New Mexico Statutes Annotated

W. "OMB" means office of management and budget

X. "PHA" means public housing authority

Y. "REAC" means real estate assessment center

Z. "REC" means regional education cooperative

AA. "RCC" means regional center cooperative

BB. "RSI" means required supplemental information

CC. "state auditor" means elected official, personnel of his office designated by him or independent auditors designated by him

DD. "SAS" means statement on auditing standards

EE. "SBE" means state board of education

FF. "UFRS" means uniform financial reporting standards

GG. "U.S. GAO" means U.S. general accounting office

[2.2.2.7 NMAC - Rp 2.2.2.7 NMAC, 4-30-03]

2.2.2.8 THE AUDIT CONTRACT:

A. Section 12-6-3, NMSA 1978, (Annual and Special Audits) requires that "the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him. The comprehensive annual financial report for

the state shall be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him. The audits shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor." Section 12-6-14 NMSA 1978 (Contract Audits) states that "the state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however that an agency subject to oversight by the state department of public education or the commission on higher education shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section." The 1999 Public Accountancy Act states in Section 61-28B-13 that "A firm must hold a permit issued pursuant to the provisions of the 1999 Public Accountancy Act (61-28B-1 to 61-28B-29 NMSA 1978) in order to provide attest services." Only certified public accountants (CPAs) holding a current permit to practice issued by the New Mexico public accountancy board (board) and whose firm is registered and in good standing with the board shall audit financial statements. IPAs shall submit a firm profile to the state auditor. Firms are required to notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts only with IPAs who have **submitted a complete and correct** firm profile and who have complied with all the requirements of this Rule including:

(1) Section 2.2.2.14, Continuing Education and Quality Control Requirements;

(2) Section 2.2.2.8 I, Independence Requirements; and

(3) For an IPA who has previously audited agencies under this Rule, they must have complied in the past with:

(a) Section 2.2.2.9, Report Due Dates; and

(b) Section 2.2.2.13, Review of Audit Reports and Working Papers of this Rule.

B. The state auditor shall notify each agency, in writing, whether the audit is to be conducted by the state auditor or an IPA.

C. If the audit is to be conducted by an IPA, the agency shall comply with the following procedures to obtain audit services:

(1) The agency shall identify all elements or services to be solicited upon receipt of notification, and request quotations or proposals for each identifiable element:

(a) financial statement audit;

(b) federal single audit;

(c) financial statement preparation;

(d) GASB 34 and 35 Implementation; and

(e) other (i.e. housing authority, charter school, foundations and other component units).

(2) Audit services costing **no more than \$20,000 (exclusive of gross receipts tax)** should be considered small purchases. The agency is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. A multi-year proposal (not to exceed three years) exceeding \$20,000 for all three years is not considered a small purchase.

(3) For audit services costing **over \$20,000 (exclusive of gross receipts tax)**, the agency shall seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (13-1-1 to 13-1-199 NMSA 1978); New Mexico general services department (GSD) Rule 1.4.1 NMAC, *Procurement Code Regulations*, if applicable; and New Mexico department of finance and administration (DFA) Rule 2.40.2 NMAC, *Governing the Approval of Contracts for the Purchase of Professional Services*. In addition, if the agency intends to allocate a portion of the audit cost to federal funds as direct or indirect charges, the agency should comply with procurement requirements stated in the Federal Office of Management and Budget's, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, (OMB A-102 Common Rule). Institutions of higher education and state and local hospitals should comply with procurement standards stated in OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*.

(4) In accordance with Section 13-1-150 NMSA 1978 (Multi-term Contracts), the agency may, and is strongly encouraged to, request a multi-year propos-

al to provide services, not to exceed a term of **three** years including all extensions and renewals. The term of the contract shall be one-year with the option to extend for two successive one-year terms at the **same price, terms and conditions as stated on the original proposal**. Exercising such option to extend must be by mutual agreement of the parties to the contract and with the approval of the state auditor. In the event that either of the parties to the contract elects not to extend or the state auditor disapproves the recommendation for renewal, the agency shall use the procedure to solicit services pursuant to paragraphs 2 and 3 of Subsection 2.2.2.8.C of this Rule.

(5) The agency shall evaluate all competitive sealed proposals or quotations received pursuant to paragraphs 2 and 3 of Subsection 2.2.2.8.C of this Rule using a two-step evaluation process, preferably executed by a selection committee. Members of component units such as charter schools, housing authorities, etc., should be included in the IPA selection process. Each IPA shall initially be evaluated on the basis of experience and qualifications. After the initial top three selections, the IPAs shall be evaluated on the basis of cost. The agency shall use the evaluation form attached to this Rule as Appendix B.

(6) After completing the evaluations for each IPA, and making the IPA selection, each agency shall submit the information listed below to the state auditor on or before May 31. Agencies that are subject to the oversight of the state department of education (SDE) or the commission of higher education (CHE) have an additional requirement due to the passage of House Bill 219, to submit their IPA recommendation to SDE or CHE for oversight agency approval prior to submitting their IPA recommendation to the state auditor. The sample cover letter in Appendix A can be used to document the required oversight agency approval. The IPA recommendations with required oversight approval, and the additional information listed below must also be submitted to the state auditor, on or before May 31:

(a) A cover letter indicating the name of the firm being recommended, the oversight agency approval signature, and an indication of whether the proposal is "annual" or "multi-year";

(b) The fully completed and signed evaluation form for the IPA being recommended. If you are in year 2 or 3 of a multi-year proposal, submit a copy of part II of the evaluation form from the previous year; and

(c) A listing of professional services contracts the agency has with any IPA on the state auditor's approved list.

(7) If the agency refuses to make

a recommendation by the deadline, the state auditor may conduct the audit.

(8) Per Section 12-6-14 NMSA, "The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit."

(9) The agency shall retain all procurement documentation, including completed evaluation forms, for three years.

(10) In the event the agency's recommendation is not approved by the state auditor, the state auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency will promptly submit its next recommendation. This process will continue until an acceptable choice is approved. During this process, whenever a recommendation is not approved, the agency may petition the state auditor, within 15 days or prior to June 1, (whichever comes first) for reconsideration, wherein the petitioner presents evidence in support of its recommendation. The state auditor will set the time and place for an informal administrative hearing in a timely manner with consideration given the petitioner's circumstances.

D. The state auditor will use **discretion** and may not approve:

(1) Audit contract recommendations that do not serve the best interest of the public or the agency because of one or more of the following:

(a) lack of experience of the IPA;

(b) IPA has conducted the audit of the same agency for six consecutive years. The IPA shall not conduct the agency audit for a two-year period after conducting the agency audit for a period of six consecutive years;

(c) lack of competence or staff availability employed by the IPA;

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

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

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

(g) lack of compliance with the Procurement Code or this Rule; or

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

(2) Audit contract recommendations of any IPA which has:

(a) breached a prior-year contract;

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

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

(d) performed nonaudit services for an agency without prior approval of the state auditor;

(e) **performed nonaudit services under a separate contract for services that may be disallowed by GAGAS independence standards.** (See Section 2.2.2.8.I of this Rule);

(f) **failed to respond, in an acceptable manner, to an audit report or working paper review;**

(g) **indicated a lack of independence in fact or appearance;**

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

(i) has not adhered to external quality control review standards as defined by GAGAS and Section 2.2.2.14.B and C of this Rule; or

(j) otherwise, in the opinion of the state auditor, shown itself to be unfit to be awarded a contract.

(3) Any audit which the state auditor decides to perform himself or with contracted IPAs [consistent with the October 6, 1993 stipulated order Vigil v. King No. SF 92-1487(C)], and pursuant to Section 12-6-3 NMSA 1978 (Annual and Special Audits), even if previously designated an agency for audit by an IPA.

E. The state auditor shall provide audit contract forms which must be used by the agency. **Only** forms provided by the **state auditor** will be accepted and shall:

(1) be completed and returned with the number of required copies **within fifteen (15) calendar days** as stated in the approval letter of IPA selection;

(2) bear original signatures;

(3) have the IPA's combined reporting system (CRS) number verified by the taxation and revenue department (TRD) for all state agencies whose contracts are approved through DFA's contracts office, prior to submission to the state auditor; and

(4) include the amount for each portion of the audit which covers the elements or services as well as the portion of the audit which covers federal funds.

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

G. A breach of any terms of the contract shall be grounds for immediate termination of the contract. **The injured party may seek damages for such breach from the offending party.** IPAs

knowingly making false statements, assurances, or disclosures will be automatically disqualified from conducting audits of agencies in New Mexico.

H. The IPA shall notify the agency and the state auditor, **in writing**, of any changes in staff assigned to perform the audit. The IPA must update the firm profile to reflect the staffing changes. The IPA shall not subcontract any portion of the services to be performed under the audit contract without the **prior written approval** of the state auditor. The IPA may subcontract only with IPAs who have submitted a completed and approved firm profile to the state auditor as required in Section 2.2.2.8.A of this Rule. The audit contract shall specify subcontractor responsibility, who will sign the report(s), and how the subcontractor will be paid.

I. The second general standard (*Government Auditing Standards* issued by the Comptroller General of the United States, 1994 Revision) as amended January 25, 2002 is: "In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, should be **free both in fact and appearance from personal, external, and organizational impairments to independence.**" The amendment describes two overarching principles an audit organization must consider before agreeing to perform nonaudit services in order to avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the auditor is not independent in conducting audits. Audit organizations should not provide nonaudit services that involve performing management functions or making management decisions and they should not audit their own work or provide nonaudit services in situations where the nonaudit services are significant/material to the subject matter of audits.

(1) The GAGAS Amendment No. 3, **Independence**, applies to all New Mexico audits covered by the Audit Act effective for fiscal years ended June 30, 2002, and thereafter.

(2) This standard places responsibility on each auditor and the audit organization to maintain independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The following is substantially an excerpt from the AICPA fact sheet summarizing the key provision of the new GAGAS standards.

(a) The state auditor **will not** approve any contract for nonaudit services to be provided by the same IPA who performs the agency's annual audit for the following services: maintaining or preparing

the audited agency's basic accounting records; taking responsibility for basic financial or other records that the audit organization will audit; posting transactions (whether coded or not coded) to the agency's financial records or to other records that subsequently provide data to the agency's financial records; recommending a single individual for a specific position; conducting an executive search or a recruiting program for the audited agency; and operating or supervising the operation of the agency's information technology system; or preparing indirect cost proposals or cost allocation plans.

(b) Consideration and performance of nonaudit services that do not violate the two overarching principles shall be documented by the audit firm in accordance with the requirements of GAGAS 3.25. See also the GAO Q&A Draft on Amendment No. 3, *Independence*, Question 46, that **requires documentation of the safeguards** when an audit firm prepares the trial balance and financial statements and notes and then also performs the audit.

(c) The state auditor **may** approve a contract for the following nonaudit services to be provided by the same IPA who performs the agency's annual audit in circumstances where the **two overarching principles (above) are not violated and the seven required safeguards are met**. Safeguard (1) requires the IPA to preclude personnel who provided the nonaudit services from planning, conducting, or reviewing audit work related to the nonaudit service. Safeguard (2) precludes the IPA from reducing the scope and extent of the audit work beyond the level that would be appropriate if the nonaudit work was performed by another unrelated party. Safeguard (3) requires the IPA to document its consideration of the nonaudit service, and document its rationale that providing the nonaudit service does not violate the two overarching principles. Safeguard (4) requires the IPA to establish and document an understanding with the audited agency regarding the objectives, scope of work, and product or deliverables of the nonaudit service, before performing the nonaudit services. The IPA should also document an understanding with management that management is responsible for the substantive outcomes of the work. Safeguard (5) requires the IPA's quality control system for compliance with independence requirements to include policies and procedures to assure consideration of the effect on the ongoing, planned, and future audits when deciding whether to provide nonaudit services and a requirement to have the understanding with management of the audited agency documented. The understanding should be communicated to management in writing. Documentation

must specify management's responsibility for the nonaudit service, management's qualifications to conduct the required oversight, and that management's responsibilities were performed. Safeguard (6) requires that in cases where nonaudit services by their nature impair the audit organization's ability to meet either or both of the overarching principles for certain types of audit work, the audit organization should communicate to management of the audited agency, before performing the nonaudit service, that the audit organization would not be able to perform subsequent audit work related to the subject matter of the nonaudit service. Safeguard (7) requires that for audits selected in the peer review, all related nonaudit services should be identified to the audit organization's peer reviewer and the audit documentation made available for peer review.

(i) Basic accounting services that **may** be allowed: (a) Preparing draft financial statements based on management's chart of accounts and trial balance and any adjusting, correcting, and closing entries that have been approved by management; preparing draft notes to the financial statements based on information determined and approved by management; (b) Preparing a trial balance based on management's chart of accounts; (c) Maintaining depreciation schedules for which management has determined the method of depreciation, rate of depreciation, and salvage value of the asset; and/or (d) Proposing adjusting and correcting entries that are identified during the audit so long as management makes the decision on accepting the entries.

(ii) Payroll services that **may** be allowed are: (a) computing pay amounts for the agency's employees based on agency maintained and approved time records, salaries or pay rates, and deductions from pay; (b) generating unsigned payroll checks; and (c) transmitting client approved payroll to a financial institution provided management has approved the transmission and limited the financial institution to make payments only to previously approved individuals.

(iii) Preparing routine tax filings in accordance with federal tax laws and rules and regulations **may** be allowed.

(iv) Human resource services that **may** be allowed to assist management in its evaluation of potential candidates are limited to activities such as: (a) serving on an evaluation panel to review applications; and (b) interviewing candidates to provide input to management in arriving at a listing of best qualified applicants to be provided to management.

(v) Providing informa-

tion technology services **may** be allowed if limited to services such as advising on system design, system installation, and system security if management acknowledges responsibility for the design, installation, and internal control over the agency's system and does not rely on the auditor's work as the primary basis for determining: (a) whether to implement a new system; (b) the adequacy of the new system design; (c) the adequacy of major design changes to an existing system; or (d) the adequacy of the system to comply with regulatory or other requirements.

(vi) Providing appraisal or valuation services **may** be allowed if limited to services such as: (a) reviewing the work of the agency or a specialist employed by the agency where the agency or specialist provides the primary support for the balances recorded in financial statements or other information that will be audited; or (b) valuing an agency's pension, other post-employment benefit, or similar liabilities provided management has determined and taken responsibility for all significant assumptions and data.

(vii) Contracts for gathering and reporting unverified external or third-party data to aid legislative and administrative decision-making **may** be allowed.

(viii) Services advising an agency regarding its performance of internal control self-assessments **may** be allowed.

(ix) Services assisting a legislative body by developing questions for use at a hearing **may** be allowed.

(3) The IPA shall provide a list of all contracts entered into with any governmental agency submitted with the profile to the state auditor. The list should state all financial audit, special audit, or nonaudit services provided or to be provided beginning on January 1, 2000, and thereafter.

(4) In accordance with Section 12-6-12 NMSA the agency and IPA shall not enter into any financial, special audit or any other nonaudit service contract without the **prior written approval** of the state auditor. When submitting nonaudit service contracts to the state auditor for approval, please include the contract fee, start and completion date and scope of services to be performed. The agency and IPA must provide the state auditor with a copy of any report generated.

J. The state auditor will approve progress and final payments as follows:

(1) Section 12-6-14 NMSA 1978 (Contract Audits) provides that state auditor may approve progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request

for partial payment.

(2) Progress payments up to 79% **do not** require state auditor approval, providing the agency certifies receipt of services. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Progress payments from 80% to 90% **do** require state auditor approval after being approved by the agency.

(3) The state auditor may allow only the first 50% of progress payments to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Section 2.2.2.9.A of this Rule.

(4) Section 12-6-14 NMSA 1978 (Contract Audits), provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has stated, in writing, that the audit has been conducted in a competent manner in accordance with contract provisions and this Rule. The state auditor's determination with respect to final payment shall be stated in the letter accompanying the release of the report to the agency, subject to a comprehensive review by the state auditor. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 B, NMSA 1978, and this Rule and will be reported as an audit finding of the agency. Violation of this statute may subject the auditor to removal from the list of approved auditors.

(5) Section 12-6-14 1978 (Contract Audits) also provides that "no payment of public funds may be made to an independent auditor unless a contract is entered into and approved."

K. Financial Statements:

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

(2) **The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records**, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the deadline imposed in Section 2.2.2.9.A of this Rule.

(3) If there are differences between the financial statements and the books, the IPA should provide the adjusting entries to the agency to reconcile the report to the books.

(4) If the IPA prepared the financial statements, in conformance with Section 2.2.2.8.I of this Rule for management's review and approval, including doc-

umenting the safeguards as required by GAGAS 3.25, the fact that the auditor prepared the financial statements must be disclosed in the concluding paragraphs of the audit findings and recommendations section of the audit report. As indicated in the GAO Q&A Draft on *Amendment No. 3*, Question 46, "**Maintaining the audited entity's books and records is the responsibility of its management.**" Accordingly, management is responsible for ensuring that these books and records adequately support the preparation of financial statements in accordance with generally accepted accounting principles and that records are current and in balance."

L. Working Papers:

(1) The working papers are to be retained for a minimum of three years from the date shown on the opinion letter of the audit report, or longer if requested by the federal oversight or cognizant agency or the state auditor. The state auditor shall have access to the working papers at the discretion of the state auditor.

(2) When requested by the state auditor, all working papers or clear legible copies shall be delivered to the state auditor.

(3) The working papers of a predecessor IPA are to be made available to a successor IPA in accordance with SAS No. 84. Any costs incurred will be borne by the requestor. If the successor IPA finds that the predecessor IPA's working papers do not comply with applicable auditing standards and this Rule, or do not support financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies noted are of such significance to deem that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations and this Rule, any of the following actions may be taken:

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

(b) The state auditor may deny the issuance of future audit contracts; and/or

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

M. Auditor Communication: The *Government Auditing Standards: 2002 Revision (Exposure Draft)* Sections 4.6 through 4.13 provide guidance regarding auditor communication requirements in financial audits performed in accordance with GAGAS. GAGAS broadens the parties with whom

auditors must communicate during the planning stages of the audit. Section 4.6 states "Auditors should communicate information regarding the nature of services and level of assurance provided **to not only officials of the audited entity, but also to the individuals contracting for or requesting the audit services, and the audit committee or other equivalent oversight body.**" Auditors should specifically address their planned work related to:

(1) Testing compliance with laws and regulations and internal control over financial reporting;

(2) The nature of any additional testing of compliance and internal control required by laws and regulations or otherwise requested like:

(a) Planned testing of compliance with applicable state and federal laws and regulations shown in Sections 2.2.2 10 H and I of this Rule;

(b) Planned tests of compliance with laws, regulations, and internal control related to Single Audit requirements that exceed the minimum GAGAS requirements (GAGAS 4.12); or

(c) Any agreed upon procedures (for example the HUD requirement for a separate attestation engagement required in 2.2.2.12 B(5)(c)).

(3) The communication should explain whether the auditors are planning on providing opinions on compliance with laws and regulations and internal control over financial reporting. Such tests are not usually sufficient in scope to opine on compliance or internal control over financial reporting, but contribute to the evidence supporting the auditors' opinion on the financial statements.

(4) To fulfill these communication requirements, IPAs shall prepare a **written and dated engagement letter** during the planning stage of a financial audit, addressed to the appropriate officials of the agency which may include (GAGAS 4.8):

(a) The head of the audited entity;

(b) The audit committee or board of directors or equivalent oversight body; and

(c) The individual who possesses a sufficient level of authority and responsibility for the financial reporting process, such as the chief financial officer.

(5) Within 10 days of the entrance conference, the IPA shall submit to the state auditor a copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates, which will facilitate meeting the audit due date in Section 2.2.2.9.A of this Rule.

N. Amendment of any of the contract provisions will be made upon forms used in the normal course of business by the agency. **Delivery dates are not sub-**

ject to amendment. Work performed beyond the originally proposed work, such as preparation of financial statements, for management's review and approval, supporting schedules or special procedures, shall be allowed only in compliance with the auditor independence requirements of Section 2.2.2.8 I of this Rule and will be negotiated and compensated only upon amendment of the original contract. **All amendments must be approved by the state auditor.** The audit engagement letter shall not be interpreted as amending the contract. No fee contingencies will be included in the engagement letter. The original contract and the amendments approved by the state auditor constitute the entire agreement. Any amendments to the contract must be in compliance with the New Mexico Procurement Code, Sections 13-1-1 to 13-1-199, NMSA 1978.

O. The state auditor may terminate an audit to be performed by an IPA after determining that the audit has been unduly delayed or for any other reason and perform the audit entirely or partially with IPAs contracted by him [consistent with the October 6, 1993, stipulated order *Vigil v. King* No. SF 92-1487(C)]. The notice of termination of the contract will be in writing. [2.2.2.8 NMAC - Rp 2.2.2.8 NMAC, 4-30-03]

2.2.2.9 REPORT DUE DATES:

A. Annual audit reports are to be received by the state auditor on or before the date specified in the audit contract. If a due date falls on a weekend or holiday, the audit report is due the following workday. If the report is mailed to the state auditor, it should be post marked no later than the due date to be considered filed timely. **The state auditor will grant no extensions of time to deliver the audit reports.** If a copy of the dated signed engagement letter has not been submitted to the state auditor, the audit report will not be accepted. **If an agency's financial records are incomplete or require significant adjustment at the time the audit report is due, the IPA shall issue the audit report with the appropriate opinion rendered, no later than the due date specified by this Rule.** The IPA is not to allow the agency additional time to complete its accounting functions when such an allowance will cause the audit to be late. The IPA or agency may consult the state auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the IPA to go beyond the scope of auditing standards generally accepted in the United States of

America, or the audit report due date, to assure an unqualified opinion.

(1) The audit report due dates are as follows:

(a) Regional center cooperatives, regional education cooperatives, cooperative educational services and independent housing authorities **September 30;**

(b) hospitals **October 15;**

(c) school districts, counties, and higher education **November 15;**

(d) municipalities, special districts, and local workForce investment boards **December 1;**

(e) councils of governments **December 15;**

(f) state agency reports are due no later than **60 days** after the department of finance administration financial control division provides the state auditor with notice to the effect that the agency's books and records are ready and available for audit (Section 12-6-3 C NMSA as amended by House Bill 219);

(g) Agencies with a fiscal year-end other than June 30 must submit the audit report **5 months after the fiscal year-end;** and

(h) Separate audit reports (if applicable) for component units (i.e. housing authorities, charter schools, hospitals, foundations etc.) that are a department or component unit of another governmental agency are due the **same date the primary government's audit report is due.**

(2) Audit reports for agencies submitting auditor recommendations after the due dates specified above, will be due 30 days after the auditor recommendation has been approved by the state auditor.

(3) If an audit report is not received on or before the due date by the state auditor, the report is late and not in compliance with the requirements of Section 2.2.2.9.A of this Rule. A current-year audit finding regarding this instance of noncompliance must be included in the audit report.

B. As in any contract, both parties can and are encouraged to negotiate a delivery date prior to the regulated due date specified in Section 2.2.2.9.A of this Rule. No delivery date, however, may exceed the regulated due date specified in Section 2.2.2.9.A of this Rule.

C. **All audit reports must be paginated.** The IPA shall deliver to the state auditor one of the following: a hard-copy version of the report; an e-mail draft copy; or the finalized audit report with the required number of copies indicated in the audit contract on or before the delivery due date. Along with the audit report the IPA should submit to the state auditor copies of the "passed audit adjustments" referred to in Section 2.2.2.10 K (2). If a hardcopy or an

e-mail copy is submitted, once the state auditor has accepted it, the required number of hardcopies must be received by the state auditor **before** the release of the audit report. The IPA shall deliver to the agency, the number of copies of the audit report indicated in the audit contract **only** after the state auditor has officially released the audit report. Release of the audit report to the agency prior to it being officially released by the state auditor will result in an audit finding. Every member of the agency's governing authority shall receive a copy of the audit report.

D. The agency and IPA may agree to a contract provision that unjustified failure to meet delivery requirements by either party to the contract may result in liability for a specified amount of liquidated damages from the offending party.

E. IPAs are encouraged to deliver completed audit reports before the due date to facilitate the review process performed by the state auditor. [2.2.2.9 NMAC - Rp 2.2.2.9 NMAC, 4-30-03]

2.2.2.10 GENERAL CRITERIA:

A. Audit Scope:

(1) The audit shall cover the whole reporting agency, the primary government and any component units of the governmental agency.

(a) All entities for which the primary government is financially accountable (GASB 14 paragraph 10) must be included within the financial statements of the primary government. The primary government and/or its auditors must determine whether an operation is a component unit of the primary government, as defined by GASB Statement No. 14. The flowchart at GASB 14 paragraph 132 is helpful. All agencies for which the primary government is financially accountable **must be included in the financial reports of the primary government by discrete presentation unless otherwise approved by the state auditor.** Exceptions may occur when an agency requires presentation other than discrete. An exemption must be requested by the agency, in writing, from the state auditor in order to present a component unit as other than a discrete component unit. The request for exemption must include evidence supporting the request. The approval of the state auditor for the exemption is required prior to issuing the report. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government (GASB 14 paragraphs 44-50).

(b) If a primary government has

no component units that fact should be disclosed in the Summary of Significant Accounting Policies description of the reporting entity.

(c) **The state auditor requires the component unit(s) to be audited by the same auditor who audits the primary government.** Requests for exemption from this requirement must be submitted **by the agency** to the state auditor in writing. If the request to use a different auditor for the component unit is approved, the following requirements must be met:

(i) The primary auditor must agree to use the information from the work of the component unit auditor;

(ii) The component unit auditor selected must appear on the office of the state auditor list of eligible independent public accountants;

(iii) The bid and auditor selection processes must comply with the requirements of this Rule;

(iv) The office of the state auditor standard contract form must be used;

(v) All component unit findings must be disclosed in the primary government's audit report; and

(vi) The separately issued component unit audit report must be submitted to the state auditor for the review process described in Section 2.2.2 13 of this Rule.

(d) The level of planning materiality required by the state auditor **for component units** is at the **individual fund level**.

(e) Supplemental Information (SI) included in the scope of the audit and therefore the auditor opinion (as allowed by SAS 98) are:

(i) Combining financial statements for discretely presented component units for agencies that have not implemented GASB 34. Presentation of the underlying fund types of the individual component units is required when separately issued financial statements of the component units are not available (GASB 14 paragraph 50);

(ii) Component unit fund financial statements and related combining statements for agencies that have implemented GASB 34, if separately issued financial statements of the component units are not available (AAG-SLV 3.20); and

(iii) Individual fund budget comparison schedules if separately issued financial statements are not available, for both agencies that have and have not implemented GASB 34, when a legally adopted budget exists for a fund.

(2) Audits of state and local governmental agencies shall be comprised of a financial and compliance audit of the state-

ments and schedules shown in (a) or (b) below:

(a) For agencies that have not implemented GASB Statement No. 34, the scope of the audit includes the general purpose financial statements, **the combining financial statements by fund type**, and the individual fund and account group financial statements. The level of planning materiality required by the state auditor is at the **individual fund level**. The state auditor requires that the budget comparison statements be audited and be included as part of the basic financial statements.

(b) For agencies that have implemented GASB Statement 34, the level of planning materiality required by the office of the state auditor is at the **individual fund level**. The state auditor requires that the budget comparison statements be audited and be included as part of the basic financial statements whenever possible and consistent with GASB 34 footnote 53 and AAG-SLV 11.13. The scope of the audit includes the following statements and schedules which the auditor is required to audit and give an opinion on:

(c) The basic financial statements consisting of:

(i) the government-wide financial statements;

(ii) fund financial statements;

(iii) budget comparison statements (for **only** the general fund and major special revenue funds when the budget information is available on the same fund structure basis as the GAAP fund structure); and

(iv) notes to the financial statements; **plus**

(d) The auditor must audit the following required supplemental information, if applicable, and include it in the auditor's opinion (AAG-SLV 14.51). RSI budgetary comparison schedules for the general fund and major special revenue fund data presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds (*Proposed Statement of GASB Budgetary Comparison Schedules-Perspective Differences an amendment of GASB Statement No. 34*).

(e) The auditor must audit the following supplemental information if applicable and include it in the auditor's opinion:

(i) component unit fund financial statements and related combining statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.20);

(ii) combining financial statements; and

(iii) individual fund

budget comparison statements for remaining funds that have a legally adopted budget (**including major funds other than general fund and special revenue funds, non-major governmental funds, and proprietary funds**) that did not appear as basic financial statement budget comparisons for the general fund or major special revenue funds, or as RSI as described above.

(f) The auditor should apply certain limited procedures to the following required supplemental information (RSI) (if applicable) and report deficiencies in or the omission of required information in accordance with the requirements of SAS AU 558.06.

(i) the management discussion and analysis (MD&A);

(ii) RSI data required by GASB Statements 25 and 27 regarding pension plans and postemployment health-care plans administered by defined benefit pension plans; and

(iii) schedules derived from asset management systems (GASB 34 paragraphs 132 to 133).

B. House Joint Memorial 24 (Pertaining to GASB Statements 34 and 35) of the Forty-Fifth Legislature - First Session 2001:

(1) "Whereas, the governmental accounting and standards board has adopted Statements 34 and 35, which effectively change governmental accounting for all governmental agencies in New Mexico; and

(2) Whereas Statements 34 and 35 change the format and contents of government financial statements and also include a government's infrastructure that may now be depreciated; and

(3) Whereas, the American Institute of Certified Public Accountants will be forthcoming with an audit guideline that will compel certified public accountants to render an adverse opinion on an audit of the financial statements of an agency that does not fully implement Statements 34 and 35 within established staggered timelines; and

(4) Whereas, the federal government uses the audits of government agencies as one of several criteria to evaluate fund proposals submitted by government agencies; and

(5) Whereas, investment firms, banks and other investors use audits of government agencies to assess a bond rating and interest and ultimately to decide whether to invest in state, county, municipal or other governmental indebtedness, and

(6) NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that all state agencies, state oversight agencies, school districts, colleges and universities and any other agencies that receive govern-

mental funds take action to institute the Governmental Accounting Standards Board Statement 34 and 35 to ensure timely and accurate implementation; and

(7) BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the state auditor for distribution to all government agencies."

C. Legislation regarding budget adjustment requests (BARs) prevents or restricts many budget transfers or increases. The IPA shall satisfy himself that these restrictions are not being violated by direct payment or other unauthorized transfers.

D. Legislation can designate a fund as reverting or non-reverting. The IPA must review the law which appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation must be reverted, and to whom. The law will also indicate the deadline for the required reversion. Appropriate audit procedures must be performed to determine compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes should fully disclose the reverting versus non-reverting nature of an appropriation. The financial statements must disclose the specific legislation that makes a fund or appropriation non-reverting. If non-reverting appropriations are commingled with reverting appropriations, the notes to the financial statements must disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions see Section 2.2.2.12 A of this Rule.

E. Governmental Auditing, Accounting and Financial Reporting Standards: The audits shall be conducted in accordance with:

(1) Generally Accepted **Government Auditing Standards** (GAGAS) issued by the U.S. general accounting office, latest edition and amendments;

(2) **Codification of Statements on Auditing Standards** (SAS) issued by the AICPA, latest edition (see Appendix D);

(3) **OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations**;

(4) SOP 98-3, **Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards**, latest edition;

(5) AICPA Audit and Accounting Guide, **Audits of State and Local Governmental Units** (ASLGU), latest edition;

(6) AICPA Audit and Accounting Guide, **Audits of Health Care Organizations**, latest edition;

(7) AICPA Audit and Accounting Guide, **Audits of Colleges and Universities**, latest edition;

(8) AICPA Audit and Accounting Guide, **Audits of Employee Benefit Plans**, latest edition; and

(9) 2.2.2 NMAC, **Requirements for Contracting and Conducting Audits of Agencies**, latest edition.

F. The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the **Codification of Governmental Accounting and Financial Reporting Standard (GASB)**, latest edition (see Appendix C). Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB and other applicable pronouncements issued by financial accounting standards board (FASB).

G. IPAs who perform government audits are expected to maintain professional libraries with current editions of the above publications. The audit guides published by Practitioners Publishing Company (PPC) are practice aides only and are not considered to be authoritative.

H. State Compliance: An IPA shall identify significant state statutes and rules and regulations applicable to the governmental agency under audit and perform tests of compliance. In addition to those significant state statutes, rules and regulations identified by the IPA, the following state statutes and constitutional provisions will be tested:

(1) Procurement Code (13-1-1 to 13-1-199 NMSA 1978);

(2) Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978);

(3) Personnel Act (10-9-1 to 10-9-25 NMSA 1978);

(4) Public Money Act (6-10-1 to 6-10-63 NMSA 1978);

(5) Public School Finance (22-8-1 to 22-8-42 NMSA 1978);

(6) Investment of Public Money (6-8-1 to 6-8-21 NMSA 1978);

(7) Public Employees Retirement Act (10-11-1 to 10-11-38 NMSA 1978);

(8) Educational Retirement Act (22-11-1 to 22-11-45 NMSA 1978);

(9) Sale of Public Property (13-6-1 to 13-6-4 NMSA 1978);

(10) Anti-Donation Clause (NM Constitution Article IX, Section 14);

(11) Special, Deficiency, and Specific Appropriations (appropriation laws applicable for the year under audit);

(12) Budget Compliance (6-3-1 to 6-3-25 NMSA 1978);

(13) Lease Purchase Agreements; (6-6-11 to 6-6-12, Montano v. Gabaldon,

108 NM 94, 766 P.2d 1328, 1989);

(14) 1 NMAC 1.2.1, Accounting and Control of Fixed Assets of State Government; (updated for GASB 34 if applicable);

(15) 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies; and

(16) Article IX of the State Constitution limits on indebtedness.

(17) Governmental Conduct Act (10-16-1 to 10-16-18 NMSA 1978);

(18) Records, Legal Notices and Other Obsolete County Records (14-1-8 NMSA 1978); and

(19) FY03 appropriations cannot be used to pay credit card invoices (except for gasoline credit cards used solely for operation of official vehicles and telephone credit cards used solely for official business) per Laws of 2002 (Ex. Sess.), Chapter 4, Section 3, Subsection K. DFA, FCD recommended that all agencies that have credit cards issued by oil companies replace them with Wright Express fuel cards from GSD and that agencies holding house credit cards from vendors use instead the state's procurement card available through the office of the state controller. Use is allowed of procurement cards designed and implemented by DFA financial control division, per House Bill 219 amendment to Section 6-5-10, NMSA 1978.

I. Federal Compliance:

(1) The following government pronouncements establish requirements and give guidance for "Yellow Book" and/or Single Audit.

(a) **Single Audit Amendments of 1996**; (Public Law 104-156);

(b) **Generally Accepted Government Auditing Standards** (GAGAS) issued by the U.S. General Accounting Office, latest edition and amendments;

(c) OMB Circular A-21, **Cost Principles for Educational Institutions**, latest edition;

(d) OMB Circular A-87, **Cost Principles for State, Local, and Indian Tribal Governments**, latest edition;

(e) OMB Circular A-102, **Grants and Cooperative Agreements with State and Local Governments**, latest edition;

(f) OMB Circular A-110, **Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations**, latest edition;

(g) OMB Circular A-133, **Audits of States, Local Governments and Non-Profit Organizations**, latest edition;

(h) OMB Circular A-133 **Compliance Supplement**, latest edition; and

(i) OMB **Catalog of Federal Domestic Assistance** (CFDA), latest edition;

(2) IRS Employee Income Tax Compliance Issues - Noncompliance with these IRS requirements requires a current year audit finding.

(a) Employee fringe benefits are presumed by the IRS to be income to the employee unless they are specifically excluded from income by the tax code. Any employee fringe benefits not excluded from income by the tax code must be reported on the employee's W-2. Examples of such fringe benefits could be: meal allowances paid to employees for meals away from home when overnight travel is not involved; discounted housing like school district teacherages, dues for membership in clubs organized for business, pleasure, recreation, or other social purpose (except Rotary & Kiwanis Club); cash and non-cash awards. Personal use of a government agency vehicle is always taxable income to the employee unless the vehicle is a qualified non-personal use vehicle [Rev. 1.274-5T(k)(3)] provided to the employee as a "working condition fringe benefit."

(i) Examples of qualified non-personal use vehicles are: clearly marked police & fire vehicles; unmarked law enforcement vehicles (officer must be authorized to carry a firearm and has arrest authority); ambulance or hearse; vehicle with gross weight over 14,000 lbs.; 20 passenger bus and school bus; tractor and other farm equipment; and delivery truck with driver seating only.

(ii) The value of commuting and other personal use of a "non-qualified vehicle" must be included on the employee's W-2. There are three rules the IRS allows to be used for valuing personal use of an employer's vehicle: automobile lease valuation rule; cents-per-mile rule; and the commuting rule (\$3 per day). For more detailed information regarding valuation of personal use of vehicles see IRS Pub. 15-B, Reb 1.61-21(d), (e), and (f).

(b) Personal service contractors (1099 employees) who are retired employees of the governmental agency they work for must be able to meet the IRS tests to qualify as contract labor. In the event a personal services contractor is in substance an employee, the governmental agency could be liable for the employee's share of FICA and employer FICA match on the contract payments. Public employees retirement association (PERA) could expect excess retirement payments back. (Section 10-11-8(C) NMSA 1978)

(c) For more information regarding these and other IRS issues please contact the federal, state and local government specialist with the IRS in Albuquerque, NM, at 505-837-5541.

J. Audit Findings:

(1) Section 12-6-5 NMSA 1978

(Reports of Audits) states each report shall set out in detail, in a separate section, **any violation of law or good accounting practices** found by the audit or examination. Therefore, all findings should be included in the annual audit report. **"There is no level of materiality in government auditing and all violations must be disclosed because "public monies" are involved."**

(2) The second planning standard for financial audits per *Generally Accepted Government Auditing Standards* (GAGAS), issued by the U.S. general accounting office (Section 4.14-4.15), requires the auditor to follow up on known material findings and recommendations from previous audits. This includes findings reported in financial, special and internal audits. In addition to this standard, the IPA will report the status of **all** prior-year findings by reference number (i.e. 01-1, 01-2, 02-1, 02-2) and descriptive title in the audit report as being resolved or repeated in the current-year.

(3) Current-Year:

(a) All current-year audit findings shall have a reference number and a short title that identifies the finding (i.e. 03-1, 03-2, 03-3).

(b) A memorandum on potential audit findings should be prepared and submitted to agency management as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. Findings are not subject to negotiation and should comply with good accounting practices. If applicable, the agency should also prepare a corrective action plan. **The agency shall respond, in writing, to the IPAs memorandum of findings within 10 workdays. Responses to the audit findings should be included in the audit report. Lack of agency responses within the 10 days does not warrant delay of the audit. If the responses are not received, indicate that they were not received and the reason why after each finding.**

(c) each audit finding (including unresolved prior-year findings) shall specifically state and describe the following:

(i) condition (quantify where possible-number of instances, dollar amounts, etc.);

(ii) criteria (which must include specific reference to the law, regulation, or other guidance that was violated);

(iii) effect;

(iv) cause;

(v) recommendation;

and

(vi) agency response (i.e., agency comments and a specific corrective action plan).

(4) Failure to file the audit report by the due date set in Section 2.2.2.9 of this

Rule is considered noncompliance with this Rule and shall be a current-year finding.

(5) If an agency has entered into any professional services contract with an IPA without written state auditor approval, this should be reported as a finding of non-compliance with Section of 2.2.2.8.I of this Rule.

(6) Component unit findings must be included in the primary government financial audit report.

(7) A release of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation of state statute and will require an additional finding in the audit report.

K. Exit Conference and Related Confidentiality Issues:

(1) The IPA must hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component unit's (housing authorities, charter schools, hospitals, foundations, etc.) if applicable. If component unit representatives cannot attend the combined exit conference a separate exit conference must be held with the component unit's governing authority and top management. The date of the conference(s) and the names and titles of personnel attending must be stated in a concluding paragraph of the audit findings and recommendations section of the audit report.

(2) The IPA shall deliver to the agency a draft audit report (stamped "Draft"), a **list of the "passed audit adjustments"**, and a copy of all of the adjusting entries at the exit conference. The draft audit report shall include the independent auditor's report, a complete set of financial statements, notes to the financial statements, audit findings that include response from agency management, status of prior-year audit findings, and the reports on compliance and internal control required by government auditing standards and the Single Audit Act. Section 2.2.2.10.BB of this Rule and SAS 89 *Audit Adjustments* provides an explanation regarding the list of "passed audit adjustments." The agency will have at least ten (10) workdays to review the draft audit report and report to the IPA any issues that need to be resolved prior to submitting the report to the state auditor. The audit report shall be delivered to the state auditor **with a copy of "passed audit adjustments"** attached, on or before the due date specified in Section 2.2.2.9.A of this Rule.

(3) The audit process will not have been completed at the time of the exit conference. **Neither the IPA nor agency personnel shall release any information to the public relating to the audit at the time of the exit conference or at any other**

time until the audit report becomes public record. Agencies subject to the Open Meetings Act (Act) who wish to have a quorum of the governing board present at the exit conference will have to schedule the exit conference during a closed meeting in compliance with the Act in order to avoid disclosing audit information that is not yet public record, in a public meeting.

(a) Pursuant to the Open Meetings Act (10-15-1 to 10-15-4 NMSA 1978), any closed meetings shall be held only after reasonable notice to the public.

(b) Section 12-6-5 NMSA 1978 (Reports of Audits) provides that an audit report does not become a public record, subject to public inspection, until ten days after it is released by the state auditor to the agency audited.

(c) The Attorney General's *Open Meetings Act Compliance Guide* states that the agency being audited is governed by a public body subject to the Open Meetings Act and where discussion of the report occurs at an exit conference at which a quorum of the members of that body is present, such an exit conference **shall not** be open to the public in order to preserve the confidentiality of the information protected by Section 12-6-5 NMSA 1978.

(d) Once the finalized version of the audit report is officially released to the agency by the state auditor (by an authorizing letter) and the required ten day waiting period has passed, the audit report **shall** be presented to a quorum of the governing authority of the agency for approval at a public meeting.

L. Possible Violations of Criminal Statutes in Connection With Financial Affairs:

(1) The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement whether caused by error or fraud (SAS AU Sec. 110.02). SAS 82, *Consideration of Fraud in a Financial Statement Audit*, (which superseded SAS 53, *The Auditor's Responsibility to Detect and Report Errors and Irregularities*), provides guidance to the auditor in fulfilling this responsibility as it relates to fraud. GAGAS 4.18 explains that "under GAGAS, the term noncompliance...has a broader meaning than fraud and illegal acts. Noncompliance includes not only fraud and illegal acts, but also violations of contracts or grant agreements." SAS 99, *Consideration of Fraud in a Financial Statement Audit*, will become effective for fiscal periods beginning on or after December 15, 2002 (FY04).

(2) Every agency and IPA, pursuant to Section 12-6-6 NMSA 1978 (Criminal Violations), shall notify the state

auditor immediately, in writing, upon discovery of any possible criminal statute violation in connection with its financial affairs. The notification shall include an estimate of the dollar amount involved, and a complete description of the violation, including names of persons involved and any action taken or planned. The state auditor will determine whether a special audit is warranted based upon the **written** information provided. If warranted, the state auditor will conduct the special audit. The IPA shall not enter into **any financial or special** audit contract unless selected through a process consistent with the procurement code and subject to the **prior written approval** of the state auditor. A copy of the report shall be provided to the state auditor.

(3) The state auditor shall immediately report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

M. C o m p e n s a t e d Absences:

(1) Vacation pay and other compensated absences should be computed in accordance with the requirements of GASB Statement No. 16, *Accounting for Compensated Absences*, and be reported in the financial statements. The notes to the financial statements should disclose the accounting treatment applied to compensated absences.

(2) If GASB 34 has been implemented by the agency, the statement of net assets, governmental activities column should report both the current and long-term portions of the compensated absence liability because the government-wide financial statements report all liabilities.

N. Special Revenue Funds Authority: The authority for creation of special revenue funds must be shown in the audit report (i.e., cite the statute number, executive order, resolution number, or other specific authority) in the divider page or notes to the financial statements.

O. Public Monies:

(1) Pledged Collateral by Banks:

(a) All audit reports should disclose the collateral requirements in the notes to the financial statements. In addition, there should be a **supplementary schedule** to the financial statements that discloses the collateral pledged by each bank and savings and loan association (S&L) that is a depository for public funds. The schedule should disclose the type of security (i.e. bond, note, treasury, bill, etc), security number, CUSIP number, **fair market value** and maturity date. The schedule should also disclose the name of the custodian and the place of safekeeping for all collateral. If the bank balances of deposits as of the balance sheet date are entirely insured

or collateralized with securities held by the agency or by its agent **in the agency's name**, that fact should be stated. If not, disclosures should be made in accordance with GASB Statements No. 3 and 31.

(b) If the pledged collateral in an aggregate amount is not equal to one half of the amount of public money in each account (Section 6-10-17 NMSA 1978), there should be a finding in the audit report. No security is required for the deposit of public money that is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Shares Insurance Fund (NCUSIF) according to Section 6-10-16 NMSA 1978. The **supplementary schedule** of collateral requirements should be calculated separately for each bank and disclosed in the report as follows:

- (i) Total amount of deposit in bank or credit union \$300,000
 - (ii) Less: FDIC or NCUSIF coverage* 100,000
 - (iii) Total uninsured public funds 200,000
 - (iv) 50% collateral requirement
- (Section 6-10-17 NMSA 1978) 100,000
- (v) Pledged Security 100,000
 - (vi) Over (Under)

\$ 0

[*The FDIC issued an advisory opinion (FDIC 94-24) on June 13, 1994, stating that public funds are entitled to \$100,000 insurance for time or savings deposits **and** \$100,000 for demand deposits deposited within the state in compliance with 12 CFR Subsection 330.14(b)]

(c) Repurchase agreements must be covered by 102% of pledged collateral (Section 6-10-10 H, NMSA 1978) and must be disclosed in the supplemental schedule of pledged collateral.

(d) Applicable Statutes: Agencies who deposit and invest public monies are subject to provisions of the following sections:

- (i) Chapter 6, Article 10, Public Money, NMSA 1978; and
- (ii) Chapter 22, Article 8, Public School Finance, NMSA 1978.

(e) There should be compliance testing for all local public bodies subject to the above sections. If the agency is not complying with the statutes, there should be a finding in the audit report.

(f) All monies coming into all agencies, i.e., vending machines, fees for xerox copies, telephone charges, etc., shall be considered public monies and be accounted for.

(g) The state treasurer's office monitors the collateralization of the bank accounts of most state agencies. If the col-

lateralization of a state agency's bank accounts is monitored by the state treasurer's office, the IPA shall include a note stating that the accounts are monitored by the state treasurer's office and that the state treasurer issues separate financial statements which disclose the collateral pledged to secure these deposits. If the collateralization of a state agency's bank accounts is not monitored by the state treasurer's office, then the IPA needs to confirm the collateral held by the bank in much the same manner as would be done in the audit of a local government or school district.

(2) List of individual deposit accounts and Investments: Each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union);

(b) account name;

(c) type of account (checking, savings, investment);

(d) bank balance of deposits and investments as of the balance sheet date; and

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

(3) Repurchase Agreements: Section 6-10-10 NMSA 1978 (Deposit and Investment of Funds) was amended effective July 1, 1994, allowing certain agencies to invest in repurchase agreements with certain stipulations and prerequisites.

(4) Cities, counties, and other non-state agencies that have investments in the state treasurer external investment pool (the local government investment pool) must include the following disclosures in the notes to their financial statements (GASB Statement No. 31 paragraph 15):

(a) The investments are valued at fair value based on quoted market prices as of the valuation date;

(b) The state treasurer local government investment pool is not SEC registered. Section 6-10-10 I, NMSA 1978, empowers the state treasurer, with the advice and consent of the state board of finance, to invest money held in the short-term investment fund in securities that are issued by the United States government or by its departments or agencies and are either direct obligations of the United States or are backed by the full faith and credit of the United States government or are agencies sponsored by the United States government. The local government investment pool investments are monitored by the same investment committee and the same policies and procedures that apply to all other state investments;

(c) The pool does not have unit

shares. Per Section 6-10-10.1F, NMSA 1978, at the end of each month all interest earned is distributed by the state treasurer to the contributing entities in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the fund amounts were invested; and

(d) Participation in the local government investment pool is voluntary.

P. Budgetary Presentation:

(1) The statements of revenues and expenditures budget and actual and budgetary comparison schedules shall include the amount of **prior-year cash balance required to balance the budget**.

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures should be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation should be included in the notes to the financial statements. If the required budgetary comparison is presented as RSI (for reasons described below) the reconciliation should appear in either a separate schedule or in notes to RSI according to the AICPA Audit and Accounting Guide *Audits of State and Local Governments GASB 34 Edition*, (AAG-SLV 11.14).

(3) For agencies that have not implemented GASB 34 there is no change from the previous requirements of the NCGAS 1 paragraph 139 for the placement of the combined statement of revenues, expenditures, and changes in fund balances-budget and actual-general and special revenue fund types (and similar governmental fund types for which annual budgets have been legally adopted). The state auditor still requires individual fund budget comparison schedules following the combining statements. All such budget statements and schedules must be audited and included in the auditor opinion.

(4) For agencies that have implemented GASB 34 all budget comparison statements and schedules must show the original and final appropriated budget, the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a) The basic financial statements must include budget comparison statements for **only** the general fund and major special revenue funds if the budget structure for those funds is similar enough to the GAAP fund structure to provide the necessary information.

(b) Required supplemental information section is the place where the budget comparison schedules should appear for the general fund and major special revenue funds if the agency budget structure differs from the GAAP fund structure enough that

the budget information is unavailable for only those specific funds. An example of this "perspective difference" would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budget comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budget comparison data. See the proposed statement of the GASB budgetary comparison schedules-perspective differences an amendment of GASB Statement No. 34 paragraphs 3 and 10. When budget comparisons have to be presented as required supplemental information (RSI) due to such perspective differences it is a requirement of the state auditor that they be audited and included in the auditor's opinion. See AAG-SLV 14.51 and Appendix A, Example 14A.12 in the AICPA, *Audit and Accounting Guide, GASB 34 Edition*.

(c) Supplemental information (SI) is the place where all other budget comparison information should appear for any other funds (major funds other than general fund and special revenue funds, nonmajor governmental funds, and proprietary funds) that have a legally adopted budget. It is a requirement of the state auditor that budget comparison statements presented in the basic financial statements or as required supplemental information (RSI) or supplemental information (SI) be audited and included in the auditor's opinion. For an example of an opinion that includes SI and/or RSI see Example 14A.12 in the AICPA, *Audit and Accounting Guide, GASB 34 Edition*.

Q. Appropriations to Agencies: The budget comparison presented in the financial statements must be at least at the same appropriation level as the approved budget to demonstrate compliance with legal requirements. See 2.2.2.12.A.(6) of this Rule for the list of the old and new budget categories. If actual expenditures exceed budgeted expenditures within a category it must be reported in a finding. If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables, required to balance the budget) that fact must also be reported in a finding. Revenue categories of appropriations to state agencies are listed below. The budget comparison statements must be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the appropriation, either the old or new categories shown on Section 2.2.2.12.A.(6) of this Rule.

(1) state general fund;

(2) other state funds;

(3) internal service funds/inter-agency transfers; or

(4) federal funds.

R. Deferred Compensation

Plans:

(1) GASB Statement No. 32, *Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*, was issued to reflect a change in the legal status of Internal Revenue Code (IRC) Section 457. The provisions of IRC Sections 457 deferred compensation plans were amended to state that a plan shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan are held in trust for the exclusive benefit of participants and their beneficiaries. Previously, the amounts deferred under an IRC Section 457 plan were legally the property of the sponsoring employer government. Under these requirements, the government no longer owns the amounts deferred by employees or related income on those amounts.

(2) The change in the law requires existing plans to establish a trust to hold IRC Section 457 plan assets by January 1, 1999. Sponsor governments must adopt the provisions of GASB Statement No. 32 for periods beginning after December 31, 1998, or in the period the government complies with the law change, if earlier. A government is considered to hold plan assets in a fiduciary capacity only if it (1) has significant administrative responsibility for the plan or (2) performs the investment function for the plan.

(3) Agencies that implement GASB 34 should be aware that GASB 32 has been amended by GASB 34. See GASB 34 paragraphs 69 through 72 and examples E-1 and E-2 for guidance on reporting fiduciary funds.

(4) GASB Statement No. 32 does not require specific note disclosures.

S. Consideration of the Internal Control and Risk Assessment in a Financial Statement Audit:

(1) SAS No. 55, *Consideration of Internal Control in a Financial Statement Audit*, and SAS No. 78, *Consideration of Internal Control in a Financial Statement Audit*, an Amendment to SAS No. 55, SAS No. 94, *The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit and Governmental Auditing Standards*, Section 4.28 to 4.36, provide guidance to IPAs related to consideration of internal control as part of an audit. SAS No. 78 replaced the SAS No. 55 definition and description of internal control with the definition and description from *Internal Control-Integrated Framework*, published by the committee on sponsoring organizations of

the treadway commission (the COSO Report). SAS No. 78 describes internal control as consisting of five interrelated components: control environment; risk assessment; control activities; information and communication; and monitoring. SAS No. 94, *The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit* amended SAS No. 55 further. "Information technology (IT) encompasses automated means of originating, processing, storing, and communicating information, and includes recording data devices, communication systems, computer systems (including hardware and software components and data), and other electronic devices. An entity's use of IT may be extensive; however, the auditor is primarily interested in the entity's use of IT to initiate, record, process, and report transactions or other financial data. ... Controls in systems that use IT consist of a combination of automated controls (for example, controls embedded in computer programs) and manual controls." In obtaining an understanding of the internal controls of an entity that uses IT, "the auditor considers how an entity's use of IT and manual procedures may affect controls relevant to the audit. The auditor then assesses control risk for the assertions embodied in the account balance, transaction class, and disclosure components of the financial statements." The proposed SAS, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement (Assessing Risks)*, which will become effective for audits of fiscal year ended June 30, 2005, will require the auditor to obtain an understanding of the industry, regulatory, and other external factors, the nature of the entity, etc. GAGAS section [3.12(b)] already requires the audit organization as a whole to possess "knowledge of the specific environment in which the audited entity operates and the subject matter under review." The GAGAS standards require that auditors use their understanding of internal control relevant to financial statement assertions affected by laws and regulations and contract and grant provisions (GAGAS 4.35) to identify types of potential misstatements, consider factors that affect the risk of material misstatement, and design substantive tests.

(2) All financial audits performed under this Rule are **required to include tests of internal controls** (manual and/or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. Inquiry alone is not sufficient testing of internal controls. The requirement to test internal controls applies even in circumstances when the auditor has

assessed control risk at maximum. **This is a special requirement of the state auditor.**

(3) The IPA is required to document the understanding of internal control (SAS 94 paragraph 61), risk assessment (SAS 94 paragraph 83) and test of controls (SAS No. 96) in the working papers of the financial audit.

T. Lease Purchase Agreements:

(1) The New Mexico Supreme Court has held that it is unconstitutional for agencies to enter into lease purchase agreements after January 9, 1989, unless special revenue funds are the designated source of payments for the agreement. (Any agreements executed prior to that date may not be extended or amended without compliance with the guidelines of **Montano v. Gabaldon**, 108 N.M. 94, 766 P.2d 1328).

(a) The attorney general interpreted **Montano** to mean that long-term contracts for professional services, leases, and real property rental agreements may still be entered into within the constraints of the Bateman Act and the Procurement Code. However, **any** agreement which is in effect for more than one fiscal year, including leases of real property, must have a provision allowing the agency to terminate the agreement at will at anytime, or at least at the end of each fiscal year, without penalty. Furthermore, the agency must have no "equitable or moral" duty to continue to make payments under the contract. The agreements must also contain a non-appropriation clause allowing for termination of the agreement in the event the agency decides not to appropriate funds for each fiscal year.

(b) The attorney general subsequently opined that if the source of funds to repay the debt is solely repaid from the project revenue or from a special non-general-tax fund and not from any general tax revenue, then the debt, be it in the form of bonds or a lease purchase agreement, is not the sort of debt which triggers the constitutional requirement of approval by the voters. This is the teaching of the **Connelly** case relied on by the court in **Montano**. **Montano** did not reverse **Connelly**, **Seward** and the other cases which have consistently limited the application of constitutional restrictions to debts which are paid out of general tax revenues.

(c) If specific questions as to the constitutionality of a particular lease agreement remain, an independent legal opinion should be obtained from the attorney general.

(2) Accounting for lease purchases that meet the FASB Statement No. 13 criteria for a capital lease purchase:

(a) Modified accrual basis of accounting for fund financial statements:

(i) At the time of the lease purchase, the aggregate purchase liability should be reported as an expenditure and as other financing source in the governmental fund that acquired or constructed the general asset. (NCGAS 5 paragraph 14 and AAG-SLV 7.34)

(ii) Subsequent governmental fund lease payments should be recognized as expenditures in the accounting period in which the fund liability is incurred, if measurable. (NCGAS 1 paragraph 8 (a) and AAG-SLV 8.69)

(b) Full accrual basis of accounting for government-wide statements:

(i) At the time of the lease purchase, record the capitalized asset and related credit to net assets-invested in capital assets, net of related debt. The amount recorded is generally the lesser of the net present value of the minimum lease payments or the fair value of the leased property excluding executory costs and profit. (NCGAS 5 paragraph 16 and AAG-SLV 7.33)

(ii) The leased property is amortized in accordance with the government's normal depreciation policy for owned assets of the same type, but the amortization period is limited to the lease term, rather than the useful life of the asset. (AAG-SLV 7.33)

(iii) At the time of the lease purchase, record the liability for the current and long-term portions of the minimum lease payments due, with the related debit to net assets-invested in capital assets net of related debt. (AAG-SLV 7.32)

U. Inter-fund Activity:

(1) According to the AICPA Audit and Accounting Guide, *Audits of State and Local Government (GASB 34 Edition)*, Section 9.31, the pre-GASB 34 reporting model interfund transaction classifications are:

- (a) quasi-external transactions;
- (b) reimbursements;
- (c) residual equity transfers;
- (d) operating transfers;
- (e) interfund loans; and
- (f) intra-entity transactions and balances.

(2) Under the GASB 34 reporting model those interfund "activities" have become, respectively:

(a) "Interfund services provided and used" which is a narrower definition than quasi-external transactions because the amounts should approximate their external exchange value which was not a requirement under the pre-GASB 34 model;

- (b) interfund reimbursements;
- (c) interfund transfers;
- (d) interfund transfers;
- (e) interfund loans; and
- (f) Intra-entity activity and bal-

ances.

(3) GASB 34 reciprocal interfund activity is the internal counterpart to exchange and exchange-like transactions. It includes interfund loans and interfund services provided and used.

(4) GASB 34 nonreciprocal interfund activity is the internal counterpart of nonexchange transactions.

(a) Nonreciprocal interfund activity includes interfund transfers for which there is no equivalent flow of assets in return. Payments in lieu of taxes are included in this category. According to GASB 34 paragraphs 112(b)(1) and 410 (a), such transfers between funds within the primary government should be reported as follows:

(i) In governmental funds, transfers should be reported as other financing uses in the funds making transfers and as other financing sources in the funds receiving transfers;

(ii) In government-wide financial statements, transfers between funds should be reported in a separate category as the final item before change in net assets; and

(iii) In proprietary funds, transfers should be reported after nonoperating revenues and expenses.

(b) GASB 34 paragraphs 61 and 318 indicate that transfers between funds of the primary government and funds of a component unit should be reported as follows:

(i) Transfers between the primary government and discretely presented component units are required to be reported as external transaction, revenues and expenses, in the primary government's financial statements and in the component unit's separately issued financial statements.

(ii) Transfers between the primary government and a blended component unit should be reported in the separately issued reports of the component unit as revenues and expenses. But when the blended component unit is included in the primary government's financial statements, those revenues and expenses should be reclassified and shown as transfers.

(c) Nonreciprocal interfund activity also includes interfund reimbursements that are repayments from a fund responsible for an expenditure or expense to the fund that originally paid for them. Reimbursements should not be displayed in the financial statements.

V. Required Auditor's Reports:

(1) For agencies that have **not yet implemented** GASB 34/35, auditor reports should follow the examples contained in the AICPA, *Audit and Accounting Guide, Audits of State and Local Governmental*

Units, issued May 1, 2001. Appendix D includes Examples 1 through 5 revised to reflect the requirements of SAS 93 with references to auditing standards and accounting principles generally accepted in the United States of America. Revised reports are also available from the AICPA's website at <http://www.aicpa.org/belt/a133main.htm>. For agencies **that have implemented** GASB 34/35, the auditor reports should follow the examples contained in the new AICPA, *Audit and Accounting Guide Audits of State and Local Governments (GASB 34 Edition)*, issued September 1, 2002. Appendix 14A-Illustrative Auditor's Reports provides report illustrations. Example 14A.12 illustrates how to opine on the basic financial statements and the combining and individual fund financial statements presented as supplementary information. Guidance provided in Chapter 14, Footnote 31 applies when the government presents budgetary comparison information as basic financial statements as required by this Rule, instead of as RSI. All independent auditors' reports should include a statement regarding the conduct of the audit being in accordance with auditing standards generally accepted in the United States of America **and with applicable Government Auditing Standards** per GAGAS 5.3.

(2) The proposed SAS, *Performing Audit Procedures in Response to Assessed Risk and Evaluating the Audit Evidence Obtained* says: 69. "In evaluating whether the financial statements are presented fairly in all material respects in conformity with GAAP, the auditor should consider the effects both individually and in the aggregate, of misstatements that are corrected by the entity. ...The **consideration and aggregation of misstatements should include likely misstatements (the auditor's best estimate of the total misstatements in the account balances or classes of transactions that he or she has examined), not just known misstatements** (the amount of misstatements specifically identified). Likely misstatements should be aggregated in a way that enables the auditor to consider whether, in relation to individual amounts, subtotals, or totals in the financial statements, they materially misstate the financial statements taken as a whole." 81. "If the auditor concludes, based on accumulation of sufficient audit evidence, that effects of likely misstatements, individually or in the aggregate, cause the financial statements to be materially misstated, the auditor should request management to eliminate the misstatement. If the material misstatement is not eliminated, the auditor should issue a qualified or an adverse opinion on the financial statements. Material misstatements may be eliminated by, for example, application of appropriate

accounting principles, other adjustments in amounts, or the addition of appropriate disclosure of inadequately disclosed matters. Even though the effects of likely misstatements on the financial statements may be immaterial, the auditor should recognize that an accumulation of immaterial misstatements in the balance sheet could contribute to material misstatements of future financial statements." Current standards (SAS AU 350.30) require the auditor to project misstatements resulting from audit sampling applications and all known misstatements from nonsampling applications and consider them in the aggregate along with other audit evidence when evaluating whether the financial statement taken as a whole may be materially misstated.

(3) Proper implementation of GASB 34 and/or GASB 35 will impact the auditor's opinion in the independent auditor's report.

(a) An adverse opinion shall result if anything less than a full set of financial statements, as required by GASB 34 and/or GASB 35, are presented.

(b) An adverse opinion shall result if the old model is presented instead of the new model under GASB 34 and/or GASB 35.

(c) A modified opinion may result if a component unit fails to implement GASB 34 and/or GASB 35 in the same fiscal period as the primary government.

(d) An adverse opinion will result if infrastructure is excluded from the government-wide statements and it is significant.

(4) GAAP is defined by GASB 34 and/or 35 once the implementation date for the entity passes. "Rule 203 of the Code of Professional Conduct of the AICPA states: 'A member shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or (2) state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies designated by Council to establish such principles that has a material effect on the statements or data taken as a whole.'" (SAS AU Sec 508.14)

W. Service Organizations:

(1) SAS No. 88 amends SAS No. 70, *Reports on the Processing of Transactions by Service Organizations*, to help IPAs determine what additional information they might need when auditing the financial statements of an agency that uses a service organization to process transactions.

SAS No. 70 provides guidance an IPA should consider when auditing the financial statements of an agency that uses a service organization to process certain transactions. SAS No. 70 also provides guidance for an IPA who issues reports on the processing of transactions by a service organization for use by other IPAs.

(2) SAS No. 70 (AU 324.03) defines a service organization as an organization that is engaged to provide either or both of the following services:

(a) execution of transactions and maintenance of the related accountability; and

(b) recording of transactions and processing of related data.

(c) The following are examples of service organizations:

(i) Tax collection authorities;

(ii) EDP service centers that process transactions and related data for others;

(iii) Regional educational service centers;

(iv) Bank trust departments that invest and hold assets for employee benefit plans or others;

(v) Payroll service companies that process payroll transactions and make payroll disbursements; and

(vi) Potentially public housing authority fee accountants.

(3) When a governmental agency uses a service organization (as defined by AU 324.03), its transactions are processed through another organization's financial reporting system and are subject to that organization's controls. If the use of the service organization is significant to planning and performing the audit, the IPA should obtain an understanding of the client's financial reporting system and internal controls for information produced by the service organization in accordance with SAS No. 70. **The understanding obtained should be documented.**

(4) SAS No. 98, *Omnibus Statement on Auditing Standards-2002, amended SAS No. 70 to require a service auditor to inquire of management about subsequent events.*

X. Disposition of Property:

(1) Sections 13-6-1 and 13-6-2 NMSA 1978, and the procurement code, govern the disposition of obsolete, worn-out or unusable tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least thirty days prior to any such disposition of property, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority

approving the action must be sent to the State Auditor.

(2) In the event a computer is included in the planned disposition, the agency shall "sanitize" all licensed software and any electronic media pertaining to the agency. According to the May 5, 2002 memorandum from the chief information technology security and privacy office on this subject, "ordinary file deletion procedures do not erase the information stored on hard disks or other magnetic media. Sanitizing erases or overwrites totally and unequivocally, all information stored on the media. There are three basic approaches:

(a) purchasing and using a commercial degaussing product to erase magnetic disks;

(b) overwriting stored data a minimum of five times; or

(c) reformatting the drives ("F diskling").

(3) The agency will certify in writing the proper erasure of the hard drive and submit the certification along with the notification of the proposed disposition of property to the state auditor at least thirty days prior to taking action. The IPA shall test for compliance with this requirement. **This is a special requirement of the state auditor.**

Y. Joint Powers Agreement:

(1) All joint powers agreements must be listed in a supplementary schedule in the audit report. The schedule should include the following:

(a) participants;

(b) responsible party for operations;

(c) description;

(d) beginning and ending dates of agreement;

(e) total estimated amount of project and portion applicable to agency;

(f) amount agency contributed in current fiscal year;

(g) audit responsibility;

(h) fiscal agent if applicable; and

(i) name of government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under joint powers agreements see Section 2.2.2.10.Z (Self-Insurance) Section of this Rule.

Z. Self Insurance: Those agencies that have self-insurance agreements should disclose the data in the notes to the financial statements. The note should include the name of the agency that is providing the insurance and the amount of contribution by the agency to the fund during the year. Reserves should be reviewed to determine if the reserves are actuarially sound. There should be full disclosure in

the notes to the financial statements.

AA. Nonexchange Transaction Asset and Revenue Recognition: GASB Statement No. 33 establishes accounting and financial reporting standards for the nonexchange transactions of state and local governments. It is effective for fiscal years starting after June 15, 2000. A nonexchange transaction occurs when a government (including the federal government) either gives value to another party without directly receiving equal value in exchange or receives value from another party without directly giving equal value in exchange. There are four types of nonexchange transactions: derived tax revenues (income and motor fuel taxes); imposed nonexchange revenues (property tax, fines and penalties, and property forfeitures); government-mandated nonexchange transaction revenues (federal programs that state or local governments are mandated to perform, state programs that local governments are mandated to perform); and voluntary nonexchange transactions (grants, entitlements, and donations by nongovernmental entities, including private donations.) On both the accrual and modified accrual basis of accounting, revenue recognition is required for nonexchange transactions in the financial statements unless the transaction is not measurable (reasonably estimable). For guidance in applying the accrual basis of revenue recognition see GASB 33 paragraphs 16 through 28. For guidance in applying the modified accrual basis of revenue recognition, see GASB 33 paragraphs 29 and 30. Implementation of GASB 34 will require revenue recognition on both bases of accounting: full accrual basis in the government-wide statements; and modified accrual basis in the fund financial statements. Common application issues are listed below.

(1) **The account receivable asset amount recognized under both the accrual and modified accrual bases of accounting should be the same amount.** What changes is the amount of revenue recognized. Any "unavailable" amount of revenue should be reclassified from revenue to "deferred revenue" for the modified accrual basis. (AAG-SLV 6.17)

(2) Property taxes are an example of "imposed nonexchange" revenue. According to GASB 33 paragraph 18, "Governments should recognize revenues from property taxes, net of estimated refunds and estimated uncollectible amounts, in the period for which the taxes are levied, even if the enforceable legal claim arises or the due date for payment occurs in a different period." For modified accrual presentation, property tax revenues are recognized when they become available. Available means, due or past due and

receivable within the current period, usually within 60 days. (NCGAI 3 paragraph 8)

(3) New Mexico capital projects funds drawn down from the state board of finance are voluntary nonexchange revenues to the capital project recipients. The state board of finance, as the provider has restrictions and eligibility requirements related to the requests for draw downs that pay for the capital projects. On the full accrual basis of accounting, project recipients should recognize receivables and revenues when all applicable eligibility requirements of the state board of finance are met (GASB 33 paragraph 21). On the modified accrual basis of accounting, recipients should recognize revenues in the period when all applicable eligibility requirements have been met and the resources are available. [GASB 33 paragraph 29(d)]

(4) There will be no increases to contributed capital under GASB 33, all inflows from nonexchange transactions must be reported as revenue. (GASB 33 paragraph 93)

BB. SAS 89 Audit Adjustments:

(1) Statement on Auditing Standards (SAS) 89, issued December 1999, is effective for fiscal years beginning on December 15, 1999. Per the AICPA summary, SAS 89 is designed to encourage management to record adjustments aggregated by the auditor. It clarified management's responsibility for the disposition of financial statement misstatements brought to its attention. The engagement letter should state that management is responsible for adjusting the financial statements to correct material misstatements (if the agency prepared the financial statements). In the representation letter, management should affirm to the auditor that the effects of any uncorrected financial statement misstatements aggregated by the auditor are immaterial, both individually and in total (if the agency prepared the financial statements). In such cases, a summary of any misstatements that management did not correct in their financial statements must be included in or attached to the management representation letter.

(2) SAS 89 requires the auditor to inform those who have oversight of the financial reporting process about uncorrected misstatements aggregated by the auditor during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements taken as a whole. Those having oversight of the financial reporting process are generally the governing board or an audit committee. Passed audit adjustments are those determined by the auditor that did not get included in the

audited financial statements. **The auditor must present this list of "passed adjustments" to the agency management and governing board representatives at the exit conference. A copy of the list must be attached to the audit report submitted to the state auditor for review.** In the event no audit adjustments were omitted from the financial statements a memo stating that there were "no passed adjustments" should take the place of the list of "passed adjustments."

CC. GASB 34 Implementation Issues:

(1) In the year GASB 34 is implemented, note disclosure must be made reconciling the GASB 34 beginning net assets back to the prior year audited ending fund balances. **This is a special requirement of the state auditor.**

(2) GASB 34 omits agency funds from the statement of changes in fiduciary net assets (GASB 34 paragraph 110). For governmental agencies that have agency funds with additions and deletions that are of particular interest to the financial statement users, a schedule of changes in assets and liabilities for the agency funds can be included as supplemental information (SI). The state auditor requires this disclosure for the following agencies:

(a) district courts; and
(b) school districts. See Section 2.2.2.12 C(3)(e) for more information related to school district agency fund presentation.

DD. Accounting for Forfeited Property:

(1) Seized property should be accounted for in an agency fund before the Section 31-27-6, NMSA 1978 "judgment of forfeiture."

(2) Once the judgment of forfeiture is made, the property should be accounted for in a special revenue fund because the revenues are legally restricted for specified purposes. The balance sheet of such a special revenue fund that accounts for seized property may have zero balances at the end of a fiscal year because net balance amounts may have been transferred to the general fund of the governing body of the seizing law enforcement agency, or the general fund to be used for drug abuse treatment services, for drug prevention and education programs, for other substance abuse demand-reduction initiatives or for enforcing narcotics law violations. Exceptions are forfeitures of property arising from: violations of hunting or fishing regulations that must be deposited in the game protection fund; and violations against cultural properties that must be used for the restoration of the affected cultural property, with net balances being deposited into the general fund.

(3) Seized property resulting in

forfeiture proceeds creates revenue for the governmental agency that seized the property. That revenue and related expenditures must be included in the budget process of the governmental agency.

(4) See Section 31-27-1 NMSA 1978 and related cross references for guidance on various types of seizures and forfeitures. Section 31-27-7, NMSA 1978 provides statutory guidance for proper disposition of forfeited property and use (allowable expenditures) of all related proceeds. [2.2.2.10 NMAC - Rp 2.2.2.10 NMAC, 4-30-03]

2.2.2.11 THE ACCOUNTABILITY IN GOVERNMENT ACT:

A. The Accountability in Government Act (AGA) (Chapter 15, Laws of 1999) provides a general process for implementation of performance-based budgeting over a four-year period.

B. For agencies whose performance measures are included in the General Appropriations Act, the agency shall include a schedule of performance data (outcomes, outputs, efficiency, etc.) if the schedule is required by the agency's oversight agency such as DFA, CHE and SDE and preparation guidelines are issued by the oversight agency.

C. The auditor's responsibilities for performing procedures and reporting on Required Supplemental Information (RSI) is provided in SAS No. 52, *Omnibus Statement on Auditing Standards* 1987 (AICPA, Professional Standards, vol. 1, AU 558, *Required Supplemental Information*). The auditor ordinarily should apply the following limited procedures to RSI.

(1) Inquire of management about the methods of preparing the information, including:

(a) whether it is measured and presented within prescribed guidelines;

(b) whether methods of measurement or presentation have been changed from those used in the prior period and the reasons for any such changes; and

(c) any significant assumptions or interpretations underlying the measurement or presentation.

(2) Compare the information for consistency with:

(a) management's responses to foregoing inquiries;

(b) audited financial statements; and

(c) other knowledge obtained during the audit.

(3) Consider whether to include representations on RSI in the management representation letter.

D. Apply additional procedures, if any, that other AICPA SASS, SAS,

Interpretations, Audit and Accounting Guides, or Statements of Position prescribe for specific types of RSI.

E. Make additional inquiries if applying the foregoing procedures causes the auditor to believe that the information may not be measured or presented within applicable guidelines.

F. The IPA should report on the performance data in either an agency-prepared or auditor submitted document when:

(1) the required performance data is omitted;

(2) the auditor concludes that the measurement or presentation of the performance data departs materially from prescribed guidelines;

(3) the auditor is unable to complete the prescribed procedures; and

(4) the auditor is unable to remove substantial doubts about whether the performance data conforms to prescribed guidelines.

G. The IPA generally has no reporting requirement; however, the IPA may disclaim an opinion on the information.

[2.2.2.11 NMAC - Rp 2.2.2.11 NMAC, 4-30-03]

2.2.2.12 **SPECIFIC CRITERIA:** The applicable specific criteria should be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, the appropriate state statutes should be reviewed in planning governmental audits.

A. PERTAINING TO AUDITS OF STATE AGENCIES:

(1) Due Dates for Agency Audits: HB 219 amended Section 12-6-3, NMSA 1978 so that **by statute, state agency reports are due no later than 60 days after DFA/FCD provides the state auditor with notice to the effect that the agency's books and records are ready and available for audit.** This requirement does not prevent the auditor from performing interim audit work prior to receipt of the DFA notice of agency preparedness. Once the notice is received from DFA indicating that an agency's books and records are ready and available for audit, if the IPA finds deficiencies in the "agency preparedness," the IPA shall immediately write a dated letter to the state auditor detailing how the agency's books and records are not ready or available for audit. Upon receipt of such a letter from the IPA, the state auditor will communicate with DFA in writing regarding the deficiencies and request an updated notice of agency preparedness from DFA.

(2) Materiality at **the individual**

fund level means at the individual central accounting system (CAS) fund level for state agencies. The individual CAS funds should be shown in the combining financial statements and opined on in the independent auditors' report.

(3) Encumbrances Reconciliation: DFA maintains an encumbrance system for all state agencies under its jurisdiction. The state agency is responsible for preparing a list of the valid encumbrances and reconciliation with DFA's year-end list. The differences in the reconciliation must be disclosed in the notes to the financial statements, by category of expenditure and by appropriation level.

(4) Special, Deficiency, and Specific Appropriations:

(a) Special, deficiency, and specific appropriations must be disclosed in the financial statements. The original appropriation, expenditures to date, outstanding encumbrances and unencumbered balances should be shown in a supplementary schedule or in a note to the financial statements. **This is a special requirement of the state auditor.**

(b) Any special, deficiency, and specific appropriation balances that are not reverted at the balance sheet date must be presented as unearned or deferred revenue or as: reserved fund balance in the fund financial statements; and restricted net asset in the statement of net assets. The accounting treatment of any balances should be fully explained in the supplementary schedule or note to the financial statements regarding the special appropriations.

(5) Net Assets/Fund Balance:

(a) The government-wide statement of net assets and the proprietary fund balance sheet should show net assets as: (1) invested in capital assets, net of related debt; (2) restricted; and/or (3) unrestricted. GASB 34 paragraphs 33 through 37 explain the components of net assets. Net assets are restricted when constraints placed on net asset use are either: externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or imposed by law through constitutional provisions or enabling legislation. Note that restricted net assets are not the equivalent of reserved fund balances. Encumbrances should not be shown as restricted net assets.

(b) Governmental fund financial statement fund balances should be segregated into reserved fund balances and unreserved fund balances (GASB 34 paragraph 84). In general, an agency should show reserved fund balance related to encumbrances, inventories, and petty cash. All other reservations must be specifically required or authorized by legislation. The notes to the financial statements must dis-

close the specific legal authority for all reservations of fund balance. Reserved fund balances of the combined nonmajor funds should be displayed in sufficient detail to disclose the purposes of the reservations (i.e. reserved for debt service or reserved for encumbrances). Unreserved fund balances of nonmajor funds should be displayed by fund type on the face of the balance sheet.

(c) The statement of fiduciary net assets (fiduciary fund financial statement) should show net assets as “held in trust for” (GASB 34 paragraph 108 and example E-1)

(6) Books of Record:

(a) DFA maintains a central accounting system (CAS) of state accounts for cash and budgetary control purposes. There is a three-volume set of DFA Model Accounting Practices (MAPs) available that describes state agency accounting policies, procedures, document processing and GASB 34 implementation. They provide excellent guidance for an auditor regarding policy and procedure requirements and should be available at each state agency.

(b) DFA has made recent changes to the CAS chart of accounts. There are now five appropriation unit codes instead of the previous eleven. Statements of revenues and expenditures should continue to be presented in accordance with GAAP by function or program classification. Budget comparison statements must be presented using the level of appropriation reflected in the agency appropriation for the current-year.

New appropriation code	Old appropriation name	Old appropriation unit
200	personal services	000
200	employee benefits	010
400	in-state travel	020
400	maintenance and repairs	030
400	supplies	040
300	contractual services	050
400	operating costs	060
400	other costs	070
400	capital outlay	080
400	out-of-state travel	095
500	other financing uses	150
600	refunds, reversions, annuity	160

The updated revenue codes follow a format that facilitates GASB 34 revenue classification:

Revenue Code	Type of Revenue
XXX3	program charges for services
XXX4	program operating revenue
XXX5	program capital contrib/grants
XXX6	general revenue
XXX7	addition to employee retirement plan
XXX8	other financing sources
XXX9	special items/extraordinary
XXX0	transfers

For more detail about the chart of accounts see the DFA website.

(7) Reversions to state general fund:

(a) All reversions to the state general fund must be identified in the financial statements by the fiscal year of appropriation (e.g. reversion to state general fund FY 03). The gross amount of the appropriation and the gross amount of the reversion must be shown separately.

(b) 6-5-10 NMSA 1978 requires all unreserved, undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30, to the general fund. The agency may adjust the reversion **within forty five days** of release of the audit report for that fiscal year. Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(8) Nonreciprocal (not payments for materials or services rendered) interfund (internal) activity includes (a) transfers (redefined to include activities previously known as “operating transfers” and “residual equity transfers” and (b) reimbursements (GASB 34 paragraph 410):

(a) Intra-agency transfers between funds within the agency should offset. Reasons for intra-agency transfers should be fully explained in the notes to the financial statements. In the separate audit report of the state agency these transfers between their internal funds should be shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements.

(b) Inter-agency transfers (between an agency’s internal funds and other funds of the State) should be segregated from intra-agency transfers and should be fully explained in the notes to the financial statements along with the agency number and cash account to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than notes, but agency and cash account numbers must be shown. The IPA is responsible for performing audit procedures on all such inter-agency transfers. In the separate audit reports of the state agencies (that are departments of the state and not component units of the state) these transfers between their internal funds and other funds of the state should also be shown as other financing sources or uses in the fund financial statements and as transfers in the government-wide financial statements.

(c) Inter-agency transfers between legally separate component units and the primary government the State:

(i) The AICPA Audit and Accounting Guide *Audits of State and Local Governments (GASB 34 Edition)*, lists some examples of potential component units (blended and/or discrete) of a state in Section 12.02: school districts; colleges and universities; utilities; hospitals and other health care organizations; and public employee retirement systems.

(ii) If the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit’s separately issued financial statements should report such activity between itself and the primary government as revenues and expenses. When the blended component unit is included in the primary government’s financial statements, such inter-agency transfers would be reclassified as transfers. (GASB 34 paragraph 318)

(iii) All resource flows between a discretely presented component unit of the state and other funds of the state

are required to be reported as external transactions-revenues and expenses in the primary government's financial statements and the component unit's separately issued financial statements. (GASB 34 paragraph 318)

(d) All transfers to and from CAS fund 853, the state general fund appropriation account, must be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections.

(e) Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements should not be reported as interfund activity in the financial statements.

(9) General Services Department (GSD) Capital Projects: GSD records the state of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency must capitalize those assets based on actual amounts expended, in accordance with GSD instructions issued in 1 NMAC 1.2.1.10, *Valuation of Assets*.

(10) State-owned Motor Vehicle Inventory: Successful management of the state-owned vehicles pursuant to the Transportation Services Act (15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(11) Capital Assets Inventory:

(a) The Audit Act (12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment whose cost is over \$1,000. Neither the statute nor Rule 1 NMAC 1.2.1, *Accounting and Control of Fixed Assets of State Government*, requires that agencies remove items from their capital asset inventory whose value is less than \$1,000; and

(b) The state auditor encourages agencies to maintain a separate accountability report (listing), for management purposes, of those items that cost less than \$1,000. This listing will not be reflected in the financial statements.

(12) Financial Statement Presentation (GASB 34 paragraph 134):

(a) Unless a state agency is legally separate from the state, the special formats applicable to special-purpose governments should not be used.

(b) State agencies that are not

legally separate from the state should provide both fund financial statements and government-wide financial statements in their separately issued financial statements.

(13) Independent Auditor's Report: The independent auditor's report for state agencies, district attorneys, and district courts **must include an explanatory paragraph preceding the opinion paragraph**. The explanatory paragraph should reference the summary of significant accounting principles disclosure regarding the reporting agency, and indicate that the financial statements present the financial position and results of operation of only that portion of the financial reporting agency of the state that is attributable to the transactions of the agency. See Example 14A.14 in the AICPA Audit and Accounting Guide *Audits of State and Local Governments (GASB 34 Edition)*. A statement should be included that the audit was made in accordance with generally accepted government auditing standards per GAGAS 5.3.

B. PERTAINING TO HOUSING AUTHORITIES:

(1) **The State of New Mexico currently has 47 Housing Authorities that are included under the Audit Act:**

(a) independent

5

(b) component units or department of municipalities

33

(c) component units or department of counties

8

(d) component unit of the state

1

(2) The housing authority must be included in the financial report of the primary government by discrete presentation unless otherwise approved by the state auditor.

(a) Discrete presentation shows financial data of the component unit in a column, to the right of and separate from the financial data of the primary government. See GASB 14 paragraphs 44 through 50 for additional guidance.

(b) The primary government and/or auditor must make the determination whether the housing authority is a component unit of the primary government. See Section 2.2.2.10.A (1) of this Rule for guidance in this determination. In the event the primary government and/or auditor determine that the housing authority is a department of, rather than a component unit of the primary government, **a request for exemption from the discrete presentation requirement must be submitted to the state auditor, by the agency, explaining why the housing authority is not a blended component unit**. The request for exemption must include evidence that the housing authority is not a separate legal agency from the primary government and

that the corporate powers of the housing authority are held by the primary government. Evidence included in the request must address these issues:

(i) The housing authority is not a corporation registered with the public regulation commission;

(ii) There was never a resolution or ordinance making the housing authority a public body corporate; and

(iii) The housing authority was authorized under Section 3-45-1 NMSA 1978, Municipal Housing Law.

(c) Upon receipt of the exemption from the requirement for discrete presentation, granted by the state auditor, the housing authority department or program would be included in the financial report of the primary government like any other department or program of the primary government.

(d) **An annual exemption is required.**

(3) For housing authorities that are component units, the financial data for all funds of the housing authority **must be accounted for in proprietary funds**.

(4) Notice PIH 2002-4 (HA) dated February 11, 2002, requires all public housing authorities to submit one copy of the completed audit report including the findings to the HUD office for review, effective for fiscal years ended June 30, 2001.

(a) The IPA shall issue to the housing authority **a separate audit report if it is required by HUD or the agency**. The preparation and submission cost for any required separate audit report must be included in the audit contract.

(b) Any separate housing authority audit report is due on or before the due date specified in Section 2.2.2.9 of this Rule. If the separate report is not received on or before the due date by the state auditor, the report is late and not in compliance with the requirements of Section 2.2.2.9 A. of this Rule, and a current-year audit finding must be included the audit report.

(5) Auditors and public housing authorities must follow the requirements of *Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities Not-for-Profit Multifamily Program Participants and their Independent Accountants*, which is available on the real estate assessment center (REAC) web site at www.hud.gov/offices/reac under a search for UFRS. Additional administrative issues related to the audit of public housing authorities follow.

(a) The local governments are encouraged to include representatives from the Housing Authority in the IPA selection process.

(b) Audits of the public housing authorities shall be conducted by the same IPA who performs the audit of the local government. Separate audit contracts will not be approved.

(c) Audits of public housing authorities that are component units of or are otherwise included in a state or local government that expends \$300,000 (require a Single Audit) must also include a separate agreed-upon procedures engagement related to the audited financial data schedule (FDS) which is electronically submitted to REAC by the housing authority. The PHA must submit electronically a final approved FDS based on the audited financial statements **no later than 9 months** after the PHA's fiscal year end. The auditor must:

(i) electronically report on his comparison of the electronic FDS submission in the REAC staging data base through the use of an ID and password;

(ii) include a hard copy of the FDS in the audit report;

(iii) render a SAS 29 opinion on the FDS; and

(iv) explain any material differences between the audited FDS and the financial statements in the notes to the financial statements. **The audit must include this separate attestation engagement. The preparation and submission cost for this HUD requirement must be included in the audit contract.**

(d) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold a separate entrance and exit conference with housing authority's management and a member of the governing board.

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

C. PERTAINING TO SCHOOL DISTRICTS:

(1) Update to the Auditor Selection Process: After completing the evaluation for each IPA the school district shall submit the IPA recommendation to the state department of education (SDE) for approval, prior to submitting the recommendation to the state auditor for approval. The sample cover letter provided in Appendix A may be used for the SDE approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Regional Center Cooperative (RCC) and Regional Education Cooperative (REC) Audits:

(a) For accounting purposes,

RCCs and RECs are considered joint ventures, in accordance with the GASB *Codification of Governmental Accounting and Financial Reporting Standards*, Section J50 "Accounting for Participation in Joint Ventures and Jointly Governed Organizations".

(b) A separate financial and compliance audit is required on activities of RCCs and RECs. The IPA shall provide a copy of this report to the participating school districts and the New Mexico department of education once the report has been released by the state auditor. The presentation of these funds should be in conformity with accounting principles generally accepted in the United States of America.

(c) Audits of RECs should test for compliance with SBE Regulations 6.23.3.1 through 6.23.3.12.

(d) On-behalf payments for fringe benefits and salaries made by RCCs and RECs for employees of school districts should be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with Sec. N50.131.

(3) School District Audits must address the following issues:

(a) Audits of school districts shall test for compliance with SBE Regulation 6.20.2 NMAC, *Governing Budgeting and Accounting for New Mexico Public Schools and School Districts* and the *Manual of Procedures*, primarily Supplement 7, *Cash Controls*, (pages 7-1 through 7-13).

(b) The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule will account for cash in the same categories as used by the district in its monthly cash reports to the state department of education.

(c) On-behalf payments of salaries and fringe benefits made for school district employees by RCCs and RECs must be accounted for in accordance with GASB Cod. Sec. N50.129 through .133 and disclosed in accordance with Sec. N50.134. "Employer governments should obtain information about the amount of on-behalf payments for fringe benefits and salaries from the paying entity or the third-party recipient; interentity cooperation is encouraged. If information cannot be obtained from those sources, employer governments should make their best estimates of the amounts." (GASB 24 paragraph 9)

(d) Any joint ventures or other entities created by the school districts are agencies subject to the Audit Act.

(e) Agency Fund Reporting:

(i) Under the old report-

ing model, the combining statement of changes in assets and liabilities - all agency funds shall show all agency funds summarized by school.

(ii) When GASB 34 is implemented, the statement of changes in fiduciary net assets will omit agency funds. Therefore, it is a requirement of the state auditor that a schedule be included in the audit report, showing the changes in the agency funds summarized by school.

(4) Pertaining to Charter Schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board to operate as a charter school. A charter school is considered a public school, accredited by the state board of education and accountable to the school district's local school board for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b) In defining a school district's financial reporting agency, certain GASB 14 criteria must be applied to determine whether the district (primary government) has any component units that must be included. A charter school is a component unit of its sponsoring school district. The charter schools must be included in the financial statements of their sponsoring school districts by discrete presentation. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government.

(c) Financial statement presentation requirements for charter school component units follow. Note that the scope of the audit includes supplemental information consisting of component unit fund financial statements and combining statements which must be opined on. Pre-GASB 34 presentation - GASB 14 paragraph 50 requires the presentation of combining financial statements for discretely presented component units. Presentation of the underlying fund types of the individual component units is required since separately issued financial statements of the component units are not available. The combining statements should appear in the report with the other combining statements and should be at the level of detail that will include disclosure of information required by GASB 14 paragraph 51. If GASB 34 has been implemented the charter schools should be reported in the following manner:

(i) All charter schools should be reported as significant and therefore major component units of the school district. All the charter schools should be included in the basic financial statements (full accrual basis presentation) in one of

the following manners: a separate column for each component unit presented in the government-wide statement; combining statements of component units presented as a basic financial statement after the fund financial statements; or as condensed financial statements in the notes to the basic financial statements. (GASB 34 paragraphs 124 to 126)

(ii) Fund financial statements are required because such information is not available in separately issued financial reports on the charter schools. This modified accrual basis presentation should be presented as supplemental information (SI) according to AAG-SLV 3.20. If any funds presented are the result of combining nonmajor funds, a combining statement should also be included in the SI presentation.

(d) The state auditor requires that individual budget-to-actual comparison schedules for the charter schools be included in the financial report following the fund financial statements and related combining statements as SI to demonstrate compliance with legally adopted budgets. The individual budget comparison schedules are also included in the scope of the audit and must be audited and included in the auditor's

opinion.

(5) New Mexico Public Schools Insurance Authority (NMPSIA): Both legal compliance and substantive tests should be performed at the agency level on these transactions.

D. PERTAINING TO LOCAL PUBLIC BODIES:

(1) Obsolete County Records: Section 14-1-8 NMSA 1978 requires that "An official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage." The auditor should test for compliance with this statute.

(2) Tax Roll Reconciliation - County Governments: Counties must include two supplementary schedules. The first one is a "Tax Roll Reconciliation of

Changes in the County Treasurer's Property Taxes Receivable" showing the June 30th receivable balance with an additional break-out of the receivable for the past 10 years. The second schedule titled "County Treasurer's Property Tax Schedule" must show by agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year, by agency. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASB 33. See 2.2.2.10 AA of this Rule for more information regarding GASB 33 property tax revenue recognition. Property taxes levied on January 2002 are budgeted for the fiscal year July 1, 2002 through June 30, 2003. If the county does not have a system set up to gather and report the necessary information, or the necessary information itself, for the Property Tax Schedule a related finding is required.

(3) The following is an example of a tax roll reconciliation schedule:

STATE OF NEW MEXICO (NAME) COUNTY TAX ROLL RECONCILIATION - CHANGES IN PROPERTY TAXES RECEIVABLE FOR THE YEAR ENDED JUNE 30, 2003	
Property taxes receivable, beginning of year	\$ 641,290
Changes to Tax Roll:	
Net taxes charged to treasurer for fiscal year	4,466,602
Adjustments:	
Increases in taxes receivables	3,066
Charge off of taxes receivables	(6,144)
Total receivables prior to collections	5,104,814
Collections for fiscal year ended June 30, 2003	(4,330,993)
Property taxes receivable, end of year	<u>\$ 773,821</u>
Property taxes receivable by years:	
1993	\$ 0
1994	29
1995	556
1996	1,848
1997	3,381
1998	5,498
1999	13,169
2000	34,134
2001	167,729
2002	547,477
Total taxes receivable	<u>\$ 773,821</u>

(4) An example of the schedule titled "County Treasurer's Property Tax Schedule" is shown in Appendix E.

E. **PERTAINING TO AUDITS OF COLLEGES AND UNIVERSITIES:**

(1) Update to the Auditor Selection Process: After completing the evaluation for each IPA the college or university shall submit the IPA recommendation to the commission on higher education (CHE) for approval, prior to submitting the recommendation to the state auditor for approval. The sample cover letter provided in Appendix A may be used for the CHE approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Budget Comparison Schedules: The state auditor requires that every college and university audit report include budget comparison schedules as supplementary information (SI). The budget comparison schedules must show columns for: the original budget; the revised budget; actuals on the budgetary basis; and a variance column. **The budget comparison schedules must be audited and an auditor opinion must be rendered.** See Section 14.51 of the AICPA Audit and Accounting Guide, *Audits of State and Local Governments, GASAB 34 Edition* (AAG-SLV). The auditor must confirm the final adjusted and approved budget with the CHE. The auditor opinion on the budgetary SI should follow example 14A.12 in AAG-SLV and include a statement that the audit was made in accordance with generally accepted government auditing standards (GAGAS 5.3). A reconciliation of actual amounts on the budget basis to financial statement accrual basis amounts should be disclosed on the budget comparison schedule. The reconciliation is required only at the "rolled up" level of Unrestricted and Restricted - All Operations. The CHE, department of finance administration (DFA) budget division, and the legislative finance committee (LFC) have approved the following format for audited budget comparison schedules. This Rule requires that the format be used in reporting the budget comparison data as supplementary information.

(a) Unrestricted and restricted - all operations (Schedule 1)
Unrestricted and restricted revenues: State general fund appropriations, federal revenue sources, tuition and fees, land and permanent fund, endowments and private gifts, other
Total unrestricted and restricted revenues
Cash balance budgeted
Total unrestricted and restricted revenues and cash balance budgeted
Unrestricted and restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant, research, public service, auxiliary services, intercollegiate athletics, capital outlay, building renewal and replacement, retirement of indebtedness, other (student aid, grants and stipends; and independent operations)
Total unrestricted and restricted expenditures
Change in net assets (budgetary basis)
(b) Unrestricted - all operations (Schedule 2)
Unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Cash balance budgeted
Total unrestricted revenues and cash balance budgeted
Unrestricted expenditures: Research, public service, internal services, student aid, grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness
Total unrestricted expenditures
Change in net assets (budgetary basis)
(c) Restricted - all operations (Schedule 3)
Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Cash balance budgeted
Total restricted revenues and cash balance budgeted
Restricted expenditures: Research, public service, internal services, student aid, grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness
Total restricted expenditures
Changes in net assets (budgetary basis)
(d) Unrestricted - instruction and general (Schedule 4)
Unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Cash balance budgeted
Total unrestricted revenues and cash balance budgeted

Cash balance budgeted
Total unrestricted revenues and cash balance budgeted
Unrestricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total unrestricted expenditures
Change in net assets (budgetary basis)
(e) Restricted - instruction and general (Schedule 5)
Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Cash balance budgeted
Total restricted revenues and cash balance budgeted
Restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total restricted expenditures
Change in net assets (budgetary basis)

(3) The level of planning materiality required by the state auditor follows:

(a) Institutions that have not yet implemented GASB 34/35 should report using the format in the AICPA Industry Audit Guide, *Audits of Colleges and Universities*. Audit planning materiality level required by the state auditor is at the individual fund level.

(b) Institutions that have implemented GASB 34/35 must report using the Business Type Activities (BTA) model. The level of planning materiality described in the AICPA Audit and Accounting Guide, *Audits of State and Local Governments (GASB 34 Edition)*, Section 4.26 must be used for the audit of these institutions. **Planning materiality for component units is at the individual component unit level.**

(4) Compensated absence liability should be shown as follows:

(a) In reports of institutions that have not implemented GASB 34/35, vacation pay should be shown in current unrestricted funds; and

(b) In reports of institutions that have implemented GASB 34/35, the statement of net assets should reflect the current portion of compensated absences under current liabilities, and the long-term portion of compensated absences under noncurrent liabilities.

(5) Component Unit Issues: Legally separate entities that meet the criteria set forth in GASB 14 paragraph 132 to qualify as a component unit of the educational institution must be included in the audit report of the financial statements of the institution in accordance with GASB 14 and Section 2.2.2.10A (1) of this Rule.

(a) If the college or university has no component units there should be a statement to that effect in the notes to the financial statement in the description of the reporting entity.

(b) GASB Statement No. 39, *Determining Whether Certain*

Organizations Are Component Units, will become effective for financial statements of periods beginning after June 15, 2003, and requires that a legally separate, tax-exempt organization should be reported as a component unit of a reporting entity if the primary government is not financially accountable; however, the nature and significance of the relationship with the primary government is such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete. As a result of this statement, many college and university foundations, which were not previously reported as component units, will have to be reported as a component unit of the college or university.

(6) Management Discussion and Analysis (MD&A): The MD&A analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results is required by this Rule for colleges and universities. The analysis should include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity.

(7) Special appropriations (outside HB2) should be clearly shown in the financial statement or explained in the notes to the financial statements. Any unexpended balances in the appropriations at year-end that do not have to be reverted should be shown as:

(a) Designated for subsequent year's expenditures under the old reporting model; and as

(b) Restricted expendable net assets in the BTA model. See Section 2.2.2.12.A.(7) of this Rule for more information regarding reversions of appropriations.

F. **PERTAINING TO MUTUAL DOMESTIC WATER ASSOCIATIONS:** Associations created pursuant to the Sanitary Projects Act (3-29-1 NMSA 1978) are subject to audit under the Audit

Act 12-6-2, NMSA 1978 and this Rule. The financial statements should follow the not-for-profit model, not the government model. [2.2.2.12 NMAC - Rp 2.2.2.12 NMAC, 4-30-03]

2.2.2.13 REVIEW OF AUDIT REPORTS AND WORKING PAPERS:

A. Section 12-6-14(D) NMSA requires that the state auditor or personnel of his office designated by him examine all audit reports of agencies made pursuant to contract. All audits under contracts approved by the state auditor are subject to review.

(1) The state auditor conducts a preliminary review of all audit reports received for proper reporting and presentation of financial statements, note disclosures and audit findings.

(2) The state auditor notifies the IPA regarding any deficiencies found during the review process. The IPA shall submit related corrections or notification of disagreement with the review comments to the state auditor **within ten days** of receipt of the deficiency notification.

(3) A copy of the deficiency comments will be mailed to the agency, by the state auditor, if the IPA does not respond to the deficiency notification in a timely manner. These deficiency comments are considered public documents and may be requested by the agency.

(4) **If the IPA does not respond to the deficiency notification, the state auditor will notify the agency to select a different auditor for future audits.**

B. Released audit reports may be subject to a comprehensive desk and working paper review by the state auditor. These review checklists are public documents available on the website at www.saonm.org/pdfguides.html, unless the review is performed in conjunction with a federal agency. It should be noted that any reviews of working papers will include a

test of audit firm documentation of:

(1) Continuing professional education (CPE) for compliance with GAGAS requirements; and

(2) The independence safeguards on nonaudit services, for compliance with GAGAS 3.25 requirements.

C. If during the course of such a quality control review, the state auditor determines that deficiencies noted are significant enough that the audit was not performed in accordance with auditing standards generally accepted in the United States of America and/or this Rule, any or all of the following action(s) may be taken:

(1) The IPA may be required to correct the working papers and reissue the audit report to the agency, and any others receiving copies;

(2) the number of audit engagements may be limited;

(3) the IPA may be denied the issuance of future audit contracts; and/or

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

D. Results of Review:

(1) A letter will be issued upon completion of each report or working paper review to advise the IPA of the results of the review. The IPA is required to respond to each review comment as directed.

(2) Any corrective actions will be approved by the state auditor based on the recommendation of the in-charge reviewer.

(3) The IPA may request a review of the recommended action by the state auditor. If requested, the state auditor will schedule a conference, within fifteen days, to allow the IPA an opportunity to analyze the results of the desk or working paper review and present any information the IPA deems appropriate.

E. External Report Reviews: Revisions to the audit reports from reviews conducted by the federal inspector generals and the state auditor will be made by the IPA, to all copies of the audit report held by the agencies and the state auditor.

[2.2.2.13 NMAC - Rp 2.2.2.13 NMAC, 4-30-03]

2.2.2.14 CONTINUING EDUCATION AND QUALITY CONTROL REQUIREMENTS:

A. **Effective January 1, 1989, individuals responsible for planning, directing, conducting substantial portions of the field work, or reporting on government audits were required by "Yellow Book" to complete at least 24 of the 80 hours of continuing education and training in subjects directly related to the governmental accounting or auditing environment.** The state auditor requires

that the 24 hours be completed before the engagement begins. At least 20 of the 80 hours should be completed in any one-year of the two-year period. An Individual Firm Profile Worksheet shall be completed for each employee indicating governmental CPE courses taken for the past two-year period. The IPAs must also meet the requirements set forth in the Public Accountancy Act (61-28A-14.D NMSA 1978). **The state auditor will request proof of compliance with the continuing education requirements during working paper reviews. The U. S. GAO Government Auditing Standards: 2002 Revision (Exposure Draft) changes that are expected to be effective for financial audits of periods ending on or after January 1, 2003, require in Section 3.14 that "auditors performing work under GAGAS need to maintain their professional competence through continuing professional education (CPE). Therefore, each auditor performing work under GAGAS should complete, every 2 years, at least 80 hours of CPE which directly contributes to the auditor's professional proficiency to perform such work. At least 20 hours should be completed in any one year of the two-year period."**

B. U.S. GAO *Government Auditing Standards* (GAGAS), Section 3.20 requires "each audit organization performing assignments in accordance with GAGAS should have an appropriate internal quality control system in place and undergo an external peer review. Sections 3.22 and 3.23 require that "Audit organizations performing assignments in accordance with GAGAS should have an external peer review conducted at least once every 3 years by reviewers independent of the organization being reviewed. The external peer review should determine whether the organization's internal quality control system is in place and operating effectively to provide reasonable assurance that established policies and procedures and applicable government auditing standards are being followed."

(1) Audit organizations should have an external peer review conducted within 3 years from the date they start (that is, start of field work) their first assignment in accordance with GAGAS. Subsequent external peer reviews should be conducted every 3 years. The **Standards for Performing and Reporting on Peer Reviews**, promulgated by the AICPA require that a new firm enrolling in the AICPA Peer Review Program must have its initial peer review within 18 months of joining.

(2) If the firm is unable to complete its external quality control review by the required due date, it will render the firm

ineligible from conducting audits of governmental agencies. **Extension requests to complete the external quality control review that are approved by the administering organization will not be accepted by the state auditor.**

(3) The state auditor requires the location of the external quality control review to be the office of the firm under review, regardless of whether the firm reviewed is a sole practitioner and regardless of the number of firm employees. External quality control reviews performed at a location other than the office of the firm under review will not be accepted by the state auditor.

(4) The IPA Firm Profile submission to the state auditor requires copies of:

(a) the peer reviewer's review of their organization's system of quality controls resulting in an unqualified opinion;

(b) external quality control review report for the auditor's firm;

(c) the corresponding letter of comments;

(d) auditor's response to letter of comments;

(e) letter of acceptance from peer review program in which the firm is enrolled; and

(f) a list of the governmental audits reviewed during the peer review.

(5) Failure to submit the required IPA Firm Profile documentation, or an opinion less than **modified** on the auditor's peer review, will disqualify the IPA from doing governmental audits.

(6) During the procurement process audit firms shall provide a copy of their most recent external peer review report to the agency upon submitting a bid proposal or offer.

(7) **In last year's 2.2.2 NMAC, the state auditor early implemented portions of the Exposure Draft related to requirements of external peer reviews.** Individuals conducting peer reviews of an audit organization's system of quality control should meet the following requirements per GAGAS 3.23:

(a) have thorough knowledge of GAGAS and the government environment relative to the work being reviewed. **The reviewer must be familiar with this Rule. This is a requirement of the State Auditor.**

(b) be independent (as defined in GAGAS) of the audit organization being reviewed, its staff, and the assignments selected for review;

(c) the employing organization of the peer reviewers should have received an unqualified opinion on the review of their organization's system of quality controls;

(d) have knowledge and training on how to perform a peer review; and

(e) use professional judgment in conducting and reporting the results of the review.

(8) The review should include (GAGAS 3.23):

(a) A review of the organization's internal quality control policies and procedures, reports, audit documentation, and other necessary documents (for example, independence statements, outside employment requests, financial disclosure reports, and CPE documentation);

(b) Contacts with various levels of the reviewed organization's professional staff to assess their understanding of and compliance with relevant quality control policies and procedures;

(c) Use of one of the following approaches to selecting assignments for review:

(i) Select assignments that provide a reasonable cross section of the assignments performed by the reviewed organization in accordance with GAGAS; or

(ii) Select assignments that provide a reasonable cross section of the reviewed organization's work subject to quality control requirements, including one or more assignments performed in accordance with GAGAS.

(d) The review should be sufficiently comprehensive to provide a reasonable basis for concluding whether the reviewed audit organization with reasonable assurance of conforming to professional standards in the conduct of its work. Reviewers may scale back the peer review procedures based on the reviewer's evaluation of the adequacy and results of the reviewed organization's monitoring efforts; and

(e) Reviewers should prepare a written report(s) communicating the results of the external peer review. The report should indicate the scope of the review, including any limitations thereon, and should express an opinion on whether the system of quality control of the reviewed organization was in place and operating effectively to provide reasonable assurance that established policies and procedures and applicable government auditing standards were followed. The report should also describe the reason(s) for any modifications to the opinion. When there are matters that resulted in a modification to the standard report, reviewers should report a detailed description of the findings and recommendations to enable the reviewed organization to take appropriate actions. To help users of the peer review report understand the peer review process, each report should be accompanied by an attachment describing the process, including how peer reviews are planned and performed.

C. The state auditor performs its own quality control review of IPA audit reports and working papers. When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding letter of comments, the state auditor will no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor will take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

D. **House Joint Memorial 86 Requesting the State Auditor to Study the Need for Stricter Conflict of Interest Standards for Public Accountants:** The recent legislative session passed House Joint Memorial 86. It builds on the work done under House Joint Memorial 76 (Laws of 2002) which requested that the New Mexico public accountancy board, the state auditor, the New Mexico society of CPAs (NMSCPA), and the New Mexico society of public accountants (NMSPA) work to ensure strict adherence to public accountancy regulations and standards and report their findings and recommendations to the legislative finance committee (LFC) by December 1, 2002. The HJM task force reported the following summary findings to the LFC: 429% improvement in resolving unprocessed complaints to the public accountancy board; four CPA's referred to the board for enforcement action by the state auditor and HUD, resulting from quality reviews of financial statements and working papers; early adoption by the state auditor of proposed changes to GAGAS requirements for external quality control peer reviews; "on-site" peer reviews required by the state auditor; existing statutes appear sufficient to protect the public; and continued and increased severe disciplinary actions are needed to ensure timely and accurate financial reporting. House Joint Memorial 86 continues to build upon this foundation of the work performed under House Joint Memorial 76. It states

(1) "WHEREAS, recent public accountancy scandals have highlighted the dangers that exist and the corruption that can result when certified public accountants and auditors have multiple and conflicting business relationships with their clients; and

(2) WHEREAS, stockholders and the general public must be able to rely upon the statements and reports of certified public accountants and auditors to be honest, unvarnished reports of a corporation's financial affairs; and

(3) WHEREAS, corporate corruption aided and abetted by certified public accountants and auditors costs not only

individual stockholders millions of dollars, but also governmental investors such as the state of New Mexico that invest taxpayer dollars; and

(4) WHEREAS, such corruption further weakens the public's faith in its governmental and corporate institutions; and

(5) WHEREAS, New Mexico law currently prohibits certain practices by certified public accountants, but might benefit from a review to determine if other practices should be prohibited;

(6) NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the state auditor, with the assistance of the performance audit staff of the legislative finance committee, the New Mexico public accountancy board and the New Mexico society of public accountants, be requested to study the current ethical and conflict of interest standards for New Mexico's certified public accountants and the need, if any, to revise those standards and report his findings and recommendations, if any, to the second session of the forty-sixth legislature; and

(7) BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the state auditor, the director of the legislative finance committee, the New Mexico public accountancy board and the New Mexico society of certified public accountants.

[2.2.2.14 NMAC - Rp 2.2.2.14 NMAC, 4-30-03]

[Appendices A - E follow on pages 207 - 218.]

Agency Letterhead

Date

Name of the State Auditor
2113 Warner Circle
Santa Fe, NM 87505-5499

Dear Mr. "Name of the State Auditor,"

In accordance with the requirements of Section 2.2.2.8 C (6) of 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies, the ___ agency name ___ is recommending that the firm of ___recommended IPA___ be the agency's Independent Public Accountant (IPA) for the financial and compliance audit of the agency financial statements for the fiscal year ended June 30, ____; and requesting approval of this selection by the State Auditor.

This IPA recommendation has been reviewed and approved by our oversight agency _____(CHE or SDE) as required by HB 219 and indicated by the following oversight agency signature and date.

Oversight Agency Signature Printed name of signer Date

Complete the following if applicable:

This is the _____ (first, second, or third) year of the multi-year contract for this recommended auditor.

The following is a list of all professional services contracts that the agency has with any IPA on the State Auditor's approved list of IPAs.

If you have any questions regarding this IPA recommendation please contact _____ at phone number _____ at the agency office.

Respectfully,

Agency Representative

Enc: Evaluation for the Recommended IPA

[2.2.2 NMAC Appendix A - N, 4-30-03]

NEW MEXICO STATE AUDITOR'S OFFICE

Audit Contract Proposal Evaluation Form

Part One

Name of Agency _____

Agency Contact _____ Phone # _____

Audit Firm Name _____ Date Completed _____

<u>Evaluation Criteria</u>	Points	Points Awarded
<p>Section I. <u>Capability of Firm</u></p> <p>A) The firm has the resources to perform the type and size of audit required. # of firm team members _____ Total audit hours available _____</p> <p>B) The firm meets independence standards to perform your audit.</p> <p>C) External Quality Control Review (Peer Review)</p> <p>1. Peer review results: Obtain most recent copy of the external quality control review report including letter of comments</p> <p>2. - Opinion received _____</p> <p style="padding-left: 40px;">Unmodified 10 Modified 5</p> <p>If report is less than modified (adverse) STOP HERE. FIRM DOES NOT QUALIFY.</p> <p>3. Results of reference checks and agency's prior experience with firm (check should include timeliness, planning, technical expertise, etc.).</p> <p>D) Organization and completeness of proposal or bid.</p> <p style="text-align: right;">Section I Total</p>	<p>0-5</p> <p>0-2</p> <p>0-10</p> <p>0-10</p> <p>0-3</p>	
<p>Section II. <u>Work Requirements & Audit Approach</u></p> <p>A) Knowledge of audit objectives, agency needs, and product to be delivered.</p> <p>B) Proposal or bid contains a sound technical plan and realistic estimate of time to complete major segments of the audit: planning; interim fieldwork; fieldwork; and reporting. Start Date _____ End Date _____</p> <p>C) Plans for using agency staff, including internal auditors.</p> <p>D) If the proposal or bid is for a multi-year contract, approach for planning and conducting the work efforts of subsequent years.</p> <p style="text-align: right;">Section II Total</p>	<p>0-5</p> <p>0-5</p> <p>0-3</p> <p>0-2</p>	
<p>Section III. <u>Technical Experience</u></p> <p>A) Governmental audit experience of on-site manager Name of on-site manager _____</p> <p>B) Team audit experience:</p> <p>1. Specialization in your type of agency (e.g., state agencies, schools, hospitals, counties, cities, etc.)</p> <p>2. GASB 34 and 35 Experience</p> <p>3. Experience with Housing Authorities</p> <p>4. Experience with Charter Schools</p> <p>C) Attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and the agency.</p> <p style="text-align: right;">Section III Total</p>	<p>0-10</p> <p>0-10</p> <p>0-7</p> <p>0-4</p> <p>0-4</p> <p>0-5</p>	
<p>Section IV. <u>Firm Strengths or Weaknesses</u></p> <p>Specify _____</p> <p style="text-align: right;">Section IV Total</p>	<p>0-5</p>	
Total All Sections		

Submit a copy of this form for the proposal selected to the State Auditor along with the Agency recommendation letter.

New Mexico State Auditor's Office
 Agency Audit Contract Proposal Evaluation Form
 Part Two

 Name of Agency Phone #

 Agency Contact

 Audit Firm

Cost is to be evaluated **ONLY** upon completion of Part One of this two-part evaluation form. Evaluate cost separately for the top **THREE CHOICES ONLY** from Part One. ADD parts One and Two in making your **FINAL** recommendation.

EVALUATION CRITERIA		
COST	Maximum Points	Points Awarded
Award a maximum of 10 points		
Lowest Cost Proposal \$ _____ / (divided by) Subtotal This Proposal \$ _____ = _____ (If this is a multi-year proposal, divide the total lowest cost for the three years by total cost for the three years on this proposal) x 10 = Points Awarded _____	10	
Multi-Year Proposal Y <input type="checkbox"/> (_____ year of _____ year proposal) N <input type="checkbox"/>		

BREAKDOWN	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	1 st Year Hours FYE 6/30/___	1 st Year Cost FYE 6/30/___	2 nd Year Hours FYE 6/30/___	2 nd Year Cost FYE 6/30/___	3 rd Year Hours FYE 6/30/___	3 rd Year Cost FYE 6/30/___
Financial Statement Audit	_____	_____	_____	_____	_____	_____
Federal Single Audit	_____	_____	_____	_____	_____	_____
Financial Statement Preparation	_____	_____	_____	_____	_____	_____
GASB 34/35 Implementation	_____	_____	_____	_____	_____	_____
Other (i.e. housing authorities, charter schools)	_____	_____	_____	_____	_____	_____
SUB TOTAL	_____	_____	_____	_____	_____	_____
Gross Receipts Tax		_____		_____		_____
TOTAL COMPENSATION		=====		=====		=====

SCORE	Maximum Points	Points Awarded
SCORE, Part One: Bring forward score from Part One of Evaluation Form	90	
FINAL SCORE	100	

Evaluated By

 Name and Title Date

 Name and Title Date

 Name and Title Date

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASBS#	TITLE	EFFECTIVE DATE
1	Authoritative Status of NCGA Pronouncements and AICPA Industry Audit Guide	On issuance July 1984
2	Financial Reporting of Deferred Compensation Plans Adopted under the Provisions of Internal Revenue Code Section 457	Financial statements for periods ending after 12/15/86
3	Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements	Financial statements for periods ending after 12/15/86
4	Applicability of FASB Statement No. 87, "Employers' Accounting for Pensions," to State and Local Government Employers	On issuance September 1986
5	Disclosure of Pension Information by Public Employee Systems and State and Local Governmental Employers	Financial reports issued for fiscal years beginning after 12/15/86
6	Accounting and Financial Reporting for Special Assessments	Financial statements for periods beginning after 06/15/87
7	Advance Refundings Resulting in Defeasance of Debt	Fiscal periods beginning after 12/15/86
8	Applicability of FASB Statement No. 93, "Recognition of Depreciation by Not-for-Profit Organizations," to Certain State and Local Governmental Entities	On issuance January 1988
9	Reporting Cash Flows of Proprietary and Nonexpendable Trust Funds and Governmental Entities that Use Proprietary Fund Accounting	Financial statements for fiscal years beginning after 12/15/89
10	Accounting and Financial Reporting for Risk Financing and Related Insurance Issues	Public entity risk pools: periods beginning after 06/15/90; Entities other than pools: periods beginning after 06/15/94
11	Measurement Focus and Basis of Accounting – Governmental Fund Operating Systems	Deferred by GASB 17 to periods beginning approximately two years after an implementation standard is issued (early application not permitted)
12	Disclosure of Information on Post-employment Benefits Other than Pension Benefits by State and Local Governmental Employers	Financial reports issued for fiscal years beginning after 06/15/90
13	Accounting for Operating Leases with Scheduled Rent Increases	Proprietary and similar trust funds: prospectively for leases with terms beginning after 06/30/90 Governmental and similar trust funds: Measurement criteria - prospectively for leases with terms beginning after 06/30/90; Recognition criteria- two changes: one for financial statements for periods approximately two years after an implementation standard is issued (early application not permitted)
14	The Financial Reporting Entity	Financial statements for periods beginning after 12/15/92
15	Governmental College and University Accounting and Financial Reporting Models	Financial statements for periods beginning after 06/15/92
16	Accounting for Compensated Absences	Financial statements for periods beginning after 06/15/93
17	Measurement Focus and Basis of Accounting – Governmental Fund Operating Statements: Amendment of the Effective Dates of GASB Statement 11 and Related Statements (an Amendment of GASB Statements 10, 11 and 13)	On issuance June 1993
18	Accounting for Municipal Solid Waste Landfill Closure and Post-closure Care Costs	Financial statements for periods beginning after 06/15/93
19	Governmental College and University Omnibus Statement (an Amendment of GASB Statements 10 and 15)	Pell grants - periods beginning after 06/15/93; Risk financing activities - periods beginning after 06/15/94
20	Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities that use Proprietary Fund Accounting	Financial statements for periods beginning after 12/15/93
21	Accounting for Escheat Property	Financial statements for periods beginning after 06/15/94

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASBS#	TITLE	EFFECTIVE DATE
22	Accounting for Taxpayer-Assessed Tax Revenues in Governmental Funds	Financial statements for periods beginning after 06/15/94
23	Accounting and Financial Reporting for Refundings of Debt Reported by Proprietary Activities	Financial statements for periods beginning after 06/15/94
24	Accounting and Financial Reporting for Certain Grants and Other Financial Assistance	Financial statements for periods beginning after 06/15/95
25	Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans	Financial statements for periods beginning after 06/15/96 Earlier implementation is encouraged; however, implement GASB 26 in the same fiscal year
26	Financial Reporting for Post-employment Health Care Plans Administered by Defined Benefit Pension Plans	Financial statements for periods beginning after 06/15/96 Earlier implementation is encouraged; however, implement GASB 25 in the same fiscal year
27	Financial Reporting for Pensions by State and Local Governmental Employers	Financial statements for periods beginning after 06/15/97 Earlier implementation is encouraged
28	Accounting and Financial Reporting for Securities Lending Transactions	Financial statements for periods beginning after 12/15/95 Earlier implementation is encouraged
29	The Use of Not-for-Profit Accounting and Financial Reporting Principles by Governmental Entities	Financial statements for periods beginning after 12/15/94 For entities that have applied the AICPA Not-for-Profit model but previously have not followed the governmental accounting and financial reporting standards required by Paragraphs 5 and 6 of this statement, the provisions of those governmental standards are effective for financial statements for periods beginning after 12/15/95 Earlier application is encouraged
30	Risk Financing Omnibus - an amendment of GASB Statement No. 10	Financial statements for periods beginning after 6/15/96
31	Accounting and Financial Reporting for Certain Investments and for External Investment Pools	Financial statements for periods beginning after 6/15/97
32	Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans	Financial statements for periods beginning after 12/31/98 or when plan assets are held in trust under the requirements of IRC Section 457, subsection (g), if sooner
33	Accounting and Financial Reporting for Non-Exchange Transactions	Financial statements for periods beginning after June 15, 2000 Earlier application is encouraged

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASBS#	TITLE	EFFECTIVE DATE
34	Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments	<p>The requirements of this Statement are effective in three phases based on a government’s total annual revenues in the first fiscal year ending after June 15, 1999. Governments with total annual revenues (excluding extraordinary items) of \$100 million or more (phase 1) should apply this Statement for periods beginning after June 15, 2001. Governments with at least \$10 million but less than \$100 million in revenues (phase 2) should apply this Statement for periods beginning after June 15, 2002. Governments with less than \$10 million in revenues (phase 3) should apply this Statement for periods beginning after June 15, 2003. Earlier application is encouraged. Governments that elect early implementation of this Statement for periods beginning before June 15, 2000, should also implement GASB Statement No. 33, <i>Accounting and Financial Reporting for Non-exchange Transactions</i>, at the same time. If a primary government chooses early implementation of this Statement, all of its component units also should implement this standard early to provide the financial information required for the government-wide financial statements.</p> <p>Prospective reporting of general infrastructure assets is required at the effective dates of this Statement. Retroactive reporting of all major general governmental infrastructure assets is <i>required</i> four years after the effective date on the basic provisions for all major general infrastructure assets that were required or significantly reconstructed, or that received significant improvements, in fiscal years ending after June 30, 1980. Phase 3 governments are encouraged to report infrastructure retroactively, but may elect to report general infrastructure prospectively only.</p>
35	Basic Financial Statement – and Management’s Discussion and Analysis – For Public Colleges and Universities	Colleges and Universities that are a unit of a state or local government will implement the new standards at the same time as their primary government, generally for fiscal years beginning July 1, 2001.
36	Recipient Reporting for Certain Shared Non-exchange Revenues	This Statement should be implemented simultaneously with Statement 33, for periods beginning after June 15, 2000.
37	Basic Financial Statements and Management’s Discussion and Analysis for State and Local Governments: Omnibus (An amendment of GASB Statement No. 21 and No. 34)	<p>This Statement should be implemented simultaneously with Statement 34. For governments that implemented Statement 34 prior to the issuance of this Statement, this Statement’s requirements are effective for financial statements for periods beginning after June 15, 2000. Accounting changes adopted to conform to the provisions of this Statement should be applied retroactively, if practical, by restating financial statements for all prior periods presented. If restatement is not practical, the cumulative effect of applying this Statement, if any, should be reported as a restatement of beginning net assets, fund balances, or fund equity, as appropriate, for the earliest period restated. In the period this Statement is first applied, the financial statements should disclose the nature of any restatement and its effect. Also, the reason for not restating prior periods presented should be explained.</p> <p>The provisions of this Statement need not be applied to immaterial items.</p> <p>The requirements of this Statement are effective in three phases based on the revenues of the government as described in paragraph 143 of Statement 34;</p> <ul style="list-style-type: none"> • Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 2002. • Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002. • Phase 3 governments should apply this Statement for fiscal periods beginning after June 15, 2003. <p>Earlier application is encouraged. However, paragraphs 6, 14, and</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASBS#	TITLE	EFFECTIVE DATE
38	Certain Financial Statement – Note Disclosures	<p>15 should be implemented only if Statement 34 has also been implemented.</p> <p>The provisions of this Statement need not be applied to immaterial items.</p> <p>The requirements of this Statement are effective in three phases on the revenues of the government as described in paragraph 143 of Statement 34:</p> <ul style="list-style-type: none"> • Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 2002. • Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002. • Phase 3 governments should apply this Statement for fiscal periods beginning after June 15, 2003. <p>Earlier application is encouraged. However, paragraphs 6, 14, and 15 should be implemented only if Statement 34 has been implemented.</p> <p>The provision of this Statement need not be applied to immaterial items.</p>
39	Determining Whether Certain Organizations Are Component Units	<p>The requirements of the statement are effective for financial statements for periods beginning after June 15, 2003. Earlier application is encouraged. Adjustments resulting from a change to comply with this statement should be treated as adjustments of prior periods. The financial statements of all prior periods presented should be restated, if practical, to show the financial information of the new reporting entity for all periods. If restatement of the financial statements for prior periods is not practical, the cumulative effect of applying this statement should be reported as a restatement of beginning net assets/fund balance for the earliest period restated.</p>

[2.2.2. NMAC Appendix C – Rp 2 .2.2 NMAC Appendix B, 4-30-03]

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i> <i>No.</i>	<i>Title</i>	<i>AU</i> <i>Section</i>
1	Codification of Auditing Standards and Procedures	See Part II of Cross-References To SASs section
7	Communications Between Predecessor and Successor Auditors	315
8	Other Information in Documents Containing Audited Financial Statements	550
12	Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments	337
19	Client Representation	333
21	Segment Information	435
22	Planning and Supervision	311
25	The Relationship of Generally Accepted Auditing Standards to Quality Control Standards	161
26	Association With Financial Statements	504
29	Reporting on Information Accompanying the Basic Financial Statements in Auditor Submitted Documents	551
31	Evidential Matter	326
32	Adequacy of Disclosure of Financial Statements	431
37	Filings Under Federal Securities Statutes	711
39	Audit Sampling	350
41	Working Papers	339
43	Omnibus Statements on Auditing Standards	150.06; 331.14 350.46; 420.15 901.01; 901.24 901.28
45	Omnibus Statement on Auditing Standards-1983	313; 334
46	Consideration of Omitted Procedures After the Report Date	390
47	Audit Risk and Materiality in Conducting an Audit	312
48	The Effects of Computer Processing on the Audit of Financial Statements	311.03; 311.09-.10; 326.12
50	Reports on the Application of Accounting Principles	625
51	Reporting on Financial Statements Prepared for Use in Other Countries	534
52	Omnibus Statement on Auditing Standards-1987	551.15; 558
53	The Auditors Responsibility to Detect and Report Errors and Irregularities	316A
54	Illegal Acts by Clients	317
56	Analytical Procedures	329
57	Auditing Accounting Estimates	342
58	Reports on Audited Financial Statements	508
59	The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern	341
60	Communication of Internal Control Related Matters Noted in an Audit	325
61	Communication With Audit Committees	380
62	Special Reports	623
64	Omnibus Statement on Auditing Standards-1990	341.12; 508.83; 543.16

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

SAS No.	Title	AU Section
65	The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements	322
67	The Confirmation Process	330
69	The Meaning of <i>Present Fairly in Conformity With Generally Accepted Accounting Principles</i> in the Independent Auditor's Report	411
70	Reports on the Processing of Transactions by Service Organizations	324
71	Interim Financial Information	722
72	Letters for Underwriters and Certain Other Requesting Parties	634
73	Using the Work of a Specialist	336
74	Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance	801
76	Amendments to Statement on Auditing Standards No. 72, <i>Letters for Underwriters and Certain Other Requesting Parties</i>	634.01; 634.09; 634.10; 634.34 AT 300.01
77	Amendments to Statements on Auditing Standards No. 22, <i>Planning and Supervision</i> , No. 59, <i>The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern</i> , and No. 62, <i>Special Reports</i>	311.05; 341.13; 544.02; 544.04; 623.05; 623.08
78	Consideration of Internal Control in a Financial Statement Audit: An Amendment to Statement on Auditing Standards No. 55	319
79	Amendment to Statement on Auditing Standards No. 58, <i>Reports on Audited Financial Statements</i>	508
80	Amendment to Statement on Auditing Standards No. 31, <i>Evidential Matter</i>	326
81	Auditing Investments	332
82	Consideration of Fraud in a Financial Statement Audit	316
83	Establishing an Understanding with the Client	310
84	Communications Between Predecessor and Successor Auditors	315
85	Management Representations	333
86	Amendment to SAS No. 72, Letters for Underwriters and Certain Other Reporting Parties. Amendment is effective for comfort letters issued on or after June 30, 1998.	634
87	Restricting the Use of an Auditor's Report Statement is effective for reports issued after December 31, 1998	532
88	Service Organization and Reporting on Consistency	324; 420
89	Audit Adjustments	310.06; 333.06, 333.16; 380.09; and 380.10
90	Audit Committee Communications	380.03; 380.11; and 722.25-.27
92	Auditing Derivates Instruments, Hedging Activities and Investments in Securities	332
93	Omnibus Statement on Auditing Standards - 2000	315.02; 315.12 411 (title) 411.01; 508.08 and 622

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i>		<i>AU</i>
<i>No.</i>	<i>Title</i>	<i>Section</i>
94	The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit	319
95	Generally Accepted Auditing Standards	150
96	Audit Documentation	339
97	N/A	
98	Omnibus Statement on Auditing Standards-2002	150.05 161.02 and .03 312.34-41 324 508.65 558.08 & .10 558.02 561.03 560.01 530.03-.05
99	Consideration of Fraud in a Financial Statement Audit	230 336

[2.2.2 NMAC Appendix D – Rp 2.2.2 NMAC Appendix C, 4-30-03]

Appendix E

STATE OF NEW MEXICO
(NAME) COUNTY TREASURER'S
PROPERTY TAX SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2003

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End
Grant County:									
General advabrem 1992	\$2,425,000	\$ -	\$2,419,667	\$ -	\$2,419,667	\$ -	\$5,333	\$ -	\$ -
General advabrem 1993	2,433,762	50	2,428,733	50	2,428,733	-	5,000	-	29
General advabrem 1994	2,475,960	500	2,471,071	500	2,471,071	-	4,333	-	556
General advabrem 1995	2,476,000	200	2,471,152	200	2,471,152	-	3,000	-	1,848
General advabrem 1996	2,477,989	700	2,471,810	700	2,471,810	1,844	2,798	-	3,381
General advabrem 1997	2,475,896	-	2,467,744	-	2,467,744	1,995	2,654	-	5,498
General advabrem 1998	2,476,998	2,442	2,461,329	2,442	2,461,329	1,805	2,500	-	13,169
General advabrem 1999	2,484,500	27,558	2,450,366	27,558	2,450,366	-	-	-	34,134
General advabrem 2000	2,485,000	488,209	2,317,271	488,209	2,317,271	-	-	-	167,729
General advabrem 2001	2,490,000	1,942,523	1,942,523	1,942,523	1,942,523	-	-	-	547,477
Total General advabrem	24,701,105	2,462,182	23,901,666	2,462,182	23,901,666	5,644	25,618	-	773,821
Non-rendition fees 1992	6,500	-	6,475	-	6,475	-	25	-	-
Non-rendition fees 1993	6,500	-	6,450	-	6,450	-	50	-	-
Non-rendition fees 1994	6,500	-	6,445	-	6,445	-	55	-	-
Non-rendition fees 1995	6,500	-	6,425	-	6,425	-	75	-	-
Non-rendition fees 1997	6,500	-	6,475	-	6,475	-	25	-	-
Non-rendition fees 1997	6,520	-	6,450	-	6,450	-	70	-	-
Non-rendition fees 1998	6,520	-	6,460	-	6,460	-	60	-	-
Non-rendition fees 1999	6,520	-	6,420	-	6,420	100	100	-	-
Non-rendition fees 2000	6,520	-	6,425	-	6,425	95	95	-	-
Non-rendition fees 2001	6,520	6,520	6,520	6,520	6,520	-	-	-	-
Total Non-rendition fees	65,100	6,520	64,545	6,520	64,545	195	555	-	-
Copper production 1992	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1993	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1994	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1995	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1996	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1997	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1998	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 1999	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2000	1,598,000	-	1,598,000	-	1,598,000	-	-	-	-
Copper production 2001	1,598,437	1,598,437	1,598,437	1,598,437	1,598,437	-	-	-	-
Total Copper production	15,980,437	1,598,437	15,980,437	1,598,437	15,980,437	-	-	-	-
Re-appraisal program 1992	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1993	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1994	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1995	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1996	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1997	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1998	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1999	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2000	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2001	27,808	27,808	27,808	27,808	27,808	-	-	-	-
Total Re-appraisal program	278,080	27,808	278,080	27,808	278,080	-	-	-	-
Hospital bond 1992	107	-	107	-	107	-	-	-	-
Hospital bond 1993	107	-	107	-	107	-	-	-	-
Hospital bond 1994	107	-	107	-	107	-	-	-	-
Hospital bond 1995	107	-	107	-	107	-	-	-	-
Hospital bond 1996	107	-	107	-	107	-	-	-	-
Hospital bond 1997	107	-	107	-	107	-	-	-	-
Hospital bond 1998	107	-	107	-	107	-	-	-	-
Hospital bond 1999	107	-	107	-	107	-	-	-	-
Hospital bond 2000	107	-	107	-	107	-	-	-	-
Hospital bond 2001	107	107	107	107	107	-	-	-	-
Total Hospital bond	1,070	107	1,070	107	1,070	-	-	-	-
Total Grant County	41,025,792	4,095,054	40,225,798	4,095,054	40,225,798	5,839	26,173	-	773,821

STATE OF NEW MEXICO
(NAME) COUNTY TREASURER'S
PROPERTY TAX SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2003

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End
Municipalities:									
City of Bayard 1992	\$16,500	-	\$16,500	\$ -	\$16,500	\$ -	\$ -	\$ -	-
City of Bayard 1993	16,500	-	16,480	-	16,480	-	20	-	-
City of Bayard 1994	16,500	-	16,475	-	16,475	-	25	-	-
City of Bayard 1995	16,500	-	16,500	-	16,500	-	-	-	-
City of Bayard 1996	16,500	-	16,500	-	16,500	-	-	-	-
City of Bayard 1997	16,500	-	16,433	-	16,433	-	67	-	-
City of Bayard 1998	16,500	-	16,455	-	16,455	-	45	-	-
City of Bayard 1999	16,500	-	16,400	-	16,400	100	100	-	-
City of Bayard 2000	16,500	901	16,450	901	16,450	50	50	-	-
City of Bayard 2001	16,500	16,000	16,500	16,000	16,500	-	-	-	-
Total City of Bayard	165,000	16,901	164,693	16,901	164,693	150	307	-	-
Village of Hurley 1992	8,000	-	7,975	-	7,975	-	25	-	-
Village of Hurley 1993	8,000	-	8,000	-	8,000	-	-	-	-
Village of Hurley 1994	8,000	-	7,970	-	7,970	-	30	-	-
Village of Hurley 1995	8,000	-	8,000	-	8,000	-	-	-	-
Village of Hurley 1996	8,000	-	7,950	-	7,950	-	50	-	-
Village of Hurley 1997	8,000	-	7,940	-	7,940	-	60	-	-
Village of Hurley 1998	8,000	-	7,930	-	7,930	-	70	-	-
Village of Hurley 1999	8,000	-	7,925	-	7,925	-	75	-	-
Village of Hurley 2000	8,000	43	7,950	43	7,950	50	50	-	-
Village of Hurley 2001	8,000	8,000	8,000	8,000	8,000	-	-	-	-
Total Village of Hurley	80,000	8,043	79,640	8,043	79,640	50	360	-	-
Village of Santa Clara 1992	5,000	-	4,950	-	4,950	-	50	-	-
Village of Santa Clara 1993	5,000	-	4,975	-	4,975	-	25	-	-
Village of Santa Clara 1994	5,000	-	4,990	-	4,990	-	10	-	-
Village of Santa Clara 1995	5,000	-	4,950	-	4,950	-	50	-	-
Village of Santa Clara 1996	5,000	-	4,960	-	4,960	-	40	-	-
Village of Santa Clara 1997	5,000	-	4,970	-	4,970	-	30	-	-
Village of Santa Clara 1998	5,000	-	5,000	-	5,000	-	-	-	-
Village of Santa Clara 1999	5,000	-	4,950	-	4,950	10	50	-	-
Village of Santa Clara 2000	5,000	708	4,955	708	4,955	20	45	-	-
Village of Santa Clara 2001	5,000	5,000	5,000	5,000	5,000	-	-	-	-
Total Village of Santa Clara	50,000	5,708	49,700	5,708	49,700	30	300	-	-
Town of Silver City 1992	205,287	-	205,287	-	205,287	-	-	-	-
Town of Silver City 1993	205,287	-	205,187	-	205,187	-	100	-	-
Town of Silver City 1994	205,287	-	205,237	-	205,237	-	50	-	-
Town of Silver City 1995	205,287	-	205,262	-	205,262	-	25	-	-
Town of Silver City 1996	205,287	-	205,257	-	205,257	-	30	-	-
Town of Silver City 1997	205,287	-	205,262	-	205,262	-	25	-	-
Town of Silver City 1998	205,287	-	205,287	-	205,287	-	-	-	-
Town of Silver City 1999	205,287	-	205,237	-	205,237	50	50	-	-
Town of Silver City 2000	205,287	-	205,262	-	205,262	25	25	-	-
Town of Silver City 2001	205,287	205,287	205,287	205,287	205,287	-	-	-	-
Total Town of Silver City	2,052,870	205,287	2,052,565	205,287	2,052,565	75	305	-	-
Total Municipalities	2,347,870	235,939	2,346,598	235,939	2,346,598	305	1,272	-	-
Grand Total	\$43,373,662	\$4,330,993	\$42,572,396	\$4,330,993	\$42,572,396	\$6,144	\$27,445	\$ -	\$773,821

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT**
OFFICE OF THE SECRETARY

**TITLE 8 SOCIAL SERVICES
CHAPTER 8 CHILDREN, YOUTH
AND FAMILIES GENERAL PROVI-
SIONS
PART 5 PRIVACY OFFICE**

8.8.5.1 ISSUING AGENCY:
Children, Youth and Families Department.
[8.8.5.1 NMAC - N, 4/30/2003]

8.8.5.2 SCOPE: Department
staff and the general public.
[8.8.5.2 NMAC - N, 4/30/2003]

**8.8.5.3 STATUTORY
AUTHORITY:** Section 9-2A-7(D) NMSA
1978 provides that the secretary of the chil-
dren, youth and families department (the
department) may make and adopt such reason-
able procedural rules and regulations as
may be necessary to carry out the duties of
the department and its divisions. The secre-
tary has determined an operational need to
comply with the privacy provisions of the
Health Insurance Portability and
Accountability Act of 1996 (HIPAA), 42
USCS 1320d *et seq.*
[8.8.5.3 NMAC - N, 4/30/2003]

8.8.5.4 DURATION:
Permanent.
[8.8.5.4 NMAC - N, 4/30/2003]

8.8.5.5 EFFECTIVE DATE:
April 30, 2003.
[8.8.5.5 NMAC - N, 4/30/2003]

8.8.5.6 OBJECTIVE: The
objective of this rule is to implement the
department's policy in compliance with pri-
vacy related requirements of the Health
Insurance Portability and Accountability
Act of 1996 (HIPAA) and accompanying
regulations, 45 CFR Part 164, Subpart E.
[8.8.5.6 NMAC - N, 4/30/2003]

8.8.5.7 DEFINITIONS:
A. "Citizen review board"
means a body appointed pursuant to 32A-8-
1 *et seq.* NMSA 1978 to review dispositional
children's court orders and the depart-
ment's progress report and to submit its own
reports to the court.

B. "Court appointed spe-
cial advocate" means a person appointed by
the children's court judge to assist in any
children's court proceeding.

C. "Covered" means
department components or workforce
whose activities and job duties are within

the purview of a HIPAA health plan or
health care provider.

D. "De-identified informa-
tion" means health information that is not
individually identifiable and is being used
by the department for allowable purposes in
an aggregated data set.

E. "Disclosure" means the
release, transfer, provision of access to or
divulging in any other manner of protected
health information outside the department's
covered components.

F. "Guardian ad litem"
means a person who is appointed by the
court to represent a minor or legally incom-
petent person in legal proceedings.

G. "Health care opera-
tions" means conducting quality assessment
and improvement activities; population-
based activities relating to improving serv-
ices, costs or mandated reporting activities;
reviewing worker competence or qualifica-
tions, evaluating performance and conduct-
ing training; conducting or arranging for
case review, legal services and auditing
functions; strategic planning and develop-
ment; and management and general admin-
istrative activities of the department, includ-
ing, but not limited to implementation and
compliance with HIPAA requirements, cus-
tomer service, resolutions of internal griev-
ances and creating de-identified health
information for allowable purposes for
which an individual authorization is not
required.

H. "Individual" means the
person who is the subject of protected
health information.

I. "Individually identifi-
able health information" means information
that is created or received by the depart-
ment, that relates to the past, present or
future physical or mental condition of an
individual, provision of health care to an
individual or the past, present or future pay-
ment for health care and that either identi-
fies the individual or can reasonably be
believed to identify the individual.

J. "Law enforcement offi-
cial" means an officer or employee of any
agency or authority of the United States, a
state, a territory, a political division of a
state or territory or an Indian tribe who is
empowered by law to investigate or conduct
an official inquiry into a potential violation
of law or prosecute or otherwise conduct a
criminal, civil, or administrative proceeding
arising from an alleged violation of law.

K. "Minimum necessary"
means the standard adopted by the depart-
ment when using or disclosing protected
health information or when requesting pro-
tected health information from another enti-
ty in covered circumstances, to make rea-
sonable efforts to limit protected health
information to the minimum necessary to

accomplish the intended purpose of the use,
disclosure or request.

L. "Personal representa-
tive" means (1) a person who has legal
authority under applicable law to act on
behalf of an individual adult or emancipat-
ed minor, and (2) a parent, guardian or other
person acting in *loco parentis* who is
authorized by law to act on behalf of an
individual unemancipated minor, except
where the minor is authorized by law to act
on his own behalf or via court approval or
where the parent guardian or person acting
in *loco parentis* has assented to an agree-
ment of confidentiality between the
provider and the minor.

M. "Protected health infor-
mation" or "PHI" means individually iden-
tifiable health information that is trans-
mitted by electronic media, maintained in any
medium described in the definition of elec-
tronic media at 45 CFR Section 162.103 or
transmitted or maintained in any other form
or medium. PHI excludes individually
identifiable health information in education
records covered by the Family Educational
Rights and Privacy Act at 20 USC 1232g,
records described at 20 USC
1232g(a)(4)(B)(iv) and employment
records held by the department in its role as
employer.

N. "Psychotherapy notes"
means notes recorded (in any medium) by a
health care provider who is a mental health
professional, documenting or analyzing the
contents of conversation during a private
counseling session or a group, joint, or fam-
ily counseling session and that are separ-
ated from the rest of the individual's medical
record. Psychotherapy notes excludes med-
ication prescription and monitoring, coun-
seling session start and stop times, the
modalities and frequencies of treatment fur-
nished, results of clinical tests, and any
summary of the following items: diagnosis,
functional status, the treatment plan, symp-
toms, prognosis, and progress to date.

O. "Records custodian"
means the person designated by the depart-
ment to respond to public records requests
pursuant to the Public Records Act, 14-2-1
et seq. NMSA 1978.

P. "Required by law"
means a mandate contained in law that com-
pels an entity to make a use or disclosure of
protected health information and that is
enforceable in a court of law. Required by
law includes, but is not limited to,

(1) court orders and court-ordered
warrants,

(2) subpoenas or summons issued
by a court, grand jury, a governmental or
tribal inspector general or an administrative
body authorized to require the production of
information,

(3) a civil or an authorized inves-

tigative demand,

(4) medicare conditions of participation with respect to health care providers participating in the program, and

(5) statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

Q. "Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

R. "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to an individual; or the referral of an individual for health care from one health care provider to another.

S. "Use" means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination or analysis of such information within an entity that maintains such information.

T. "Workforce" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the department, is under the direct control of the department, whether or not they are paid by the department. [8.8.5.7 NMAC - N, 4/30/2003]

8.8.5.8 PRIVACY OFFICER:

The secretary designates a privacy officer who is responsible for the development and implementation of the department's policies and procedures providing for compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and who is responsible for receiving complaints under 45 CFR Section 164.530(d). The secretary may also designate such other personnel as necessary to support the efforts of the privacy office. The secretary's personnel designations are documented in written or electronic form.

[8.8.5.8 NMAC - N, 4/30/2003]

8.8.5.9 NOTICE OF PRIVACY PRACTICES:

A. Persons receiving covered health care or health-related services from the department receive written or electronic notice of the department's privacy practices for Protected Health Information (PHI) in accordance with 45 CFR Section 164.520.

B. Notice is provided no later than the date of first delivery of serv-

ice, except that persons receiving health-related services under the small health plan administered by the prevention and intervention division prior to April 14, 2004 shall receive notice on or before April 14, 2004. Persons deemed eligible for such services after April 14, 2004 shall receive notice on the date of first delivery of service. In an emergency treatment situation, notice will be given as soon as reasonably practicable after the emergency treatment situation.

C. The department makes a good faith effort to obtain written acknowledgement of an individual's receipt of Notice, and if not obtained, will document said good faith efforts.

D. The department will retain copies of all versions of its notice of privacy practices, including dates and scope of use.

E. Persons held in lawful custody by the juvenile justice division do not have a right to receive notice of privacy practices.

[8.8.5.9 NMAC - N, 4/30/2003]

8.8.5.10 INDIVIDUAL RIGHTS RELATED TO PROTECTED HEALTH INFORMATION:

The Health Insurance Portability and Accountability Act of 1996 and children, youth and families department policies, 8.8.5.1 through 8.8.5.20 NMAC, provide that individuals have certain rights with respect to their protected health information. Any requests to avail themselves of those rights, as enumerated herein, must be in writing.

A. Individuals or their personal representatives have a right to inspect and copy their own PHI as follows:

(1) Access is denied, with no right of review, if:

(a) the individual is a resident in a department correctional facility and obtaining such access would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other residents, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the resident;

(b) the information was compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative proceeding;

(c) the information is contained in psychotherapy notes;

(d) the PHI was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information, or

(e) any circumstances where access to PHI is restricted by federal or state statute or regulation not otherwise pre-

empted by HIPAA.

(2) Access is denied, with right of review, if:

(a) the access to the PHI requested is determined by a licensed health care professional to be likely to endanger the life or physical safety of the individual or another person; and such determination is documented;

(b) the access is requested by a personal representative and a licensed health care professional determines that such access is reasonably likely to cause substantial harm to the individual or another person, or

(c) the PHI makes reference to another person (unless such person is a health care provider) and a licensed health care professional has determined that granting the access requested is reasonably likely to cause substantial harm to such other person.

(3) If the basis for the denial of access provides for a right of review, the individual or his/her personal representative has a right to have the denial reviewed by another licensed health care professional who did not participate in the original denial decision. Such review must be completed within a reasonable period of time, and the department must promptly provide the individual or his/her personal representative with notice of the reviewer's decision and comply with the determination to provide or deny access.

B. Individuals or their personal representatives have a right to submit a written request for an amendment to their own PHI for as long as the department maintains the PHI.

(1) The department must act on the request within sixty (60) days of receipt of the request by the privacy office or within ninety (90) days if the privacy office notifies the individual or his/her personal representative within the first sixty (60) days of the reasons for delay and the date by which action on the request will be taken. Requests to amend the individual's record may be denied for the following reasons:

(a) PHI contained in the record is deemed to be accurate and complete;

(b) PHI contained in the record was not created by department employees, (unless the individual or his/her personal representative provides reasonable basis to believe that the originator of the records is no longer available to act on the request), or

(c) the information that is the subject of the request for amendment is not part of the designated record set.

(d) would not be available for inspection under Section 8.8.5.10(A)(1) above.

(2) Approved amendments will become incorporated into the individual's

record and the department will make reasonable efforts to provide the amended information to those persons and others, including business associates, that the department knows to have the affected PHI and that may have relied, or be foreseen to rely, on that information to the detriment of the individual. If the department rejects the amendment, the individual or his/her personal representative will be provided an opportunity to submit a written letter of disagreement that shall be appended or otherwise linked to the part of the record containing the disputed information.

C. Individuals or their personal representatives have a right to request receipt of the department's communications containing PHI by alternative means or at alternative locations by submitting a request in writing to the department's privacy officer. The department routinely accommodates all reasonable requests.

D. Individuals or their personal representatives have a right to submit a written request for a written accounting of disclosures made by the department within the previous six years as provided in Section 8.8.5.17 herein. The department acts on the request no later than 60 days after receipt, and the time may be extended for a 30 day period if the department provides a written statement of the reasons for the delay. Health oversight agencies and law enforcement officials may require, under certain circumstances provided in 45 CFR Section 164.528(a)(2), a suspension of the right to an accounting for a specified time. An accounting does not include disclosures made:

(1) to carry out treatment, payment and health care operations;

(2) to the individual or to the individual's personal representative of his or her own PHI;

(3) incident to certain uses or disclosures permitted or required pursuant to 45 CFR Section 164.502;

(4) pursuant to a written authorization;

(5) to correctional institutions or law enforcement officials pursuant to 45 CFR Section 164.512(k)(5);

(6) prior to the compliance date for providers of April 14, 2003 or for the small health plan administered by the prevention and intervention division of April 14, 2004.

(7) that are otherwise excepted in 45 CFR Section 164.528(a)(1).

E. Individuals have a right to complain to the department concerning the department's policies and procedures implementing HIPAA. The complaint is made in writing either to the department privacy office and/or to the secretary of the

United States department of health and human services. The complaint must be filed within 180 days of when the complainant knew or should have known that the alleged violation occurred, unless this time limit is waived for good cause shown. The complaint must name the entity or person that is the subject of the complaint, describe the alleged violation and the applicable requirements of the code or regulation.

[8.8.5.10 NMAC - N, 4/30/2003]

8.8.5.11 USES AND DISCLOSURES:

A. The department uses PHI for purposes of treatment, payment, and health care operations and as required by law. Written authorization is not required for these uses.

B. Any request for, or need to use, PHI for any purpose other than those specified in paragraph A of this section, such as research or marketing, is forwarded to the privacy office for response. The records custodian will also forward any Public Records Act requests involving PHI to the privacy office. The privacy office will determine whether written authorization is required for the requested use pursuant to 45 CFR Section 164.508.

C. Individuals have a right to request restrictions on uses or disclosures of PHI. The department may accept or deny such restrictions, at its discretion.

D. Pursuant to 45 CFR Section 164.502(b) and 164.514(d), uses and disclosures are limited to the minimum necessary information to accomplish the purpose intended, except that the following uses and disclosures are not subject to minimum necessary requirements:

(1) uses and disclosures for purposes of treatment;

(2) certain uses and disclosures to the individual or his/her personal representative, pursuant to 45 CFR Section 164.502(b)(2)(ii);

(3) uses and disclosures made pursuant to an authorization;

(4) disclosures made to the secretary of the United States health and human services department, pursuant to 45 CFR Section 160.300 *et seq.*;

(5) uses and disclosures required by law, pursuant to 45 CFR Section 164.512(a)(2), (c), (e) and (f), and

(6) uses and disclosures required for compliance with applicable federal HIPAA regulations.

E. The department is required by law to provide certain PHI to designated persons pursuant to court order, including court appointed special advocates, special masters, and guardians ad

litem. The department is also required to provide certain PHI to the citizen review board pursuant to 32A-8-1 *et seq.* NMSA 1978.

[8.8.5.11 NMAC - N, 4/30/2003]

8.8.5.12 PERSONAL REPRESENTATIVE: The department generally recognizes the legal authority of a personal representative to act on behalf of an individual. However, the department will decline to treat a person as a personal representative in the following circumstances:

A. The person does not present sufficient documentation or other evidence of authority to represent the individual;

B. There is a reasonable belief that the individual has been or may be subjected to domestic violence, abuse or neglect by such person and that treating the person as the personal representative could endanger the individual or that, in the department's professional judgment, it is not in the best interest of the individual to treat the person as the individual's personal representative, or

C. The individual is an unemancipated minor but is authorized to give lawful consent or authorization or may obtain health care without consent of the personal representative, and the minor has not requested that the person be treated as the minor's personal representative, or the personal representative has assented to agreement of confidentiality between the department and the minor.

[8.8.5.12 NMAC - N, 4/30/2003]

8.8.5.13 DE-IDENTIFICATION OF AGGREGATED DATA:

The department may use PHI to create de-identified information for purposes such as research, quality control and reporting to various federal and state agencies. Health information that does not identify an individual is not individually identifiable health information as defined in HIPAA. A person with appropriate knowledge of, and experience with, generally accepted statistical and scientific principles and methods for rendering information not individually identifiable applies such principles and methods to determine if the information, in combination with other information could identify the individual to the anticipated recipient. The method and results of the analysis are documented.

[8.8.5.13 NMAC - N, 4/30/2003]

8.8.5.14 SAFEGUARDING PHI:

The department takes reasonable precautions to safeguard PHI from any intentional or unintentional use or disclosure that would violate the provisions of HIPAA.

[8.8.5.14 NMAC - N, 4/30/2003]

8.8.5.15 TRAINING AND PERSONNEL PRACTICES:

A. The department provides HIPAA training to all covered workforce within a reasonable period of time after initial employment and will provide notice and training, if necessary, of material changes in HIPAA policies and procedures within a reasonable time after the change occurs. All training is documented in written or electronic form and retained by the department for six years.

B. The department's policies regarding employee discipline for HIPAA violations and prohibiting retaliation are contained in its code of conduct. The privacy office will investigate all alleged violations and initiate any appropriate disciplinary action.

[8.8.5.15 NMAC - N, 4/30/2003]

8.8.5.16 MITIGATION: The department mitigates, to the extent practicable, any harmful effect known to the department resulting from a use or disclosure of PHI in violation of this policy or the requirements of HIPAA by the department or its business associates. Measures taken will depend on individual circumstances.

[8.8.5.16 NMAC - N, 4/30/2003]

8.8.5.17 DOCUMENT RETENTION: The department retains certain documents for six years from the date of creation or the date the document was last in effect, whichever is later, as provided in 45 CFR Section 164.500 *et seq.*

[8.8.5.17 NMAC - N, 4/30/2003]

8.8.5.18 RIGHTS NOT WAIVED: The department does not require individuals to waive their rights to complain to the secretary of the United States health and human services department or any other rights under 45 CFR Part 164 Subpart E as a condition of the provision of treatment, payment, enrollment in a health plan or eligibility for benefits.

[8.8.5.18 NMAC - N, 4/30/2003]

8.8.5.19 PROCEDURES: The department will develop all procedures, guidelines and protocols necessary to implement these policies.

[8.8.5.19 NMAC - N, 4/30/2003]

HISTORY OF 8.8.5 NMAC: [RESERVED]

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT**

PROTECTIVE SERVICES DIVISION

This is an amendment to 8.10.8 NMAC,

Sections 7, 20 and 28.

8.10.8.7 DEFINITIONS:

A. The "assessment plan" is the process of compiling information to identify the client's strengths, needs, and issues that need to be addressed in order to develop a treatment plan.

B. "Boarding school" is an educational institution which provides room and board to children.

C. "Children's maintenance accounts" are accounts established when a child receives specific monetary benefits, such as social security, SSI child support, and other benefits. All resources received on behalf of the child are used to reimburse the department for the child's care and meet the needs of the child.

D. "Close proximity" means a location physically close enough to facilitate family visiting, consistent with the best interest and special needs of the child.

E. "Conditionally safe" is the term used to describe the department's assessment based upon available information that, when persons or services have been put in place to protect the child, or factors detrimental to the child have been temporarily eliminated, the child's immediate circumstance or environment is not threatening to the child.

F. "Congregate care settings" are facilities that are licensed to provide 24 hour a day care for children in a group setting.

G. "Crisis shelter group care" is a facility licensed to provide 24 hour, seven day a week emergency, short term care to children between the ages of seven and 12.

H. "Daily supervision" provides 24 hour a day supervision for a child when the child's usual caretaker is not able to provide such care. It is a program to sustain the foster family by providing time-limited and temporary relief from the ongoing responsibility of daily care.

I. "Department" means the children, youth and families department.

J. "Department licensed family foster homes" are homes licensed by the department to provide care to a child not related to the foster parents.

K. "Division" means the protective services division of the department.

L. An "emergency shelter" is a facility licensed to provide 24 hour a day, seven days per week care to children age 12 and over who are in need of temporary shelter.

M. The "fifth degree of consanguinity" includes brother, sister, grandparents, aunt, uncle, niece, nephew, first cousin, mother-in-law, father-in-law,

sister-in-law, and brother-in-law, as well as documented godparents.

N. A "group home" is a residential child care facility licensed for no more than 15 children age 12 years old and older. Group homes are not secure settings.

O. An "Indian child" is any unmarried person who is under age 18 and either (1) is a member of an Indian Tribe or (2) is eligible for membership and is the biological child of a member of an Indian tribe.

P. "Indian foster family homes" are foster family homes licensed or approved by an Indian tribe.

Q. The "interstate compacts" are binding agreements among states which allow homestudies and certifications of out-of-state placements, which allows the department to place children across state lines.

R. "Least restrictive" means that the placement is as home-like as possible considering the needs of the child.

S. "Maintenance payments" are the reimbursements made to substitute care providers and designed to meet the child's ongoing needs. Maintenance payments are not considered income.

T. "Matching" is the process by which a placement is selected to best meet the needs of the child.

U. A "maternity home" is a residential facility that provides care for pregnant women and their newborns.

V. The "needs" of the child include safety, food, shelter, and emotional well-being.

W. "Permanency planning" is the systematic process of carrying out, within a time-limited period, a set of goal directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers and the opportunity to establish lifetime relationships.

X. The "permanency plan" specifies where and with whom the child shall live and the proposed legal relationship between the child and the permanent caretaker(s).

Y. A "relative" is someone connected to another person by blood or marriage within the fifth degree of consanguinity.

Z. "Relative foster home" is a home licensed by the department to provide foster care to a child related to the foster parent(s) within the fifth degree of consanguinity or a documented godparent.

AA. "Safe" is the term used to describe the department's assessment based upon available information that a child's immediate circumstance or environ-

ment is free from persons and/or situations that have been identified as possible causes of harm to the child.

BB. “**Sibling continuity**” is the placement of siblings together or, when placement together is clinically contraindicated, sibling continuity involves supporting the relationship amongst the siblings through visitation.

CC. “**Substitute care**” is any placement outside the child’s home.

DD. “**Tots to teens**”, also known as early and periodic screening, diagnosis and treatment (EPSDT), is a Medicaid program designed to provide comprehensive and preventive health care services to Medicaid-eligible children under age 21.

EE. “**Treatment foster care home**” is a foster home licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

FF. The “**treatment plan**” is developed by the department or licensed child placement agency based on the information collected and identifies the specific changes in behaviors and/or circumstances that are required for the child to achieve permanency.

GG. “**Trial home visit**” is the period of time, not to exceed 6 months, in which a child with a plan of reunification resides with the parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

HH. “**Notice of privacy practices**” is the written or electronic notice of CYFD’s uses and disclosures of protected health information and of the individual’s rights and CYFD’s legal duties with respect to protected health information.

II. “**Protected health information**” is individually identifiable health information maintained by the division for purposes of providing case management services.

[8.10.8.7 NMAC - Rp 8 NMAC 10.8.7, 02/14/01; A, 4/30/03]

8.10.8.20 SERVICE PLANS:

The department develops two types of service plans during the time a case remains open for services.

A. The department develops an assessment plan at the assessment planning conference.

B. The department develops a treatment plan prior to the adjudication, and reviews and modifies the plan as required at all subsequent judicial reviews and permanency hearings.

C. The assessment plan and treatment plan must describe services offered and provided to prevent removal

from the home, reunify the family and/or to finalize a placement when reunification is not, or is no longer, the case plan goal.

D. If a child is placed a substantial distance from home, the service plan will set forth the reasons why this placement is in the child’s best interest. For an out-of-state placement, the department visits at least once every 12 months, and submits a report of the visit, or makes arrangements for a case worker on the staff of the state agency for the state in which the child has been placed to visit the child at least once every 12 months and submit a report of the visit.

E. The department evaluates the status of each child within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion, and re-evaluates the status every six months thereafter so long as the child remains in custody. The evaluation shall include a determination of the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the treatment plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care. The evaluation should also project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.

E. The department provides the parent or guardian, the child if age 14 or older, and the guardian ad litem if the child is in the state’s custody, with the notice of privacy practices at the first contact to develop treatment services. The department documents the acknowledgment of receipt and the good faith efforts to obtain the acknowledgment and reasons why it was not obtained.

[8.10.8.20 NMAC - Rp 8 NMAC 10.8.19, 02/14/01; A, 4/30/03]

8.10.8.28 DOCUMENTATION:

A. The division documents case work activities concerning services provided to children receiving permanency planning services.

B. The records maintained by the department are confidential and may only be released in accordance with applicable law.

C. The department documents acknowledgment of receipt of the notice of privacy practices or documents the good faith efforts made to obtain acknowledgment of receipt of the notice of privacy practices and the reasons why the acknowledgment was not obtained. In the case of notice provided to GALs, a certificate of

service signed by the department’s attorney shall constitute the requisite documentation. [8.10.8.28 NMAC - Rp 8 NMAC 10.8.27, 02/14/01; A, 4/30/03]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

This is an amendment to 8.10.9 NMAC, Sections 7, 9 and 10.

8.10.9.7 DEFINITIONS:

A. An “**approved education plan**” is an individualized educational plan that describes the milestones and time frames that must be achieved by the youth to attain a high school diploma or GED, and/or post secondary goals such as technical/vocational school or college.

B. “**Planned permanent living arrangement**” is an alternative plan to provide physical and emotional permanency for a youth who resides in an out-of-home placement and for whom reunification, permanent placement with a fit and willing relative, adoption, or guardianship are not considered to be the most appropriate permanent plan.

C. The “**transitional living plan**” is an individualized, written plan that assesses and addresses a youth’s needs and strengths to successfully enter adulthood.

D. “**Notice of privacy practices**” is the written or electronic notice of CYFD’s uses and disclosures of protected health information and of the individual’s rights and CYFD’s legal duties with respect to protected health information.

E. “**Protected health information**” is individually identifiable health information maintained by the division for purposes of providing case management services.

[8.10.9.7 NMAC - Rp 8 NMAC 10.9.7, 02/14/01; A, 4/30/03]

8.10.9.9 TRANSITIONAL

LIVING PLAN: The department develops and implements a transitional living plan for every youth in foster care who is 16 years of age or older, and for those youth age 18 years who have emancipated from foster care and who are eligible for independent living services. The transitional living plan shall include:

A. a description of the specific skills the youth requires for successful transition into independent living as an adult;

B. identification of the program, educational or otherwise, appro-

appropriate to provide the necessary skills;

C. the reasons why the program is likely to be useful;

D. the availability of any proposed programs;

E. the department's plan for assuring that the child/youth shall be adequately prepared for adulthood;

F. where the youth will live until reaching adulthood; ~~and~~

G. the child's goals for achieving independence; and

H. discussion of the notice of privacy practices and completion of the acknowledgment of receipt of the notice.

[8.10.9.9 NMAC - Rp 8 NMAC 10.9.9, 02/14/01; A, 4/30/03]

8.10.9.10 SUPPORT SERVICES: The department shall provide case management, support services, financial assistance, and medical coverage to help youth achieve self-sufficiency.

A. Those eligible for support services are:

(1) youth in department custody under age 18; and

(2) youth who emancipated from foster care at age 18 but who have not yet reached the age of 21.

B. The department recruits and develops adult mentors to provide personal and emotional support to children aging out of foster care. Mentors may be members of the youth's extended family or other appropriate adults who are willing and interested in becoming a permanent support for the youth at the time of transition into adulthood and beyond. Mentors will:

(1) attend training as identified or provided by the department;

(2) meet the criminal records clearance criteria established for foster and adoptive applicants;

(3) participate in activities as identified in the youth's transitional living plan or semi-independent living arrangement.

C. At the first contact in the context of providing support services, the social worker provides the youth with the notice of privacy practices, discusses the meaning of the notice and documents the acknowledgment of receipt or the good faith efforts to obtain the acknowledgment and the reasons why it was not obtained.

[8.10.9.10 NMAC - Rp 8 NMAC 10.9.10, 02/14/01; A, 4/30/03]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

This is an amendment to 8.11.3 NMAC, Sections 7, 14 and 19. This rule was also reformatted and renumbered from 8 NMAC 11.3, to comply with current NMAC requirements.

8.11.3.7 DEFINITIONS:

A. "Abuse" is knowingly, intentionally or negligently and without justifiable cause, inflicting physical pain, injury or mental anguish; or the intentional deprivation by a caretaker or person the services necessary to maintain the mental and physical health of an adult.

B. The "adult protective services (APS) attorney" is the attorney that represents the department in actions pursuant to the Adult Protective Services Act and federal and state constitutional, statutory and case law.

C. An "administrative review" is an informal process. It may include an informal conference or may include only a record review. The administrative review process does not create any substantive rights for the client.

D. An "appropriate referral" is a report of adult abuse, neglect or exploitation received by the department which falls within the department's mandate to investigate.

E. A "care facility" is a hospital; skilled nursing facility; intermediate care facility; care facility for the mentally retarded; psychiatric facility; rehabilitation facility; kidney disease treatment center; home health agency; ambulatory surgical or outpatient facility; home for the aged or disabled; group home; adult foster care home; private residence that provides personal care; shelter care or nursing care for one or more persons; adult day care center; boarding home; adult residential shelter care home; and any other health or resident care related facility or home but does not include a care facility located at or performing services for any correctional facility.

F. A "collateral contact" is an individual who may possess pertinent information concerning the alleged victim, the alleged perpetrator or may be able to provide information concerning the alleged abuse, neglect or exploitation that would be helpful in making an accurate investigative decision and disposition.

G. "Decisional capacity" is the ability of the person to:

(1) understand and grasp information about the risks and benefits of the proposed intervention or treatment;

(2) form a judgment of the proposed intervention based on that information;

(3) make a choice; and

(4) communicate it.

H. "Department" is the children, youth and families department.

I. "Exploitation" is an unjust or improper use of an adult's resources for another's profit or advantage, pecuniary or otherwise.

J. An "initiation of an investigation" is when the assigned social worker has face-to-face contact with the vulnerable adult.

K. The "investigation decision" states whether adult abuse, neglect and/or exploitation is substantiated or unsubstantiated.

L. The "investigation disposition" is the determination of the level of involvement, if any, of the department with the family, based upon an assessment of ongoing risk to the vulnerable adult.

M. "Neglect" is the failure of the caregiver of an adult to provide basic needs such as clothing, food, shelter, supervision and care for the physical and mental health for that adult or failure by an adult to provide such basic needs for himself/herself.

N. A "priority one" is any appropriate referral for which the information gathered requires a response within 24 hours from receipt of the referral.

O. A "priority two" is any appropriate referral for which the information gathered requires a response within five calendar days from the receipt of the referral.

P. [RESERVED]

Q. "Substantiation" means that the information collected during the investigation supports a finding that the vulnerable adult was abused, neglected and/or exploited.

R. To "unsubstantiate" means that the information collected during the investigation does not support a finding that the vulnerable adult was abused, neglected and/or exploited.

S. An "emergency referral" is any appropriate referral for which the information gathered requires a response that is initiated within one to three hours from the receipt of the referral.

T. "Notice of privacy practices" is the written or electronic notice of CYFD's uses and disclosures of protected health information and of the individual's rights and CYFD's legal duties with respect to protected health information.

U. "Protected health information" is individually identifiable health information maintained by the division for purposes of providing case man-

agement services.

[7/1/97, 10/1/97; 8.11.3.7 NMAC - Rn & A, 8 NMAC 11.3.7, 4/30/2003]

8.11.3.14 CONDUCTING THE INVESTIGATION:

A. The department visits the residence of the referred adult(s) when investigating alleged abuse, neglect or exploitation.

(1) The department cannot enter a home without the permission of the resident.

(2) If the department is denied access to the home of an alleged victim, law enforcement or the adult protective services attorney may be contacted to assist in gaining access.

B. The department conducts interviews with those individuals who potentially have knowledge of the alleged abuse, neglect and/or exploitation. These interviews at a minimum should include the alleged victim, the caregiver, alleged perpetrator and a collateral contact.

C. The department provides the following information to those individuals being interviewed:

(1) the purpose of the department's contact;

(2) their right to refuse to participate in the investigation;

(3) the department's intent to maintain confidentiality except when it becomes necessary to inform and/or collaborate with the district attorney, courts, law enforcement officials or other appropriate agencies in accordance with the Adult Protective Services and Resident Abuse and Neglect Acts;

(4) the department's responsibility to secure information from others in order to complete a thorough investigation; and

(5) the department's responsibility to intervene when necessary, including emergency removal, initiating court petitions and providing services.

D. The department interviews/investigates any other possible adult victims discovered during the initial investigation.

E. The department arranges for evaluations/examinations as required during the investigation.

F. The department collects information required to make an investigation decision and an investigation disposition.

G. The department completes an investigation within the time frames established by the department.

H. The department provides the notice of privacy practices to the adult or guardian no later than the first contact or, in the event of an emergency, as

soon as reasonably practicable after the emergency. The department documents acknowledgment of receipt of the notice of privacy practices or documents the good faith efforts made to attempt to obtain acknowledgment of receipt of the notice and the reasons why the acknowledgment was not obtained.

[7/1/97; 8.11.3.14 NMAC - Rn & A, 8 NMAC 11.3.14, 4/30/2003]

8.11.3.19 DOCUMENTATION:

A. The department records all investigation assignments.

B. The department documents all investigations.

C. The department documents acknowledgment of receipt of the notice of privacy practices or documents the good faith efforts made to attempt to obtain acknowledgment of receipt of the notice of privacy practices and the reasons why the acknowledgment was not obtained.

[7/1/97; 8.11.3.19 NMAC - Rn & A, 8 NMAC 11.3.19, 4/30/2003]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

This is an amendment to 8.11.4 NMAC, Sections 7, 11 and 18. This rule was also reformatted and renumbered from 8 NMAC 11.4, to comply with current NMAC requirements.

8.11.4.7 DEFINITIONS:

A. "Adult day care" is the contracted provision of an organized program of day care services for functionally impaired adults who have been physically or mentally abused, neglected or exploited or are at risk of being abused, neglected or exploited; have physical or mental disabilities; and are in need of restorative or rehabilitative services to attain their highest functioning level with regards to activities of daily living. Services are delivered in a licensed facility.

B. "Attendant care" is the provision of non-medical personal care to a functionally impaired adult in his/her own home by a caregiver.

C. The "comprehensive assessment" is an in-depth evaluation and analysis into the cause and effects of the abuse, neglect and/or exploitation and a determination of the need for services.

D. "Emergency shelter/caregiver" is the placement of an adult in an appropriate facility or the use of a caregiver in the adult's home to provide a protected environment.

E. A "functional impair-

ment" is the inability of an adult to perform independently some or most activities of daily living.

F. "Group eligible Native American" is any Native American who is an enrolled member of a tribe and residing on a reservation in New Mexico.

G. "Home care services" are the provision of direct or contractual non-medical personal care and housekeeping services for adults who have physical or mental disabilities and meet the criteria established by the department.

H. An "incapacitated person" is any person who demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness, or disability, chronic use of drugs, chronic intoxication, and other cause, except minority, to the extent that she/he is unable to manage his/her personal affairs or is unable to manage her/his estate or financial affairs or both.

I. The "level of care criteria" sets forth criteria for the provision of attendant care services by considering the adult's functioning ability in five areas.

J. "Notice of privacy practices" is the written or electronic notice of CYFD's uses and disclosures of protected health information and of the individual's rights and CYFD's legal duties with respect to protected health information.

K. "Protected health information" is individually identifiable health information maintained by the division for purposes of providing case management services.

[7/1/97; 8.11.4.7 NMAC - Rn & A, 8 NMAC 11.4.7, 4/30/2003]

8.11.4.11 CASE MANAGEMENT:

A. The department conducts case management of adult services using established criteria and time frames for case planning events.

B. The department conducts, and documents, at least monthly contact and quarterly face-to-face visits with adults receiving services.

C. The department utilizes formal and informal staffings and conferences to develop and review plans and to determine the need for continuation of services for each adult receiving services.

D. The department provides the notice of privacy practices to the adult or guardian no later than the first contact or, in the event of an emergency, as soon as reasonably practicable after the emergency. The department makes a good faith effort to document acknowledgment of receipt of the notice of privacy practices or documents the good faith efforts made to

attempt to obtain acknowledgment of receipt of the notice and the reasons why the acknowledgment was not obtained.

[7/1/97; 8.11.4.11 NMAC - Rn & A, 8 NMAC 11.4.11, 4/30/2003]

8.11.4.18 DOCUMENTATION:

A. The department or contract provider documents case work activities and maintains records concerning services provided to all individuals receiving adult services.

B. The records created and maintained by the department or contract provider are confidential and are only released as allowed for by law.

C. The department documents acknowledgment of receipt of the notice of privacy practices or documents the good faith efforts made to attempt to obtain acknowledgment of receipt of the notice of privacy practices and the reasons why the acknowledgment was not obtained.

[7/1/97; 8.11.4.18 NMAC - Rn & A, 8 NMAC 11.4.18, 4/30/2003]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

19 NMAC 15.H, Gas Proration and Allocation, has been reformatted and renumbered to 19.15.8 NMAC to comply with the current NMAC requirements, effective 04-30-03.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

19 NMAC 15.J, Oil Purchasing and Transporting, filed 01-18-96, has been reformatted and renumbered to 19.15.10 NMAC to comply with the current NMAC requirements, effective 04-30-03.

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.8 NMAC Section 14

19.31.8.14 ANTELOPE (2003-2004):

A. Antelope hunts for any legal weapon, listing the hunt date, hunt code, maximum number of licenses avail-

able, bag limit, and open areas or AMU's, shall be as indicated below. The director may change or cancel all hunts on military lands to accommodate closures on those lands; provided the season length and bag limit shall remain the same as assigned on original hunt code.

(1) Oct. 4 - 5, ANT-1-101, 200, MB, 3, 5, 9, 10, 11, 12 - 18, 20.

(2) Sept. 13 - 14, ANT-1-102, 35, MB, 19: Stallion range of WSMR.

(3) Sept. 20 - 21, ANT-1-103, 300, MB, 6, 23 - 27, 31 - 34, 36 - 40, 43.

(4) Sept. 27 - 28, ANT-1-104, 75, F-IM, selected ranches in SE area (youth only, must provide hunter education certification number on application).

(5) Aug. 23 - 25, ANT-1-105, 300, MB, 41, 42, 44 - 49, 53 - 58.

(6) Sept. 13 - 14, ANT-1-106, 10, MB, 29: McGregor range (military only, must be full time active military and proof of military status must accompany application).

B. Antelope hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open AMU's, shall be as indicated below:

(1) Aug. 23 - 31, ANT-2-101, 10, MB, 3, 5, 10.

(2) Aug. 23 - 31, ANT-2-102, 6, MB, 9.

(3) Aug. 23 - 31, ANT-2-103, 15, MB, 12.

(4) Aug. 23 - 31, ANT-2-104, 30, MB, 13.

(5) Aug. 23 - 31, ANT-2-105, 25, MB, 16.

(6) Aug. 23 - 31, ANT-2-106, 30, MB, 20.

(7) Aug. 23 - 27, ANT-2-107, 200, MB, 6, 23 - 27, 30 - 34, 36 - 40, 43.

(8) Aug. 9 - 13, ANT-2-108, 100, MB, 42, 44 - 49, 53 - 58.

C. Antelope hunts for muzzleloaders, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open areas or AMU's, shall be as indicated below:

(1) Sept. 13 - 14, ANT-3-101, 50, MB, 29.

(2) Sept. 13 - 14, [~~ANT-3-102~~], **ANT-3-103**, 10, MB,

29: McGregor range (youth only, must provide hunter education certification number on application).

(3) Aug. 16 - 19, [~~ANT-3-103~~], **ANT-3-104**, 175, MB, 52: portion west of the Rio Grande.

D. Antelope hunts for handicapped hunters, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open AMU's, shall be listed below:

(1) Aug. 2 - 3, ANT-4-101, 2, MB, .

(2) Aug. 2 - 3, ANT-4-102, 2, MB, 12.

(3) Aug. 2 - 3, ANT-4-103, 5, MB, 13.

(4) Aug. 2 - 3, ANT-4-104, 2, MB, 16.

(5) Aug. 2 - 3, ANT-4-105, 2, MB, 20.

(6) Aug. 2 - 4, ANT-4-106, 45, MB, 3, 5, 6, 10, 23-28, 31-34, 36-39, and 43.

(7) Aug. 2 - 3, ANT-4-107, 25, MB, 42, 44 - 49, 53 - 58.

E. The director may cancel portions of any antelope hunt or set a bag limit of any one antelope if summer surveys indicate the need for such action. The director may allot up to 6,000 private land antelope licenses for use on those ranches whose owners, manager, or lessees sign a hunting agreement with the department.

F. Private land antelope hunt dates shall be as indicated below, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and AMU's open:

(1) Sept. 20 - 21, ANT-1-701, unlimited, F-IM, selected ranches in AMU's 1, 2, 3, 5, 6, 7, 8, 10, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43.

(2) Sept. 27 - 28, ANT-1-702, unlimited, F-IM, selected ranches in AMU's 1, 2, 3, 5, 6, 7, 8, 10, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43.

(3) Sept. 20 - 22, ANT-1-703, unlimited, MB, 41, 42, 44, 45, 46, 47, 48, 49, 53 - 58.

G. Bow and mobility-impaired antelope hunters shall not be allowed in any AMU or portion thereof that has been administratively closed by the director to hunting.

[19.31.8.14 NMAC - Rp 19.31.8.14 NMAC, 4-1-2003; A, 4-30-2003]

**NEW MEXICO
DEPARTMENT OF
GAME AND FISH**

This is an amendment to 19.30.8 NMAC, Sections 5, 7, 8, 9, 10, 13, and 14. This rule was also reformatted and renumbered to comply with current NMAC requirements.

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 30 WILDLIFE ADMIN-
ISTRATION
PART 8 GUIDE AND OUT-
FITTER REGISTRATION**

19.30.8.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.

[9/14/96; 19.30.8.1 NMAC - Rn, 19 NMAC 30.8.1, 04-30-03]

19.30.8.2 SCOPE: Hunting outfitters, guides, and licensed hunters within and outside of New Mexico.

[9/14/96; 19.30.8.2 NMAC - Rn, 19 NMAC 30.8.2, 04-30-03]

**19.30.8.3 S T A T U T O R Y
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 species. Additional authority may be found in Sections 17-2A-1 and 17-2A-3 NMSA 1978.

[9/14/96; 19.30.8.3 NMAC - Rn, 19 NMAC 30.8.3, 04-30-03]

19.30.8.4 D U R A T I O N :
Permanent.

[9/14/96; 6/30/97; 19.30.8.4 NMAC - Rn, 19 NMAC 30.8.4, 04-30-03]

19.30.8.5 EFFECTIVE DATE:
September 14, 1996, unless a different date is cited at the end of a Section ~~or Paragraph~~.

[9/14/96; 6/30/97; 19.30.8.5 NMAC - Rn & A, 19 NMAC 30.8.5, 04-30-03]

19.30.8.6 OBJECTIVE: To register, regulate and set professional standards for guides, outfitters and their operations within New Mexico.

[9/14/96, 2/15/99; 19.30.8.6 NMAC - Rn, 19 NMAC 30.8.6, 04-30-03]

19.30.8.7 DEFINITIONS:

A. "Guide" shall mean any person employed or contracted by a regis-

tered outfitter to furnish personal services for the purpose of hunting or taking game animals except a 'guide' does not include a person who only cooks, cuts wood, wrangles horses or escorts clients between camp and vehicle, retrieves downed game, or otherwise solely provides services not directly related to hunting or taking of game animals.

B. "Outfitter" shall mean any person who advertises or holds himself out for hire to the public or accepts compensation for providing, within a game management unit where a hunt occurs, equipment or services for hunting activities.

C. "Agent" shall mean anyone employed or contracted in writing by a landowner to oversee the hunting operations or to outfit or guide for a landowner on the landowner's deeded property or, pursuant to a landowner's permit, on a shared public or private unit.

D. "History of violation" means any one court conviction or **multiple convictions totaling** up to 20 administrative points from a hearing officer against an outfitter or guide of any state hunting or guiding law or regulation or any related federal laws or land-use regulations related to outfitting, guiding or hunting, during the three-year period immediately preceding the application for registration, provided that the violation committed, if committed in New Mexico, would equal or exceed the 20-point requirement in Section 14. It shall also include any conviction for any felony, no matter when the felony was committed. It shall include any convictions as an accessory for the described crimes.

E. "Supervision" shall mean that outfitters are required to ensure all guides employed by them are informed of all pertinent geographic hunt boundaries and statutes and regulations regarding lawful hunting, guiding and outfitting.

F. "License year" shall mean that period beginning April 1 and ending March 31 each year for the purposes of hunting or outfitter and guide registration.

G. "Director" shall mean the director of the department of game and fish.

H. "Department" shall mean the New Mexico department of game and fish.

I. "Landowner permit" shall be a license issued pursuant to landowner authorization.

J. "Registered outfitter" shall be an outfitter who has met all the requirements described herein and has been issued a registration number by the department.

[9/14/96, 6/30/97, 9/15/98, 2/15/99; 19.30.8.7 NMAC - Rn & A, 19 NMAC 30.8.7, 04-30-03]

**19.30.8.8 REGISTRATION
PROCEDURES AND REQUIRE-
MENTS:**

A. Application form: Applications to guide and/or outfit as defined in Section 17-2A-3 NMSA 1978 and Title 19 Chapter 30 Part 8, shall be made on forms provided by the department as prescribed by the director.

B. Application deadlines: All new and renewing outfitter applicants must apply by January 15 to be eligible to participate in the 12% pool of nonresident hunter applicants for the following license year. New and renewal applications post-marked after January 15 but received before close of business on February 15 (or the following business day) will be eligible for inclusion in the 12% pool of applicants, but will be subject to an administrative fee of \$100.00, in addition to the normal application fees. After February 15, applicants may renew their ~~licenses~~ **registration** until the end of the license year (March 31) without penalty or administrative fees, but will not be eligible to participate in the 12% pool for the upcoming year. Renewing applicants wishing to place their ~~licenses~~ **registration** on "inactive" status must do so prior to the expiration of their current ~~license~~ **registration** (March 31). ~~New and renewing applicants applying after the beginning of the license year (Sub section 7.8) must meet all criteria for new applicants under, Sub section 9.1.~~ ~~[Applicants renewing licenses]~~ **New and renewing applicants applying for registration** after the beginning of a new license year may outfit during that license year but may not advertise or offer their services for hire until the new application is approved. Guide applicants may apply throughout the year at any department office by submitting a completed application and appropriate fee. Examinations will be conducted **during posted testing periods at department offices or** by appointment, at any ~~Department office~~ **location approved by the outfitter guide registrar. An applicant shall only be allowed to take the examination once per day.** To further expedite the guide registration process, an applicant may submit with their application, a certified felony background check obtained at applicant's expense. With application, appropriate fee, successful exam completion, and clear felony background check, an applicant will be issued a registration card allowing applicant to engage in guiding activity. All materials will be forwarded to ~~[Santa Fe]~~ **the department's law enforcement division** for further background checking and processing.

(1) Exception: In an emergency situation, a temporary guide registration may be issued to those who qualify. The

temporary registration is only valid for seven (7) days and may be renewed only once per emergency situation.

(2) A guide registered pursuant to the emergency situation may only be used to replace a registered guide who has become ill, injured or has a bona fide emergency, and may not be used to accommodate additional hunters.

C. Signature: Applications shall be signed by the applicant.

D. [Reserved]

E. Registration fee

(1) All registration fees shall be submitted with the application.

(2) All registration fees, except a \$50.00 administrative fee, will be refunded if an applicant is rejected or fails to complete the registration process within 60 days of the receipt of the application.

F. Insurance: Outfitter applicants shall submit with their application a document from an insurance company stating they will insure the applicant for a minimum of \$500,000 when the applicant is registered.

(1) A copy of the insurance certificate must be provided to the department upon issuance by the insurer and prior to engaging in any outfitting activity.

(2) If the insurance is not in effect, at any time while conducting any outfitting activity as defined herein, the outfitter's registration will be declared void.

G. [Reserved]

H. Exemption: A landowner or his agent, as defined in Subsection C of 19.30.8.7 NMAC, who is guiding and/or outfitting on the landowner's property or pursuant to a landowner permit, is exempt from the registration process. Nothing in this exemption shall prevent a landowner or his agent from registering, if they chose. [9/14/96, 6/30/97, 9/15/98, 7/15/99; 19.30.8.8 NMAC - Rn & A, 19 NMAC 30.8.8, 04-30-03]

19.30.8.9 QUALIFICATIONS FOR OUTFITTER REGISTRATION:

A. Outfitter registration:

(1) Applicant must be at least 21 years of age.

(2) Applicant cannot be a convicted felon or have a history of violation of any related federal land-use or state game and fish laws or regulations or guide and outfitter licensing or registration laws.

(3) An applicant must have operated as a New Mexico registered guide for three (3) years, or have been granted an interim outfitter's registration, or must submit evidence, as approved by and to the satisfaction of the department, of three (3) years of outfitting experience or other substantial knowledge of guiding or outfitting. The evidence must be submitted with the

application and may consist of federal land use permits, business records, etc.

(4) Applicant must provide acceptable proof of commercial liability insurance of at least five hundred thousand dollars (\$500,000) for the registration period April 1 through March 31 of the following year. Failure to provide proof of coverage during the registration period shall result in suspension of the registration for the period in which such insurance is required to be maintained.

(5) Applicant shall register with the taxation and revenue department and provide proof of registration to the department.

(6) Applicant shall not have had a guide or outfitter license, registration, permit or certificate suspended (if not reinstated) or revoked in any state.

(7) Applicant shall not have had his/her outfitter's license, permit or registration revoked or denied for cause by any controlling government land management agency. The applicant shall not be registered by the state during the term of the revocation or pendency of the denial.

(8) Applicant for an outfitter [~~or guide~~] registration shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration.

(9) Effective September 1, 1997, applicant must pass a department approved examination with a minimum passing grade of 70 percent.

(10) Applicant shall have successfully completed a certified hunter education course acceptable to the department prior to making application.

B. [Reserved]

[9/14/96, 6/30/97, 7/31/97; 19.30.8.9 NMAC - Rn & A, 19 NMAC 30.8.9, 04-30-03]

19.30.8.10 QUALIFICATIONS FOR GUIDE REGISTRATION:

Applicants for a guide's registration shall meet all the qualifications set forth in Section 17-2A-3 NMSA 1978. They are as follows:

A. Guide registration:

(1) Age: Applicant shall be at least eighteen (18) years of age.

(2) Examination: Effective September 1, 1997, applicant must pass a department approved examination with a minimum passing grade of 70 percent.

(3) Applicant cannot be a convicted felon or have a history of violation of any related federal land-use or state game and fish laws or regulations or guide and outfitter licensing or registration laws.

(4) Applicant shall not have had a guide or outfitter license, registra-

tion, permit or certificate suspended (if not reinstated) or revoked in any state.

(5) Applicant for a guide registration shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration.

B. [Reserved]

[9/14/96, 6/30/97; 9/15/98; 19.30.8.10 NMAC - Rn & A, 19 NMAC 30.8.10, 04-30-03]

19.30.8.11 REGULATING PROCEDURES AND CONDUCT FOR OUTFITTERS:

A. Signed contract and registration number:

(1) Outfitters shall execute a signed contract for outfitting services with each client before the hunt begins. The contract must be dated, signed by all parties to the contract and designate the terms and services per compensation to be provided.

(2) The outfitter shall provide to nonresident hunters the outfitter's registration number with the contract before the nonresident applies for a license granted from a special drawing for a hunt on public lands, and such applications will be placed in the 12 percent pool of applicants.

B. Guides provided: Outfitters shall provide one registered guide or outfitter in the field for every four or fewer hunters who are contracted for guided hunting services with the outfitter.

C. Guide supervision: Outfitters shall responsibly supervise each registered guide working under the outfitter's direction.

D. Misconduct: Outfitters shall not engage in fraud, deceit, misrepresentation or concealment of any material fact in advertising, soliciting or providing professional services to the public.

E. Unregistered services: An outfitter shall not allow an unregistered individual to perform outfitting or guiding services for the outfitter.

F. Reporting illegal activity: A registered outfitter shall report illegal outfitting and guiding services or any violation of related federal or state laws or any violations of regulations of the state game commission that he has witnessed, to any commissioned conservation officer or representative of the involved federal agency.

G. Compliance: Outfitters shall comply with all local, state and federal laws and regulations pertaining to outfitting, hunting, fishing and wildlife.

H. [Repealed]

I. Client misconduct: Outfitters shall not condone or willfully allow a violation of applicable conservation and game and fish laws by their clients.

J. Breach of contract:

Outfitters shall not breach a contract, as determined by a court of competent jurisdiction, with any person using outfitting or guiding services of the outfitter.

K. Violation of terms: Outfitters shall not violate the terms and conditions under which the license, permit or registration is issued.

L. [Repealed]
[9/14/96, 6/30/97, 9/15/98, 2/15/99; 19.30.8.11 NMAC - Rn, 19 NMAC 30.8.11, 04-30-03]

19.30.8.12 REGULATING PROCEDURES AND CONDUCT FOR GUIDES:

A. Code of conduct: The code of conduct for outfitters, as indicated in Subsections D to K of 19.30.8.11 NMAC above, shall also apply to guides.

B. Supervision: A registered guide shall have a written agreement or contract with and shall work only under the supervision of a New Mexico registered outfitter.

C. Guiding location determined by registered outfitter: A registered guide, guiding in New Mexico, except pursuant to a landowner's permit or acting as an agent for the landowner, shall work only in those areas designated in writing by the New Mexico registered outfitter by whom the guide is employed.
[9/14/96, 9/15/98; 19.30.8.12 NMAC - Rn, 19 NMAC 30.8.12, 04-30-03]

19.30.8.13 CRIMINAL ACTS BY OUTFITTERS OR GUIDES:

A. It is unlawful to procure an outfitter or guide registration while on revocation.

B. It is unlawful to [~~procure an outfitter or guide registration while on revocation~~] **outfit or guide without first obtaining the appropriate registration.**

C. It is unlawful to use an outfitter or guide registration issued to another.
[9/14/96, 6/30/97, 2/15/99; 19.30.8.13 NMAC - Rn & A, 19 NMAC 30.8.13, 04-30-03]

19.30.8.14 REVOCATION POINT SYSTEM:

A. 20 of more violation points: Any outfitter or guide accumulating twenty (20) or more violation points within any consecutive three (3) year period shall be considered by the commission for revocation and suspension of his/her outfitting or guiding registration pursuant to Title 19 Chapter 31 Part 2.

B. [Reserved]
C. ~~Registration Revoked:~~ Any outfitter or guide found to be in violation or as an accessory to any violation of

~~Chapter 17, its implementing regulations, or Section 30-14-1 NMSA 1978, after notice and an opportunity for review by a hearing officer, shall have his or her outfitter or guide registration revoked for up to three (3) years.~~

D. ~~Twenty Point Violations:~~ Any outfitter or guide who violates or is convicted as an accessory to one of the following listed provisions shall accumulate twenty (20) points for each violation toward the revocation of his/her outfitting or guiding registration and suspension of associated privileges:

(1) ~~Illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Sections 17-2-7 or 17-3-33 NMSA 1978.~~

(2) ~~Except as otherwise provided by Sections 17-2-37 to 17-2-46 NMSA 1978, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered species or the United States' list of endangered native and foreign fish and wildlife.~~

(3) ~~Signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application, in violation of Section 17-3-6 NMSA 1978.~~

(4) ~~Selling, offering for sale, offering to purchase or purchasing any game animal, game bird or protected species, in violation of Section 17-2-7 NMSA 1978.~~

(5) ~~Hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31 NMSA 1978.~~

(6) ~~Hunting elk outside the ranch boundaries for which a ranch-only license is issued or otherwise hunting elk in the wrong unit or sub-unit, in violation of Section 17-2-7 NMSA 1978.~~

(7) ~~Criminal trespass, in violation of Section 30-14-1 NMSA 1978, for a minimum of three (3) years.~~

(8) ~~Buying of hunting licenses or permits without sufficient funds to pay for same.~~

(9) ~~Procuring or applying for an outfitter or guide registration while on revocation.~~

(10) ~~Outfitting or guiding without first obtaining the appropriate registration.~~

(11) ~~Using an outfitter or guide registration issued to another.~~

(12) ~~Illegally taking, attempting to take, killing or capturing of any big game species during hunting season in violation of Section 17-2-7(1) NMSA 1978.~~

(13) ~~Illegal possession by a guided hunter of any big game species dur-~~

~~ing hunting season in violation of Section 17-2-7(2) NMSA 1978.~~

(14) ~~Hunting without an issued license.~~

E. ~~Ten Point Violations:~~ Any outfitter or guide who violates or is convicted as an accessory to one of the following listed provisions shall accumulate ten (10) points for each violation toward the revocation of his/her outfitting or guiding registration and suspension of associated privileges:

(1) ~~Hunting in closed area.~~
(2) ~~Exceeding the bag limit of game.~~

(3) ~~An outfitter using a non-registered guide.~~

(4) ~~Procurement or possession of additional deer license~~

(5) ~~Failure to provide sufficient guides to accommodate the one (1) guide per four (4) hunter requirement.~~

(6) ~~A conviction of federal land use agency laws or regulations.~~

F. ~~Five Point Violation:~~ Any outfitter or guide who violates or is convicted as an accessory to one of the following listed provisions or to any provision of Chapter 17 NMSA 1978 and its implementing regulations that is not specifically listed herein, shall accumulate five (5) points toward the revocation of his/her outfitter or guide registration:

(1) ~~Submitting a check to apply for a guide or outfitter registration without sufficient funds to pay for same.~~

(2) ~~Hunting without a license on one's person.]~~

[9/14/96, 6/30/97, 2/15/99; 19.30.8.14 NMAC - Rn & A, 19 NMAC 30.8.14, 04-30-03]

19.30.8.15 PENALTY PROVIDED:

A violation of any provision of this Part or Section 17-2A-3 NMSA 1978 that is a criminal violation, shall be punished in accordance with the provisions of Section 17-2-10 NMSA 1978. A violation of any provision of this Part or Section 17-2A-3 NMSA 1978 that is an administrative violation, shall be punished in accordance with regulation Title 19 Chapter 31 Part 2 and in accordance with the procedures of the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978.

[9/14/96, 2/15/99; 19.30.8.15 NMAC - Rn, 19 NMAC 30.8.15, 04-30-03]

19.30.8.16 HEARING REQUESTED:

A registration revocation hearing may be requested and will be provided in accordance with Title 19 Chapter 31 Part 2.

[9/14/96; 19.30.8.16 NMAC - Rn, 19 NMAC 30.8.16, 04-30-03]

HISTORY OF 19.30.8 NMAC:
[RESERVED]

NEW MEXICO MINING COMMISSION

The following is an amendment to Subsections A and E of 19.10.2.202 NMAC; and Subsection A of 19.10.2.205 NMAC.

19.10.2.202 ANNUAL FEES

A. The annual fee for an existing mining operation shall be determined by adding:

(1) \$800.00 base fee;
(2) \$15.00 per acre for the first 50 acres of currently disturbed surface land plus \$3.00 per acre for all disturbed land over 50 acres~~;~~ and];

(3) a fee determined in accordance with 19.10.2.203 NMAC;

(4) a surcharge of ~~[25%]~~75% shall be added to the total annual fees for existing mining operations that obtained an extension in accordance with Subsection D of 19.10.5.501 NMAC, but did not obtain closeout plan approval in 2002;

(5) a surcharge of 50% shall be added to the total annual fees for existing mining operations that obtained an extension in accordance with Subsection D of 19.10.5.501 NMAC, have obtained closeout plan approval and produced minerals in 2002;

(6) a surcharge of 50% shall be added to the total annual fees for existing mining operations that did not obtain an extension in accordance with Subsection D of 19.10.5.501 NMAC and have not obtained closeout plan approval; and

~~[(5)](7)~~ The annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before ~~[June 30, 2001, and]~~ June 30th of each ~~[subsequent]~~ year until all Mining Act requirements are met. ~~[For fees due on June 30, 2001, the permittee may elect to pay half the fees on June 30, 2001 and half the fees on or before December 31, 2001.]~~

B. The annual fee for the new mining operation shall be determined by adding:

(1) \$1,000.00 base fee,
(2) \$30.00 per acre for the first 50 acres of currently disturbed surface land plus \$10.00 per acre for all disturbed land over 50 acres, and

(3) a fee determined in accordance with 19.10.2.203 NMAC; and

(4) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before June 30, 2001 and June 30th of each subsequent year

for the duration of the permit.

C. The annual fee for a minimal impact existing mining operation shall be \$250.00. This fee shall be due on or before December 31, 1995, and each subsequent year for the duration of the permit. Beginning in 2001, this fee shall be due on or before June 30th of each year.

D. The annual fee for a minimal impact new mining operation shall be \$250.00. This fee shall be due on or before December 31st of the year following the permit application and each subsequent year for the duration of the permit. Beginning in 2001, this fee shall be due on or before June 30th of each year.

E. The provisions in Subsection A through D of 19.10.2.202 NMAC and Subsection F of 19.10.2.202 NMAC shall not be applicable to any fees due after March 31, ~~[2003]~~2006.

F. Formula for Reducing Fees for Substantially Reclaimed Acreage.

(1) For the purposes of 19.10.2 NMAC, "Substantially Reclaimed" means financial assurance has been released pursuant to 19.10.12.1210 NMAC except the amount to establish revegetation pursuant to Subsection A of 19.10.12.1204 NMAC.

(2) For the purposes of 19.10.2 NMAC, the total annual pre-reclamation fee is the total annual fee calculated assuming no reclamation has taken place.

(3) Base fees, disturbance fees and facility fees calculated pursuant to Subsection A of 19.10.2.202 NMAC or Subsection B of 19.10.2.202 NMAC shall be reduced in proportion to the area substantially reclaimed as compared to the total pre-reclamation fee but shall not be reduced to less than 60 percent of the total annual pre-reclamation fee. Formula for fee calculation: Fee owed = Pre-reclamation Fee - (AR/AT) * (Pre-reclamation Fee), where AT = Total Acreage and AR = Reclaimed Acreage.

[7-12-94, 11-15-95, 2-15-96, 5-31-97, 6-30-99, 12-29-2000; 19.10.2.202 NMAC - Rn, 19 NMAC 10.2.2.202, 05-15-2001; A, 05-31-2001; A, 04-30-03]

19.10.2.205 SURCHARGE FOR DEPARTMENT OF GAME AND FISH ACTIVITIES

A. To compensate the Department of Game and Fish for its costs required to implement its involvement in implementing the Act, a percentage surcharge shall be added in the same percentage to each of the above application and annual fees. This surcharge shall be 4.5 percent of fees collected in FY 96 to be used in FY 97 and FY 98. This surcharge shall be 4.2 percent of fees collected in FY 98 and FY 99, to be used in FY 99 and FY 2000. This surcharge shall be 3.2 percent of fees

collected in FY2000 to be used in FY 2001. No percentage surcharge shall be assessed in FY 2001 or FY 2002; instead, the balance of the surcharges assessed during FY 1996 through FY 2002 shall be used in FY 2002~~]~~ and], FY 2003, FY 2004, FY 2005 and FY 2006.

B. Payment. On a quarterly basis, the Director shall reimburse the Department of Game and Fish, only from this surcharge, for its reasonably necessary costs incurred under the Department's involvement with implementation of the Act.

[11-15-95, 12-15-95, 2-15-96, 5-31-97, 6-30-99; 19.10.2.205 NMAC - Rn, 19 NMAC 10.2.2.205, 05-15-2001; A, 12-28-01; A, 04-30-03]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.11 NMAC, Sections 8 and 9.

2.81.11.8 NMRHCA CONTRIBUTION OF A PERCENTAGE OF A SUBSIDY TO MONTHLY PREMIUMS OF ELIGIBLE RETIREES: Except as otherwise provided herein, for eligible retirees who become eligible for participation on or after July 1, 2001, and the eligible dependents of such retirees, the NMRCHA will contribute the following percentages of the subsidy to the monthly premiums according to the corresponding numbers of years of credited service with an NMRHCA-participating employer:

A. Example: If the subsidy for a particular plan is one half the premium cost, then for a retiree with 20 years of credited service the NMRHCA would provide 100 percent of the subsidy; half the cost.

B. Example: For the same subsidy of one half the premium cost, the percent of subsidy for a retiree with eight years of credited service would be 25 percent of the 50 percent subsidy; 12.5 percent of the cost.

[Please see chart, next page.]

Years of credited service	Percentage of subsidy
5	[6.52] 6.25
6	12.50
7	18.75
8	25.00
9	31.25
10	37.50
11	43.75
12	50.00
13	56.25
14	62.50
15	68.75
16	75.00
17	[81.50] 81.25
18	87.50
19	93.75
20	100.00

[2.81.11.8 NMAC - N, 02-14-02; A, 4-30-03]

2.81.11.9 SUBSIDIES FOR DISABLED RETIREES:

Notwithstanding any other provision of this rule:

A. The subsidy paid by the NMRHCA for a disabled retiree with a "duty disability," as described in 2.81.7.10 NMAC, subsection B, and to the dependents of such a retiree, shall be at the 100 percent level, corresponding to the 20-year level set forth in the foregoing subsection, regardless of such retiree's period of credited service.

B. The subsidy paid by the NMRHCA for a disabled retiree with a "non-duty disability," as described in 2.81.7.10 NMAC, subsection C, and to the dependents of such a retiree, shall be ~~[at the 100 percent level, corresponding to the 20-year level]~~ as set forth in the foregoing subsection, *provided*, that, as a condition of eligibility for benefits, such retiree has five or more years of credited service.

[2.81.11.9 NMAC - N, 02-14-02; A, 12-30-02; A, 4-30-03]

End of Adopted Rules Section

This page intentionally left blank.

Other Material Related to Administrative Law

**NEW MEXICO WATER
QUALITY CONTROL
COMMISSION****Water Quality Control Commission on
Proposed Scheduling Order and Hearing
Guidelines for The Triennial Review of
Surface Water Quality Standards**

The Water Quality Control Commission has appointed a Hearing Officer in the matter of the Triennial Review of Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC, docketed as WQCC 03-05. Her contact information is below:

Felicia Orth, Hearing Officer
New Mexico Environment Department
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Tele: (505) 827-0339
Fax: (505) 827-2836
E-mail: felicia_orth@nmenv.state.nm.us

The Commission has directed the Hearing Officer to adopt a Scheduling Order and Hearing Guidelines following public notice and an opportunity to comment. The Commission's proposed Scheduling Order and Hearing Guidelines are available on the web at [nmenv.state.nm.us/Regulations and Permits/New or Proposed Regulations](http://nmenv.state.nm.us/Regulations_and_Permits/New_or_Proposed_Regulations) or by submitting a request by telephone, facsimile, or e-mail to the Hearing Officer.

To be considered, all comments on the proposed Scheduling Order and Hearing Guidelines shall be submitted in writing to the Hearing Officer before 5 p.m. May 30, 2003. The Hearing Officer will adopt the final Scheduling Order and Hearing Guidelines on or before June 15, 2003, and copies will be mailed to all persons who submitted written comments during the comment period or requested copies in writing.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2003

Volume XIV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.