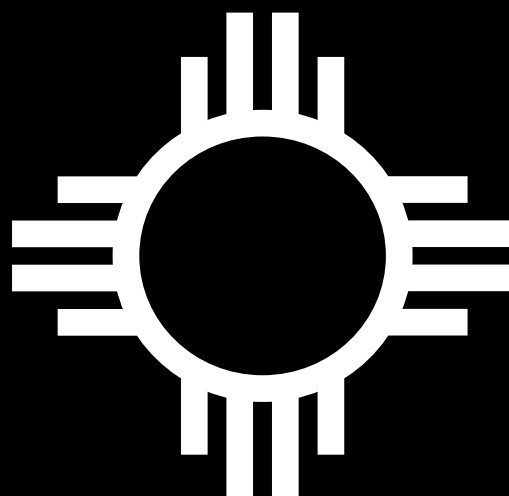


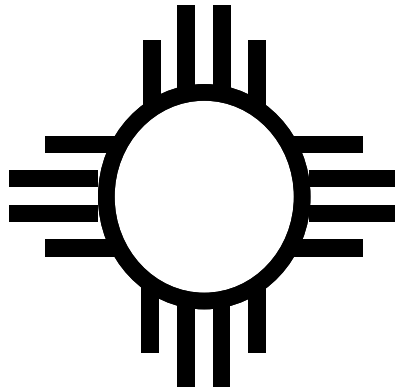
**NEW
MEXICO
REGISTER**



Volume XIX
Issue Number 7
April 15, 2008

New Mexico Register

Volume XIX, Issue Number 7
April 15, 2008



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
2008

COPYRIGHT © 2008
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XIX, Number 7

April 15, 2008

Table of Contents

Notices of Rulemaking and Proposed Rules

Aging and Long-Term Services Department	
Notice of Rulemaking	177
Agriculture, Department of	
Notice of Hearing	177
Athletic Commission	
Rule Hearing and Regular Meeting Notice	177
Chiropractic Examiners, Board of	
Rule Hearing and Regular Board Meeting	177
Cultural Affairs, Department of	
Arts Division	
Notice of Hearing on Proposed Rules Governing the New Mexico Arts Division	178
Energy, Minerals and Natural Resources Department and Taxation and Revenue Department	
Notice of Rulemaking	178
Higher Education Department	
Notice of Public Hearing	178
Human Services Department	
Income Support Division	
Notice of Public Hearing (General Assistance for Disabled Adults Program)	179
Notice of Public Hearing (General Provisions for Public Assistance Programs	
Eligibility and Verification Standards)	179
Medical Assistance Division	
Notice of Public Hearing (Medicaid Managed Care (SALUD!))	179
Notice of Public Hearings (Podiatry Services and Emergency Medical Services for Aliens (EMSA))	180
Public Regulation Commission	
Notice of Proposed Rulemaking and Order Consolidating Cases	180

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided 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

Accountancy Board, Public		
16.60.1 NMAC	A	Public Accountants: General Provisions. 183
Auditor, Office of the State		
2.2.2 NMAC	R	Requirements for Contracting and Conducting Audits of Agencies 184
2.2.2 NMAC	N	Requirements for Contracting and Conducting Audits of Agencies 184
Children, Youth and Families Department		
Family Services Division		
8.8.3 NMAC	A	Governing Background Checks and Employment History Verification 234
Environment Department		
20.12.2 NMAC	N	Board of Director Training Requirements 234
Health, Department of		
Public Health Division		
7.34.2 NMAC	N	Advisory Board Responsibilities and Duties 235
Workers' Compensation Administration		
11.4.12 NMAC	A/E	Uninsured Employers' Fund 238

Other Material Related to Administrative Law

Architects, Board of Examiners for	
Regular Meeting	241
Hoisting Operators Licensure Examining Council	
Notice of Meeting	241
Human Services Department	
Income Support Division	
Notice of Public Comment	241
Public Records, Commission of	
Historical Records Advisory Board	
Notice of Regular Meeting	241

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. 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 staterules@state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

NOTICE OF RULEMAKING

The New Mexico Aging and Long-Term Services Department, Adult Protective Services, shall hold a formal public hearing on May 7, 2008 from 1:30 to 3:30 p.m. in the Rio Grande Conference Room on the 2nd floor of the Toney Anaya Building located at 2550 Cerrillos Road, Santa Fe, New Mexico to receive public comments regarding proposed promulgation of rule 8.11.5 NMAC governing Adult Protective Services Legal. The new proposed rule 8.11.5 NMAC shall repeal and replace the previous 8.11.5 NMAC that was promulgated by the Children, Youth and Families Department on July 1, 1997 because Adult Protective Services transferred from the Children, Youth and Families Department to the Aging and Long-Term Services Department on July 1, 2005.

The proposed rule may be obtained by contacting Gerald F. McBride at 505-841-4543. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on May 7, 2008. Written comments shall be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to Gerald F. McBride, Attorney, Aging and Long-Term Services Department, 625 Silver SW, Albuquerque, New Mexico 87102, Fax Number 505-841-4542, email: gerald.mcbride@state.nm.us.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Gerald F. McBride, at 505-841-4543. The Aging and Long-Term Services Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

New Mexico Department of Agriculture will hold two public hearings to address changes in the Plant Nursery Licensing and Inspection Regulation 21.17.2. Changes impact fee structures relevant to nursery and cut flower industries.

Hearings will be held at the Albuquerque District Office located at 2604 Aztec NE, Albuquerque, New Mexico beginning at 8:30 a.m. on May 7, 2008 and at the New Mexico Department of Agriculture conference room located at 3190 South Espina (corner of Gregg and Espina), Las Cruces, New Mexico, beginning at 8:30 a.m. on May 7, 2008. Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on May 7, 2008. Written statements, inquiries, or requests for copies of the rule should be directed to New Mexico Department of Agriculture, Attn: Brad Lewis, P.O. Box 30005, MSC 3BA, Las Cruces, New Mexico 88003-8005.

NEW MEXICO ATHLETIC COMMISSION

New Mexico Athletic Commission Rule Hearing and Regular Meeting Notice

Notice is hereby given that the New Mexico Athletic Commission will convene a public rule hearing at 5:30 p.m. May 15, 2008 and a Regular Commission Meeting upon conclusion of the hearing at the Real Estate Commission Conference Room, Regulation and Licensing Department located at 5200 Oakland Ave. NE, Albuquerque, NM 87113.

The purpose of the rule hearing is to consider adoption of 15.6.20 NMAC: Amateur Mixed Martial Arts proposed regulation:

Persons desiring to present their views on the proposed rules may write to request draft copies from the Commission office at 5200 Oakland Ave. NE, Albuquerque, NM or call (505) 222-9860. All written comments must be submitted to the Commission office no later than April 23, 2008 in order for the Commission members to receive and review the comments prior to the hearing. Persons wishing to present their comments at the hearing will need nine (9) copies for distribution to the Commission, Legal Counsel and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 222-9860 at least one week prior to the hearing/meeting or as soon as possible.

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Chiropractic Examiners will hold a Rule Hearing on May 24, 2008. Following the Rule Hearing the New Mexico Board of Chiropractic Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Chiropractic Examiners Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. Portions of the regular meeting may be closed to the public while the Board is in Executive Session. The meetings will be held at the Toney Anaya Building, Rio Grande Room, 2nd Floor, and 2550 Cerrillos Road, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments, replacements, repeals and or additions to the following Board Rules in NMAC 16.4 Chiropractic Practitioners –

- 16.4.3 Requirements for Licensure By Examination
- 16.4.4 Licensure by Endorsement
- 16.4.6 Examination
- 16.4.12 Classification of Chiropractic Licensure
- 16.4.13 Reinstatement of Chiropractic Licensure
- 16.4.14 (New Part) Management of Medical Records
- 16.4.18 Practice Procedures

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capital Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4605 after April 15, 2008. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than April 10, 2008. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary

aid or service to participate, please call the Board office at (505) 476-4613 at least two weeks prior to the meeting or as soon as possible.

**NEW MEXICO
DEPARTMENT OF
CULTURAL AFFAIRS
ARTS DIVISION**

**NOTICE OF HEARING ON PROPOSED
RULES GOVERNING THE NEW
MEXICO ARTS DIVISION**

Notice is hereby given that pursuant to the New Mexico Arts Commission and Division Act Section 18-5-7(F) NMSA 1978, the New Mexico Arts Division proposes to adopt regulations to update the New Mexico Arts Commission bylaws and regulations governing the New Mexico Arts Division and its funding application procedures, requirements, and programs.

The proposed regulations update the New Mexico Arts Commission bylaws. The proposed changes will be discussed, and comments taken at a public hearing to be held on May 20, 2008. New Mexico Arts Commission updates section 4.12.1.16 NMAC General Provisions and 4.12.10.8 NMAC Application Process for Folk Arts Apprenticeship. Also proposed is the replacement of the most current issues of the two FY2009 guidelines. The updates will be heard between 9:30 am and 12:30pm. The hearing will be held at the Center for Museum Resources, 725 Camino Lejo, Santa Fe. Copies of the proposed regulations may be obtained before the meeting at the New Mexico Arts Division offices listed above or by contacting Virginia Castellano at 505/827-6490 or by e-mail virginia.castellano@state.nm.us. The notice of the public hearing and the proposed language changes will be posted on NMA web-site www.nmarts.org under "Breaking News".

Interested persons may submit written comments to the New Mexico Arts Division at PO Box 1450, Santa Fe, NM 87504-1450 or e-mail comments regarding the funding programs to virginia.castellano@state.nm.us to be received by 8:00 am May 19th, 2008. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

If any interested person has a disability and requires some accommodation in attending the public hearing or to have the rules communicated to them, please submit a written request identifying the disability and the

type of accommodation needed to Virginia Castellano before May 20. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

**NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT
AND
NEW MEXICO TAXATION AND REVENUE
DEPARTMENT**

NOTICE OF RULE MAKING

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
AND
TAXATION AND REVENUE DEPARTMENT
SANTA FE, NEW MEXICO**

The State of New Mexico, Energy, Minerals and Natural Resources Department and Taxation and Revenue Department, hereby give notice that they will conduct a public hearing at 9:00 AM on May 6, 2008 in Porter Hall, 1220 South St. Francis Drive, Santa Fe, New Mexico concerning the following: adoption of a new rule regarding the land conservation incentives tax credit for donations of land or interests in land to public or private land conservation agencies for conservation purposes and repeal of the existing rule, 3.13.20 NMAC. The proposed replacement rule will establish procedures for certifying donations of land or interests in land to public agencies or private land conservation agencies made on or after January 1, 2004, eligible for the land conservation incentives tax credit and for the Energy, Minerals and Natural Resources Department and Tax and Administration Department to administer the land conservation incentives tax credit. This rule will have statewide application. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Robert Sivinski at 505-476-3347 or through the New Mexico Relay Network (1-800-659-1779) immediately. Copies of the text of the proposed rule are available from Robert Sivinski at 505-476-3347 or from the Energy, Minerals and Natural Resources Internet web site at <http://www.emnrd.state.nm.us>. Written comments will be accepted until May 6, 2008. Please mail written comments to Robert Sivinski, EMNRD-Forestry, P.O. Box 1948, Santa Fe, NM 87504 or submit them by e-mail to robert.sivinski@state.nm.us. Written comments will also be accepted at the public hearing on May 6, 2008. Oral comments will be taken at the public hearing on May 6, 2008.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

NEW MEXICO HIGHER EDUCATION DEPARTMENT

The Higher Education Department Financial Aid Division hereby gives notice that the Department will conduct a public hearing at the Department of Health, Runnels Auditorium, 1190 Saint Francis Drive, Santa Fe, New Mexico 87502 on *May 15, 2008, from 1:30 p.m. to 3:30p.m.* The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
5.7.2 NMAC	NM Health Professions: Student Loan For Service Acts	Amend
5.7.18 NMAC	Residency for Tuition Purposes	Amend
5.7.20 NMAC	Legislative Lottery Scholarship	Amend
5.7.23 NMAC	College Affordability Grant	Amend
5.7.31 NMAC	Public Service Law Loan Repayment Program	Amend

Interested individuals may testify at the public hearing or submit written comments to Tashina Banks Moore, (Tashina.banks-moore@state.nm.us) or fax 505-476-6511). Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (www.hsd.state.nm.us) or obtained from Susan Espinoza at 505-476-6512 or susan.espinoza@state.nm.us.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Tashina Banks Moore as soon as possible.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Service Department will hold a public hearing to consider proposed rules to the General Assistance for Disabled Adults Program. The hearing will be held on Friday, May 16, 2008 at 9:00 am to 10:30 am at the Income Support Division conference room, 2009 S. Pacheco Street., Santa Fe, NM. The conference room is located on in Room 120 on the lower level of Pollon Plaza.

The Department is proposing to add language at 8.106.500.8 NMAC to provide a one time supplemental issuance for recipients of General Assistance (GA) for Disabled Adults. A one time supplemental issuance may be distributed based on the sole discretion of the Secretary of the Human Services Department and the availability of state funds.

The one time supplemental issuance shall be made available only to those GA beneficiaries eligible for assistance during the month of issuance, and shall be no more than the standard GA payment made to the beneficiary for that month. GA applications determined eligible for benefits in the month the one time supplemental issuance is given, but are approved after the last day of the month will not be eligible for the one time supplemental issuance.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals wishing to testify or requesting a copy of the proposed regula-

tion should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to: vida.tapia-sanchez@state.nm.us or via fax to 505-827-7259.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider proposed rules to the General Provisions for Public Assistance Programs Eligibility and Verification Standards and to redefine "hardship" as it pertains to the initial interview for applicants of the Food Stamp Program. The hearing will be held on May 16, 2008 at 10:30 am at the Income Support Division conference room, 2009 S. Pacheco St., NM. The conference room is located in room 120 on the lower level of Pollon Plaza.

The Department is proposing to repeal and replace General Provisions for Public Assistance Programs to remove duplicative language, clarify verification requirements for certain deductions and include new verification guidance of citizenship and identity in relation to the Medicaid Policy. These proposed rules are based on the final rule-making published July 2, 2007 from the U.S. Department of Health and Human Services (DHHS) – Center for Medicare and Medicaid Services (CMS). The Department has been operating under Interim Policy and Procedure 06-03 and 06-04 distributed on July 14, 2006 and July 19, 2006 respectively.

Further, the Department is proposing to clarify verification requirements for certain deductions. These deductions include resources, shelter, utilities and dependent care. The Department is proposing to accept the applicant/recipient statement unless the information provided is questionable, inconsistent or the resource amount report-

ed is below the maximum resource limit for the household type.

The Department is also proposing to redefine "hardship" as it applies to food stamp applicants attending an initial interview at the local income support division county office at 8.139.120 NMAC. The Department is proposing to define hardship as one of the following: over the age of 60; disabled; employed 20 or more hours per week; has a dependent child under the age of 6; has transportation difficulties; illness; care of a household member; resides in a rural area; prolonged severe weather; or other hardship identified as situations warrant.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to: vida.tapia-sanchez@state.nm.us or via fax to 505-827-7259.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on May 8, 2008, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be Medicaid Managed Care (SALUD!).

The Medical Assistance Division is proposing amendments to the Medicaid managed care rules to reflect additional program requirements and to clarify language related to Medicaid managed care policy.

Interested persons may submit written comments no later than 5:00 p.m., May 8, 2008,

to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register.html . or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold 2 separate public hearings on May 12, 2008, in Room 300 of the Health Policy Commission, 2055 S. Pacheco Street, Santa Fe, New Mexico.

From 1:30 - 2:30 p.m., the subject of the hearing will be Podiatry Services. The Human Services Department, Medical Assistance Division, is proposing amendments to 8.310.11 NMAC, *Podiatry Services* to clarify regulatory language and accuracy with existing rules and provider participation agreements. These proposed rule changes include clarifying language for the coverage of medically necessary bunion services for Medical Services Division (MAD) eligible recipients.

From 2:30 - 3:30 p.m., the subject of the hearing will be Emergency Medical Services for Aliens (EMSA). The Human Services Department, Medical Assistance Division, is proposing amendments to 8.325.10 NMAC, *Emergency Services to Undocumented Aliens*, to clarify regulatory language and accuracy with existing rules and provider participation agreements.

The Centers for Medicaid and Medicare Services (CMS) issued new information concerning an interim final rule that supports states in providing prenatal and post-

partum to undocumented alien pregnant women.

Interested persons may submit written comments no later than 5:00 p.m., May 12, 2008, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register.html . or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE FILING OF RENEWABLE PORTFOLIO STANDARD COMPLIANCE PLANS PURSUANT TO AMENDED RULE 572

Case No. 08-00040-UT

AND

IN THE MATTER OF A PROPOSED RULEMAKING RELATING TO REASONABLE COST THRESHOLDS UNDER RULE 572

Case No. 08-00084-UT

NOTICE OF PROPOSED RULEMAKING AND ORDER CONSOLIDATING CASES

THIS MATTER comes before the Public Regulation Commission ("Commission") upon its own motion. Being fully informed in the premises,

THE COMMISSION FINDS AND CONCLUDES AS FOLLOWS:

1. In our Final Order issued December 14, 2004 ("December 14 Order"), the Commission adopted the Hearing Examiner's recommendation that the Commission establish a two-pronged reasonable cost threshold ("RCT") pursuant to NMSA 1978, Section 62-16-4(c). The first prong of that approach consisted of a maximum overall customer rate increase starting at no more than 1% in 2006 and increasing no more than .2% per year thereafter until it reached a cap of 2.0% for each year beginning 2011 and beyond. The second prong of that approach consisted of a \$/kWh cap for specific renewable energy technologies such as wind and biomass resources. The December 14 Order also required El Paso Electric Company ("EPE"), Southwestern Public Service Company ("SPS"), and Public Service Company of New Mexico ("PNM") to file, by September 1, 2007, a report ("RCT Report") reflecting their positions regarding the RCT established by the Commission in that case and whether the thresholds should be changed.

2. On August 7, 2007, the Commission issued a Final Order in Case No. 07-00157-UT, which, among other matters, extended the deadline for the filing of the utilities' RCT Reports from September 1, 2007 to March 1, 2008.

3. On February 11, 2008, the Commission issued an order that opened this docket for the purpose of receiving the RCT Reports.

4. SPS filed its RCT Report on February 29, 2008, and PNM and EPE filed their RCT Report on March 3, 2008.

5. PNM states that although it has been able to procure renewable resources in the past at prices within the technology RCTs, it is unlikely to be able to do so in the future due to rising costs. PNM recommends that the technology RCTs be eliminated because they do not represent current or projected project costs; they do not take into consideration ancillary costs to the system, also because weighting for renewable energy certificates (RECs) has been eliminated, and (according to PNM) the technology RCTs were established proportional to the REC weights.

6. PNM also recommends that the Commission establish an approved methodology for comparing the levelized costs of a renewable energy project to traditional energy and capacity supplies. PNM proposes that the Commission adopt an approach that compares the levelized cost of a renewable energy project to the energy cost of a gas plant and the capacity costs of the least expensive resource with similar operating characteristics. PNM provides, as examples, that a wind project would be compared solely to the energy costs of a gas plant, because wind has no capacity value (or might even be penalized), biomass would be compared to gas energy costs and the capacity costs of a baseload resource, and that solar would be compared to gas energy costs, plus some portion of the capacity costs of gas combined cycle generation, depending on the characteristics of the solar project.

7. SPS recommends elimination of the technology RCTs because prices and market conditions change too rapidly, and further that geographic and other factors make it difficult to apply a single standard across projects. SPS states that the overall RCT is sufficient to provide protection to consumers, and that it will best be able to meet its renewable energy obligations at least cost if it is accorded maximum flexibility.

8. EPE states that its procurements to-date have been within the technology RCTs and that these RCTs provide a strong incentive to wholesale suppliers to offer renewable resources at attractive prices. EPE recommends retaining the technology reasonable cost thresholds. EPE does recommend increasing the technology RCT for large solar projects to a price reflective of average project costs for similar projects.

9. The Commission finds it should propose two alternative proposed amendments to 17.9.572.11 NMAC for comment. In the first (Alternative A), the technology reasonable cost thresholds are

eliminated entirely. In lieu of defined technology reasonable cost thresholds, the Commission would rely on a review of the procurement process and the reasonableness of proposed project costs in relation to comparable projects in the region to assure that project prices are reasonable. *See* 17.9.572.16(A)(5) NMAC. Under the second alternative (Alternative B), reasonable cost thresholds would be specified in the rule based upon the technology groups established in Case 04-00253-UT. For the purposes of noticing a proposed rule, the Commission has utilized the values established in Case 04-00253-UT as the starting point for the cost thresholds.

10. In light of this proceeding, utilities are advised that they should not screen out from their annual portfolio procurement plans to be filed July 1, 2008 any proposal that they may receive before a Final Order is issued in this case solely on the basis that the proposal exceeds the existing technology RCT.

11. To simplify the process of filing comments on the proposed amendments, Case No. 08-00040-UT should be consolidated with and into Case No. 08-00084-UT so that Case No. 08-00084-UT will be the sole remaining open docket. To that end, the record in Case No. 08-00040-UT should be transferred to Case No. 08-00084-UT, and Case No. 08-00040-UT should be closed.

12. Interested persons are invited to comment on the relative merits of the two approaches. Commenters favoring the retention of separate technology reasonable cost thresholds should also provide comment to the Commission regarding the values at which the technology reasonable cost thresholds should be established, and the mechanism by which they should automatically be updated (if any). Commenters favoring the elimination of technology reasonable cost thresholds may also comment on the value for the thresholds, in the event that the Commission determines to keep the thresholds. Comments should be supported with reference to pricing, engineering, and other data.

13. In response to the request by PNM that the Commission provide more guidance to utilities on the overall reasonable cost threshold for years after 2011, the Commission has included in the proposed rule language that would provide a further increase to that value between 2011 and 2015. Comments directed at this provision should be supported with data and models, as appropriate.

14. Interested persons may also comment on PNM's proposal that the Commission specify a methodology for application of the overall RCT to levelized project costs. Commenters favoring PNM's proposal should propose specific language to implement it in rule, or Order.

15. The Commission is proposing the foregoing amendments to 17.9.572.11 NMAC pursuant to the authority vested in this Commission by the New Mexico Public Regulation Commission Act, NMSA 1978, Section 8-8-1 et seq., the Public Utility Act, NMSA 1978, Section 62-3-1 et seq.

16. The Commission will accept written comments on the amendments to 17.9.572.11 NMAC proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments on the proposed rule no later than April 21, 2008. Any response comments shall be filed no later than May 1, 2008. Comments suggesting changes to the proposed amendments shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. Any proposed changes to the proposed rule shall be submitted in hard copy. All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and case number for Case No. 08-00084-UT shown at the top of this Notice.

17. Written comments or written response comments shall be sent to:
New Mexico Public Regulation Commission

Records Division

Attention: Case No. 08-00084-UT

224 East Palace Avenue, Marian Hall

Santa Fe, NM 87501

Telephone: (505) 827-6968

18. Copies of the proposed rule may be downloaded from the Commission's web site, www.nmprc.state.nm.us, under "Public Notices", then "Utilities".

19. The Commission will review all timely submitted written comments and will hold a public comment hearing on the following date and at the following time and place:

May 21, 2008

PERA Building

9:00 a.m.

4th Floor

Hearing Room

1120 Paseo De Peralta
Santa Fe, NM 87501

20. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

21. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

22. Commission Rule 1.2.3.7(B) ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be the earlier of June 20, 2008, or the date the Commission issues a Final Order in this case. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

23. Copies of this Notice of Proposed Rulemaking should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. Case No. 08-00084-UT is created and commenced for the purpose of developing a rule relating to energy efficiency and load management programs.

B. The record in Case No. 08-00040-UT shall be transferred into Case No. 08-00084-UT, and the docket in Case No. 08-00040-UT immediately thereafter shall be closed.

C. The proposed amendments to 17.9.572.11, attached to this Notice of Proposed Rulemaking as NOPR Alternative 1 and Alternative 2, are proposed as alternatives for adoption as a per-

manent rule as provided by this Notice of Proposed Rulemaking.

D. Initial and reply comments on the proposed rules must be filed as provided in this Notice of Proposed Rulemaking.

E. The record in this case, for purposes of 17.2.3.7(B) NMAC ("Ex Parte Communications") shall be closed at the earlier of 5:00 p.m. on June 20, 2008 or the date the Commission issues a Final Order in this case.

F. Public comment hearings shall be held as provided in this Notice of Proposed Rulemaking.

G. A copy of this Notice of Proposed Rulemaking, including Alternatives 1 and 2, shall be mailed to all persons listed on the attached Certificate of Service. This Notice of Proposed Rulemaking, excluding Alternatives 1 and 2, shall be published in two newspapers of general circulation in the State and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission's web site.

H. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 20th day of March, 2008.

NEW MEXICO PUBLIC REGULATION COMMISSION

JASON MARKS, CHAIRMAN

SANDY JONES, VICE CHAIRMAN

DAVID W. KING, COMMISSIONER

BEN R. LUJAN, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.1 NMAC Section 7, effective 4-15-2008.

16.60.1.7 DEFINITIONS:

A. "Acceptance letter" means a document issued by the administering entity indicating the type of report (unmodified, modified, or adverse) when all review documents and, if applicable, all remedial/corrective actions have been completed and accepted by the peer review committee.

B. "Act" means the New Mexico 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA1978.

C. "Administering entity" means an entity (any form of organization allowed by state law or professional organization or association of CPA's) that has met, and at all relevant times continues to meet, the standards specified by the board for administering the review. The board shall periodically publish a list of administering entities that have applied for and received approval.

D. "Client" means the person or entity who retains a licensee for the performance of professional services.

E. "Enterprise" means any person or entity who retains a licensee for the performance of professional services.

F. "Financial statements" means statements and footnotes related thereto that purport to show an actual or anticipated financial position or results of operations, cash flow, or changes in financial position based on generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts, or items of such statements, but it does not include incidental financial data included in management advisory service reports which support recommendations made to clients. In addition, it does not include tax returns and supporting schedules.

G. "He, his, him" means masculine pronouns when used herein also include the feminine and the neuter.

H. "Holding out to the public as a permit holder or registered firm" means the phrase "holding himself out to the public as a permit holder or registered firm" as used in the definition or "practice of public accountancy" in Section 3G of the act, and in these rules it means any representation of the fact that a certificate holder holds a permit or is a registered firm in connection with the performance of,

or an offer to perform, services for the public. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate, registration, or permit in connection with the professional services offered to be performed. For the purpose of this rule, a representation shall be deemed to include any oral or written communication conveying the fact that the person holds a certificate, permit or firm registration, including without limitation the use of titles or legends on letterheads, business cards, office doors, advertisements, internet, email, or other electronic media.

I. "Manager" has, when used in these rules, the same meaning as the term "manager" in a limited liability company.

J. "Member" has, when used in these rules, the same meaning as the term "member" in a limited liability company.

K. "Peer review" means a program to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies.

L. "Peer review committee" means a committee comprised exclusively of CPAs practicing public accountancy and formed by an administering entity for the purpose of accepting peer review reports submitted by firms on peer review engagements.

M. "Professional services" means any service performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

N. "Public communication" means a communication made in identical form to multiple persons or to the world at large, including but not limited to television, radio, motion pictures, newspaper, pamphlet, mass mailing, letterhead, business card, the internet, email or directory.

O. "Quality review" means an interchangeable term for peer review.

P. "Report" as defined in Section 61-28B3 (O) of the act and in these rules includes forms of language which refers to financial statements, when such forms of language express or deny any assurance as to the reliability of the financial statements to which they refer. Among the possible sources of such forms of language are pronouncements by authoritative bodies describing the work that should be performed and the responsibilities that should be assumed for specified kinds of professional engagements. In addition, these pronouncements prescribe the form of

report that should be issued upon completion of such engagements. A form of report prescribed by such a pronouncement will ordinarily constitute a form of language which is conventionally understood as implying assurance and expertise. For this reason, as provided in Section 17B of the act, the term "report" includes the issuance of reports using the forms of language set out in the American institute of certified public accountants (AICPA) statement on standards for accounting and review services (SSARS) No. 1 as amended, modified, or superseded from time to time, for reports with respect to both "reviews" of financial statements, and also compilations of financial statements, as well as the forms of language for "special reports" set out in the AICPA's statement on auditing standards (SAS) No. 14, No. 35 and No. 62 as amended, modified, or superseded from time to time. These statements on standards are incorporated in the AICPA professional standards: code of professional conduct.

Q. "Review or review program" as defined in Section 61-28A-31 NMSA 1978 means the review conducted under the relevant program, whether peer review or quality review.

R. "Services involving accounting or auditing skills" means "services involving accounting or auditing skills" as used in the definition of "practice of public accountancy" in Sections 3L and M of the act. It includes the provision of advice or recommendations in connection with the sale or offer for sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting. ~~[Excluded from the practice of public accountancy is the provision of expert witness services in any adjudicatory proceeding, including the provision of oral or written testimony relating to the examination of documents housed in New Mexico; the investigation of the possibility of fraud on unusual corporate transactions; and the examination of potential loss or damages.]~~

S. "Statement of compliance" means a certified statement from the human services department (HSD) stating that an applicant or licensee is in compliance with a judgment and order for support.

T. "Statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[16.60.1.7 NMAC - Rp 16 NMAC 60.1.7 and 16 NMAC 60.11.7, 02-14-2002; A, 11-30-2007; A, 4-15-2008]

NEW MEXICO OFFICE OF THE STATE AUDITOR

NOTICE:

The Office of the State Auditor is repealing 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies* effective April 15, 2008. It will be replaced with 2.2.2 NMAC, *Requirements for Contracting and Conducting Audit of Agencies*, which will become effective April 15, 2008.

NEW MEXICO OFFICE OF THE STATE AUDITOR

TITLE 2 PUBLIC FINANCE CHAPTER 2 AUDITS OF GOV- ERNMENTAL ENTITIES PART 2 REQUIREMENTS FOR CONTRACTING AND CON- DUCTING 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, 4-15-
08]

2.2.2.2 SCOPE: Agencies as
defined by the Audit Act and independent
public accountants (IPAs) interested in con-
ducting financial and compliance audits of
agencies of the state of New Mexico.
[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 4-15-
08]

**2.2.2.3 STATUTORY
AUTHORITY:** The Audit Act Section 12-
6-12, NMSA 1978, requires the state auditor
to promulgate reasonable regulations neces-
sary to carry out the duties of his office,
including regulations required for conduct-
ing audits in accordance with auditing stan-
dards 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 with authority to conduct
financial and compliance audits in accor-
dance with governmental auditing, account-
ing and financial reporting standards, local,
state and federal laws, rules, and regula-
tions. The Audit Act also gives the state
auditor the authority to perform special
audits of the financial affairs and transac-
tions of an agency, in whole or in part, in
situations deemed necessary.
[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 4-15-
08]

2.2.2.4 DURATION:

Permanent
[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 4-15-
08]

2.2.2.5 EFFECTIVE DATE:
April 15, 2008, unless a later date is cited at
the end of a section.

[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 4-15-
08]

2.2.2.6 OBJECTIVE: The
objective is to establish procedures and
requirements for the contracting and con-
ducting of state governmental audits in the
state of New Mexico.
[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 4-15-
08]

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 dis-
trict courts, magistrate or metropolitan
courts, district attorneys and charitable
institutions for which appropriations are
made by the legislature; any political subdi-
vision of the state, created under either gen-
eral or special act, that receives or expends
public money from whatever source
derived, including counties, county institu-
tions, boards, bureaus or commissions;
municipalities; drainage, conservancy, irri-
gation or other special districts; and school
districts; any entity or instrumentality of the
state specifically provided for by law,
including the New Mexico finance authori-
ty, the New Mexico mortgage finance
authority, the New Mexico lottery authority
and every office or officer of any entity list-
ed 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. "CFR" means code of
federal regulations.

E. "CPE" means continu-
ing professional education.

F. "COSO" means com-
mittee on sponsoring organizations of tread-
way commission.

G. "DFA" means depart-
ment of finance and administration.

H. "FCD" means financial
control division of the department of
finance and administration.

I. "FDIC" means federal
deposit insurance corporation.

J. "FDS" means financial
data schedule.

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

L. "GAGAS" means gen-

erally accepted governmental auditing stan-
dards.

M. "GASB" means gov-
ernmental accounting standards board.

N. "GAAS" means audit-
ing standards generally accepted in the
United States of America.

O. "GSD" means general
services department.

P. "HED" means higher
education department.

Q. "HUD" means U.S.
department of housing and urban develop-
ment.

R. "IPA" means independ-
ent 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. "Office" means office
of the state auditor.

X. "OMB" means office of
management and budget.

Y. "PED" means public
education department.

Z. "PHA" means public
housing authority.

AA. "REAC" means real
estate assessment center.

BB. "REC" means regional
education cooperative.

CC. "RSI" means required
supplemental information.

DD. "State auditor" means
the elected state auditor of the state of New
Mexico, personnel of his office designated
by him or independent auditors designated
by him.

EE. "SAS" means statement
on auditing standards.

FF. "UFRS" means uni-
form financial reporting standards.

GG. "U.S. GAO" means
United States government accountability
office.

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 4-15-
08]

2.2.2.8 THE AUDIT CON- TRACT:

A. Section 12-6-3, NMSA
1978, (Annual and Special Audits) man-
dates that: (1) the financial affairs of every
agency be thoroughly examined and audited
each year by the state auditor, personnel of
his office designated by him, or by inde-
pendent auditors approved by him; (2) the
comprehensive annual financial report for
the state be thoroughly examined and audit-
ed each year by the state auditor, personnel
of his office designated by him or by inde-
pendent auditors approved by him; (3) the

audits 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." Section 61-28B-13(A) of the 1999 Public Accountancy Act states, "A firm must hold a permit issued pursuant to the provisions of the 1999 Public Accountancy Act [61-28B-1 NMSA 1978] in order to provide attest services." Only firms that are registered and in good standing with the board shall audit financial statements. Pursuant to 16.60.3.14 NMAC, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from a state that the board-approved qualification service has verified to be in substantial equivalence with the certified public accountant requirements of the act shall be presumed to have qualifications substantially equivalent to New Mexico's requirements. A person whose qualifications are deemed substantially equivalent shall submit a notification of intent to practice under substantial equivalency to the public board of accountancy every twelve months. 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 that has been approved by the office and who have complied with all the requirements of this rule including:

(1) Section 2.2.2.14 NMAC, continuing education and quality control requirements;

(2) Subsection H of 2.2.2.8 NMAC, independence requirements; and

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

(a) Section 2.2.2.9 NMAC, report due dates;

(b) Section 2.2.2.13 NMAC, review of audit reports and working papers, of this rule; and

(c) Paragraph (6) of Subsection A of 2.2.2.9 NMAC, notifying the state auditor regarding why audit reports will be late.

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

(1) It is unnecessary for the agency to include a copy of the audit rule 2008 when mailing requests for proposals to IPAs because it is posted on the state auditor's website at www.saonm.org. The agency shall identify all elements or services to be solicited upon receipt of notification, and request quotations or proposals for each of the following identifiable elements:

(a) financial statement audit;

(b) federal single audit;

(c) financial statement preparation;

(d) other nonaudit services like depreciation schedule dates; and

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

(2) Audit services costing **no more than \$50,000 excluding 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. Section 13-1-191.1, NMSA 1978, requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency on the date the contractor signs the contract. A multi-year proposal (not to exceed three years) exceeding \$50,000 for all three years is not considered a small purchase.

(3) For audit services costing **over \$50,000 excluding 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*. Section 13-1-191.1, NMSA 1978, requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency as part of the

competitive sealed proposal. 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, *Grants and Cooperative Agreements with 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 proposal 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 the 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 procedures described above in Paragraphs (2) and (3) of Subsection B of 2.2.2.8 NMAC to solicit services.

(5) The agency shall evaluate all competitive sealed proposals or quotations received pursuant to Paragraphs (2) and (3) of Subsection B of 2.2.2.8 NMAC 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 assigned evaluation points on the basis of experience and qualifications. Then each IPA shall be assigned evaluation points on the basis of cost. The IPA firm receiving the most total evaluation points should be selected as the agency IPA. The agency shall use the evaluation form attached to this rule as Appendix B to document this process.

(6) After completing the evaluations for each IPA, and making the IPA selection, each agency shall submit the following information to the state auditor on or before May 31, together with its IPA recommendation. (Agencies with a fiscal year end other than June 30 must use a due date 30 days before the end of the fiscal year).

(a) A cover letter indicating the name of the firm being recommended, the fiscal year end being audited, the oversight

agency approval signature (if required), 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 the agency is in year 2 or 3 of a multi-year proposal, the agency shall submit a copy of part II of the evaluation form from the previous year.

(c) A list of professional services contracts the agency had with any IPA on the state auditor's approved list during the previous calendar year up until the date of submission, including the contract date, contract amount, and a description of the services provided.

(d) Agencies that are subject to oversight by the state public education department (PED) or the higher education department (HED) have the additional requirement of submitting their IPA recommendation to PED or HED for approval prior to submitting the recommendation to the state auditor (Section 12-6-14, NMSA 1978). An agency may use the sample cover letter in Appendix A to document the required oversight agency approval.

(7) The state auditor will notify the appropriate oversight agency when an agency has failed to submit a timely auditor recommendation.

(8) If the agency fails to make a recommendation by the deadline, the state auditor may conduct the audit.

(9) Pursuant to Section 12-6-14, NMSA 1978, "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."

(10) The agency shall retain all procurement documentation, including completed evaluation forms, for **five** years.

(11) 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 shall promptly submit a different recommendation. This process will continue until the state auditor approves a recommendation. 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.

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

(1) an audit contract recommen-

dation that does not serve the best interests of the public or the agency because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) the IPA has conducted the audit of the same agency for six consecutive years;

(i) 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;

(ii) an IPA firm that has undergone a merger or acquisition will be determined (on an individual basis) to be a **new firm** for the purposes of the rotation requirement based on, but not limited to, the following criteria: (a) the firm is a newly registered business entity; and (b) at least 67% of the firm's ownership changed;

(iii) if the firm resulting from a merger or acquisition is determined to be a same firm, as before, and it is in the middle of multiple year award, there will be a mandatory rotation of the audit manager;

(iv) if the firm resulting from a merger or acquisition is determined to be a new firm, the new firm must compete for audit services in accordance with the Procurement Code and this rule; and

(v) any other consideration(s) that may be in the best interest of the public.

(c) lack of competence or staff availability;

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

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

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

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

(h) any other reason determined by the state auditor to be in the best interests of the state of New Mexico;

(2) audit contract recommendations of an IPA that 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 Subsection H of 2.2.2.8 of NMAC);

(f) failed to respond, in a timely and 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 Subsections A and B of 2.2.2.14 NMAC;

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

(k) otherwise, in the opinion of the state auditor, shown himself or herself to be unfit to be awarded a contract;

(3) an audit recommendation for 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 the agency was previously designated for audit by an IPA.

D. 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.

E. 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.

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

G. 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 Subsection A of 2.2.2.8 NMAC. The audit contract shall specify subcontractor responsibility, who will sign the report(s), and how the subcontractor will be paid. See appendix F for the applicable form.

H. The **Government Auditing Standard 2003 Revision** general standard related to independence 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**" (GAGAS 3.03). The standard 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 the audit (GAGAS 3.13).

(1) The **Government Auditing Standards January 2007 Revision** was issued by the GAO on February 1, 2007. It is effective for financial audits for periods beginning on or after January 1, 2008 (FY09). Early implementation is permissible and encouraged. This updated Yellow Book changes the above "should" references to "must" in Paragraphs 3.02 and 3.22.

(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 that summarized the key provision of the 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 financial 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.

(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 3.17. The paragraph that describes the safeguards in the 2007 revision is Paragraph 3.30. See also the GAO, **Government Auditing Standards Answers to Independence Standard Questions**, Question 46, which **requires documentation of the safeguards** when an audit firm prepares the trial balance, financial statements and notes and then also performs the audit.

(c) The state auditor **may** approve a contract for the following "nonroutine" nonaudit services to be provided by the same IPA who performs the agency's annual financial 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 document its consideration of the nonaudit services and document its rationale that providing the nonaudit services does not violate the two overarching principles. Safeguard (2) 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 services, 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 (3) requires the IPA to preclude personnel who provided the nonaudit services from planning, conducting, or reviewing audit work related to the nonaudit services. (There is an exemption from this safeguard when the nonaudit services are the preparation of a trial balance, draft financial statements, and notes from appropriate books and records that balance, per Question 46 of the GAO, **Government Auditing Standards Answers to Independence Standard Questions**). Safeguard (4) 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 (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 and can be included in the engagement letter. Documentation must specify management's responsibility for the nonaudit services, 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 services, that the audit organization would not be able to perform subsequent audit work related to the subject matter of the nonaudit services. 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 related safeguard documentation made available for peer review. See GAGAS (2007) Paragraph 3.30 for the updated version of these safeguards.

(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) Converting cash-based financial statements to accrual-based financial statements, as long as management is in the position to make informed judgments to review, approve, and take responsibility for the appropriateness of the conversion; (d) maintaining depreciation schedules for which management has determined the method of depreciation, rate of depreciation, and salvage value of the asset; and (e) 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 list of best qualified applicants to be provided to management.

(v) Providing information 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 the financial statements or other information that will be audited; or (b) valuing an agency's pension, other post-employment benefits, 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.

(x) Preparing an entity's indirect cost proposal or cost allocation plan provided that the amounts are not material to the financial statements and management assumes responsibility for all significant assumptions and data. See Paragraph 3.28 of the 2007 revision for the corresponding list of nonaudit services that would not impair independence if the safeguards are implemented.

(3) In accordance with Section 12-6-12, NMSA 1978, 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. The contract fee, start and completion date and scope of services to be performed should be included when submitting nonaudit service contracts to the state auditor for approval. The agency and IPA must provide the state auditor with a copy of any report generated.

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

(1) Section 12-6-14, NMSA 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."

(2) Section 12-6-14, NMSA 1978 (Contract Audits) provides that the state auditor may authorize progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to 69% **do not** require state auditor approval, provided that the agency certifies receipt of services. **The agency must monitor audit progress and make progress payments only up to the percentage that the audit is completed** prior to making the 69% payment. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Progress payments from 70% to 90% **do** require state auditor approval after being approved by the agency.

(4) 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 Subsection A of 2.2.2.9 NMAC.

(5) Section 12-6-14, NMSA 1978 (Contract Audits), provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has 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. 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 IPA to removal from the list of approved auditors.

J. 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 Subsection A of 2.2.2.9 NMAC.

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

(4) If the IPA prepared the financial statements, in conformance with Subsection H of 2.2.2.8 NMAC for management's review and approval, including documenting the safeguards as required by GAGAS 3.17 [or GAGAS (2007) 3.30], 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. **The auditor must determine whether a related finding is required.** The SAS 112 Appendix lists circumstances that may be a control deficiency, significant deficiency, or a material weakness. Employees or management who lack the qualifications and training to apply generally accepted accounting principles in recording the entity's financial transactions or preparing its financial statements is one set of circumstances in the SAS 112 appendix list that should be considered in this determination. SAS 112 Paragraph 18 lists insufficient expertise in selecting and applying accounting principles as "at least a significant deficiency in internal control."

K. Working papers (SAS 103 must be implemented in FY 07):

(1) The working papers are to be retained for a minimum of five years (per SAS 103 Paragraph 32) 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 indicate 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 or all of the following actions may be taken:

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

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

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

L. Auditor communication:

(1) The *Government Auditing Standards 2003 Revision* Sections 4.6 through 4.13 provide guidance regarding auditor communication requirements in financial audits performed in accordance with GAGAS (see Sections 4.05 to 4.08 of the 2007 revision for the related discussion). 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, timing, and extend of planned testing and reporting and the level of assurance provided to **officials of the audited entity and to the individuals contracting for or requesting the audit.**" SAS 114, which is effective for FY08, also requires this and additional information to be communicated to those charged with governance of the agency. Auditors should specifically communicate this information during the planning stages of a financial audit:

(a) any potential restriction of the auditors' reports;

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

(i) planned testing of compliance with applicable state and federal laws and regulations shown in Subsections H and I of 2.2.2.10 NMAC;

(ii) 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

(iii) any agreed upon procedures for example the HUD requirement for a SAS 29 opinion on the FDS schedule required in Subparagraph (a) of Paragraph (5) of Subsection B of 2.2.2.12 NMAC.

(c) 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.

(d) 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, keeping a photocopy of the signed letter as part of the audit documentation (GAGAS 4.07). The appropriate officials of the agency may include:

(i) the head of the audited entity;

(ii) the audit committee or board of directors or equivalent oversight body; or

(iii) the individual who possesses a sufficient level of authority and responsibility for the financial reporting process, such as the chief financial officer (GAGAS 4.08).

(e) In situations where auditors are performing the audit under a contract with a party other than the officials of the audited entity, or pursuant to a third party request, auditors should also communicate with the individuals contracting for or requesting the audit, such as contracting officials or members or staff of legislative committees (GAGAS 4.09).

(f) The 2007 Revision of the Yellow Book, Paragraph 4.07, acknowledges the new AICPA standards as well as GAGAS standards concerning tests of internal control over financial reporting and compliance, and the resulting reporting. SAS 112 is effective for periods ending on or after December 15, 2006 (FY07), with earlier application permitted. It provides guidance on evaluating the severity of control deficiencies identified in an audit and defines the terms "significant deficiency" and "material weakness." **SAS 112 requires the auditor to communicate, in writing, to management and those charged with governance, significant deficiencies and material weaknesses identified in an audit.** In addition, Paragraph (8) of Subsection I of Section 2.2.2.10 below requires the auditor to include in his report any deficiencies in internal controls or immaterial violations of provisions of contracts or grant agreements or abuse per Section 12-6-5, NMSA 1978, and GAGAS 5.14 and 5.16 (2007), that do not rise to the level of significant deficiencies or material weaknesses under SAS 112.

(2) 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 pre-

pared documents with expected delivery dates, which will facilitate meeting the audit due date in Subsection A of 2.2.2.9 NMAC. A separate engagement letter and list of client prepared documents is required for each fiscal year audited.

(3) All communication with management and the agency oversight officials regarding any instances of noncompliance or internal control weaknesses must be communicated in writing. The auditor should obtain **responses in writing** to facilitate effective communication. Any instances of noncompliance or internal control weaknesses must be included as an audit finding per Section 12-6-5, NMSA 1978. Separate management letter comments shall **not** be issued as a substitute for such findings.

(4) The financial control division of the department of finance and administration mandates that each state agency, with the help of its independent auditor, identify a schedule of deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline cannot extend beyond December 15. Once the agency and auditor have certified to the financial control division of the department of finance and administration that the agency's books and records are ready and available for audit, if the auditor or agency find that the scheduled audit deliverables or agreed upon milestones are not accomplished timely and there is a possibility the audit report will be late, the auditor or agency shall immediately write a dated letter to the state auditor describing the problems. The financial control division of the department of finance administration must be sent a photocopy of the letter.

M. Amendment of any of the contract provisions will be made upon forms used in the normal course of business by the agency. **Audit report due dates are not subject to amendment.** Work performed beyond the original 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 Subsection H of 2.2.2.8 NMAC and will be negotiated and compensated only upon amendment of the original contract if they were not specifically included in the original contract. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. **All contract 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 contract 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.

N. The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed, or for any other reason, and perform the audit entirely or partially with IPAs contracted by 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, 4-15-08]

2.2.2.9 REPORT DUE DATES:

A. The auditor shall deliver the organized and bound annual financial audit report to the state auditor by 5:00 p.m. on the date specified in the audit contract or send it post marked by the due date.

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

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

(b) hospitals and special hospital districts: **October 15;**

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

(d) municipalities, special districts, land grants and local workforce investment boards **December 1;**

(e) councils of governments, district courts, and district attorneys: **December 15;**

(f) state agency reports are due no later than 60 days after the financial control division of the department of finance and administration provides the state auditor with notice that the agency's books and records are ready and available for audit; the financial control division mandates that each agency, with the help of its independent auditor, identify a schedule of audit deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time; the sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline **cannot extend beyond December 15** (Section 12-6-3 C, NMSA 1978);

(g) agencies with a fiscal year-end other than June 30 must submit the audit report no more than **5 months after the fis-**

cal year-end; and

(h) all separate audit reports prepared for component units (e.g., housing authorities, charter schools, hospitals, foundations, etc.) are due the **same date the primary government's audit report is due.**

(2) Audit reports for agencies that have submitted 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 delivered on time to the state auditor, the auditor must include this instance of noncompliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. If appropriate, the finding should also be reported as an instance of significant deficiency in the operation of internal control in the agency's internal controls over financial reporting per the SAS 112 Appendix.

(4) An organized hard copy of the report should be submitted for review by the office with the following: a copy of the dated signed engagement letter if not previously submitted; a copy of the signed management representation letter; a list of the passed adjustments, clearly labeled "passed adjustments" (or memo stating there are none); and a copy of the completed state auditor preliminary review guide (available at www.saonm.org). The checklist should reference applicable page numbers in the audit report and be signed by the person completing the review guide. The audit manager should either complete the preliminary review guide or sign off as having reviewed it. A report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed engagement letter (if not previously submitted), a copy of the signed management representation letter, the passed adjustments, and the completed preliminary review guide are also submitted to the office. All separate reports prepared for component units should also be submitted to the office for review, along with a copy of the representation letter, a list of passed audit adjustments and a completed preliminary review guide for each separate report. A separate component unit report will not be considered submitted to the office for the purpose of meeting the deadline, until a copy of the signed management representation letter, the passed adjustments, and the completed preliminary review guide are also submitted to the office. If a due date falls on a weekend or holiday, the audit report is due the following workday by 5:00 p.m. If the report is mailed to the state auditor, it should be postmarked no later than 5:00 p.m. on the due date to be considered filed timely. The state auditor will grant no extensions of time to deliver the audit reports.

(5) SAS No. 103 Paragraph 23

requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the financial statements have been prepared and the management representation letter has been signed. SAS No. 113 Paragraph 14 requires the management representation letter to be dated the same date as the independent auditor's report.

(6) **As soon as the auditor becomes aware** that an agency's financial records are incomplete or require adjustment that will make the audit report late, the auditor shall notify the state auditor and oversight agency of the situation in writing. **There must be a separate notification for each late audit report. The notification must include an explanation regarding why the report will be late and must include a concurring signature by the agency.** A copy of the letter must be sent to the applicable oversight agency, public education department, department of finance and administration (DFA), DFA local government division, or higher education department. At the time the audit report is due, if the agency's financial records are still incomplete or require significant adjustment, 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 auditor 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.

B. As in any contract, both parties can and are encouraged to negotiate a delivery date prior to the regulated due date specified in Subsection A of 2.2.2.9 NMAC. No delivery date, however, may exceed the "no later than" due date specified in Subsection A of 2.2.2.9 NMAC.

C. Delivery and release of the audit report:

(1) All audit reports (and all separate reports on component units) must be organized, bound and paginated. **The office is no longer accepting email versions of the audit reports for review.** The IPA shall deliver to the state auditor a hard copy of the **finalized** audit report for review by 5:00 p.m. on the day the report is due. Reports postmarked by the due date will also be considered submitted timely. Unfinished reports or excessively deficient reports will not satisfy this requirement. Such reports will be returned and notice may be given to the New Mexico public accountancy board for possible licensure action. The IPA should review the report using the preliminary review guide available on the website prior to submitting the report to the office. All questions in the guide must be answered, and the reviewer must sign and date the last page of the guide. The audit

manager must either complete the preliminary review guide or sign off as having reviewed the completed questionnaire.

(2) Once all deficiency comments have been corrected by the IPA and the state auditor indicates it is ready to print the report, the required number of hardcopies specified in the audit contract, and an electronic version of the completely corrected final report, in PDF format, must be provided to the state auditor.

(3) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter." Release of the audit report to the agency 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, 4-15-08]

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 primary government.

(a) Entities must be included as component units within the financial statements of the primary government, if the primary government is financially accountable for the entity (GASB 14 Paragraph 10) or if the nature and significance of the entity to the primary government warrants inclusion (GASB 39 Paragraphs 5 and 6). The primary government in cooperation with its auditors must determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government, as defined by GASB Statements No. 14 and No. 39. The flowchart at GASB 14 Paragraph 132 is helpful. All agencies that meet the criteria of GASB 14 or GASB 39 to be a component unit of the primary government **must be included with the audited financial statements of the primary government by discrete presentation unless otherwise approved by the state auditor.** 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 through 50). 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. Per paragraph 1.01 of AAG-SLV, not-for-profit component units should be reported using the government financial reporting format if they have one or more of the following characteristics: popular election of officers or appointment of a controlling majority of the members of the organization's governing body by officials of one or more state or local governments; the potential for unilateral dissolution by a government with the net assets reverting to the government; or the power to enact and enforce a tax levy. If a not-for-profit does not qualify to be reported using the governmental format under the above criteria, that fact should be explained in the note regarding the "reporting entity".

(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. If the primary government has component units that are not included in the financial statement due to materiality that fact must be disclosed. However, if the primary government is a school, college, or university, Section 6-5A-1, NMSA 1978, requires all 501(c)3 component unit organizations with a gross annual income in excess of \$100,000, to receive an audit. Such component units cannot be excluded from the audit based on the "materiality" criterion.

(c) **The state auditor requires the component unit(s) to be audited by the same auditor who audits the primary government** (except for public housing authority component units that are statutory exempt). 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) any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC.

(d) The level of planning materiality required by the state auditor **for component units** is at the **individual fund level**. College and university component units have a different materiality level. See Paragraph (3) of Subsection E of 2.2.2.12 NMAC.

(e) Supplemental information (SI) pertaining to component units included in the scope of the audit and therefore the auditor opinion (as allowed by SAS 98) are:

(i) component unit fund financial statements and related combining statements if separately issued financial statements of the component units are not available (AAG-SLV 3.20); and

(ii) individual fund budgetary comparison schedules if separately issued financial statements are not available, when a legally adopted budget exists for a fund; the office interprets a "legally adopted budget" to exist any time the agency prepares a budget in every case where an entity receives federal funds, state funds, or any other "appropriated" funds.

(2) Audits of state and local governmental agencies shall be comprised of a financial and compliance audit of the financial statements and schedules shown below.

(a) The level of planning materiality required by the state auditor is at the **individual fund level**. The state auditor requires that the budgetary 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:

(b) The basic financial statements consisting of:

(i) the government-wide financial statements;

(ii) fund financial statements;

(iii) budgetary 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.

(c) The auditor must audit the fol-

lowing required supplemental information, if applicable, and include it in the auditor's opinion (AAG-SLV 14.53). 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 (***GASB Statement No. 41, Budgetary Comparison Schedules-Perspective Differences an amendment of GASB Statement No. 34***).

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

(e) The auditor should apply certain limited procedures to the following 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 administered by defined benefit pension plans;

(iii) RSI schedules required by GASB 43 regarding postemployment benefit plans other than pension plans;

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

(v) schedules derived from asset management systems (GASB 34 Paragraphs 132 and 133).

B. 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.

C. 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 funds 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 Subsection A of 2.2.2.12 NMAC and the DFA white paper "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis."

D. 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 effective 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 (June 2003 revision which raised the threshold for Single Audit from \$300,000 to \$500,000 of federal expenditures) as recently amended by SAS 112***;

(4) ***AICPA Audit Guide, Governmental Auditing Standards and Circular A-133 Audits***, (latest edition);

(5) ***AICPA Audit and Accounting Guide, State and Local Governments*** (latest edition);

(6) 2.2.2 NMAC, ***Requirements for Contracting and Conducting Audits of Agencies***, latest edition.

E. 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 Standards (GASB)***, latest edition (see Appendix C). Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB and other appli-

cable pronouncements, and GASB illustrations trends for financial statements

F. 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.

G. 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) and Procurement Code Regulations 1.4.1 NMAC;

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

(3) Personnel Act (10-9-1 to 10-9-25 NMSA 1978) and State Personnel Administration 1.7.1 NMAC;

(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) [auditors should test to ensure **100% of payroll is reported to PERA**; this is a new PERA requirement; PERA membership is mandatory under the PERA Act, unless membership is specifically excluded by statute for: seasonal employees; student employees; certain elected officials who exercise an option to exclude themselves from PERA membership; and employees that participate in a private retirement program paid for by their government employer, that are ERA retirees and PERA retirees who return to work under NMSA 1978, Section 10-11-8, NMSA 1978, Section 10-11-3 (2005);

(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 (New Mexico Constitution Article IX, Section 8 and 11, 6-6-11 to 6-6-12, Montano v. Gabaldon, 108 NM 94, 766 P.2d 1328, 1989);

(14) 2.20.1.1 to 2.20.1.18 NMAC, *Accounting and Control of Fixed Assets of State Government* (updated for GASB 34 as applicable);

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

(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) Laws of 2007, Regular Session, Chapter 28, Section 3, Subsection L states, "Except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9.1 NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2007 may be expended for payment of agency-issued credit card invoices."

H. Federal compliance:

(1) The following government pronouncements establish requirements and give guidance for "Yellow Book" and single audits.

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

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

(c) OMB Circular A-21, *Cost Principles for Educational Institutions*, as revised May 10, 2004;

(d) OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, published May 17, 1995 and amended February 29, 1997;

(e) OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, as revised October 9, 1994 and amended August 29, 1997;

(f) OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, as revised November 19, 1993 and further amended September 30, 1999;

(g) OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, (June 27, 2003 revision);

(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 and Kiwanis Club); cash and non-cash awards, and employee insurance benefits for dependents who do not meet the IRS definition of a "dependent." 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 and fire vehicles; unmarked law enforcement vehicles (officer must be authorized to carry a firearm and have 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, Reg 1.61-21.

(b) Personal service contractors (1099 employees) who are retired employees of the governmental agency they worked 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) City or county "volunteer firefighters" who are reimbursed when they provide firefighting services on state or federal land have been determined by the IRS

to be employees of the respective city or county.

(d) The social security administration now requires all state and local government employers to disclose to all new employees the fact that their job is not covered by social security if they were hired for a position not covered by social security. These employees must sign a statement that they are aware of a possible reduction in their future social security benefit entitlement. See the website at www.socialsecurity.gov/form1945 for the required form and instructions.

(e) For more information regarding these and other IRS issues please contact the federal state and local government specialist with the IRS in Las Cruces, NM at 505-527-6900 ext. 232, or in Albuquerque, NM at 505-837-5554.

I. Audit findings:

(1) The 2007 Revision of the Yellow Book states in Paragraphs 5.10 and 5.11 that "auditors should report, as applicable to the objectives of the audit, and based upon the audit work performed, (1) significant deficiencies in internal control, identifying those considered to be material weaknesses; (2) all instances of fraud and illegal acts unless inconsequential; and (3) violations of provisions of contracts or grant agreements and abuse that could have a material effect on the financial statements. For all financial audits, auditors should report the following deficiencies in internal control: significant deficiency: a deficiency in internal control, or combination of deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with GAAP such that there is more than a remote likelihood that a misstatement of entity's financial statements that is more than inconsequential will not be prevented or detected; material weaknesses: a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected." Qualitative and quantitative factors should also be taken into consideration in determining whether a misstatement is inconsequential (SAS 112 Paragraph 7 and 8). Auditors should include all significant deficiencies in the auditors' report on internal control over financial reporting and indicate those that represent material weaknesses [GAGAS 5.13 (2007)].

(a) Per SAS 112 Paragraph 9, the auditor must evaluate control deficiencies found during test work and determine whether they individually or in combination, are significant deficiencies or material weaknesses. Evaluation guidance is provided by SAS 112 Paragraphs 9 through 19.

The SAS 112 Appendix lists examples of circumstances that may be control deficiencies, significant deficiencies, or material weaknesses. SAS 112 Paragraph 18 describes areas in which deficiencies are ordinarily at least significant deficiencies in internal controls. SAS 112 Paragraph 19 describes indicators of control deficiencies that should be treated as at least a significant deficiency and are a strong indicator of a material weakness in internal control.

(b) 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 such findings must be included in the annual financial audit report.**

(i) All deficiencies in internal control must be reported.

(ii) All instances of fraud or illegal acts must be reported.

(iii) All violations of provisions of contracts or grant agreements and abuse must be reported.

(2) **Generally Accepted Government Auditing Standards**, Section 4.09 (2007) requires the “auditors to evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements. When planning the audit, auditors should ask management of the audited entity to identify previous audits, attestation engagements, and other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented. Auditors should use this information in assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives.” In addition to this standard, the IPA will report the status of **all** prior-year findings in the current year audit report, by reference numbers such as 2006-1, 2006-2, and 2007-1, with each finding’s descriptive title, and indicate whether each finding has been resolved or repeated in the current-year. The prior year findings should use the original finding numbers. Findings from special audits performed by the state auditor must be included in the findings of the annual financial and compliance audits of the related fiscal year.

(3) Current-year:

(a) All current-year audit findings must have a reference number such as 2006-1 2006-2, 2007-1, and 2008-1, and a short title that identifies the findings. Prior year findings repeated in the current year should keep their original reference number to consistently report how old the findings are.

(b) Written audit findings should be prepared and submitted to the 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.** The agency should also prepare a corrective action plan as required by GAGAS (2007) 5.32. The agency shall respond, in writing, to the IPA’s audit 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) criteria (should indicate the required or desired state or what is expected from the program and provide the source of the criteria);

(ii) condition (provide evidence of what the auditors found and should include the scope or extent of the condition providing accurate perspective);

(iii) cause (explains why there is a difference between what the auditors found and what is expected); and

(iv) effect (the impact of the difference between what the auditors found (condition) and what should be (criteria));

(v) recommendation addressing each condition and cause; 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 2.2.2.9 NMAC is considered noncompliance with this rule and shall be a current-year audit finding. If appropriate in the auditor’s professional judgment, the finding should also be reported as an instance of significant deficiency in operation of internal control in the agency’s controls over financial reporting per SAS 112 Appendix.

(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 noncompliance with Subsection H of 2.2.2.8 NMAC.

(6) Component unit audit findings must be reported in the primary government’s 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 (Section 12-6-5, NMSA 1978) and will require an additional finding in the audit report.

(8) When auditors detect deficiencies in internal controls or immaterial viola-

tions of provisions of contracts or grant agreements or abuse that are required to be reported by Section 12-6-5, NMSA 1978, and GAGAS 5.14 and 5.16 (2007), but do not rise to the level of significant deficiencies or material weaknesses under SAS 112, the auditor must communicate those deficiencies, in written findings, and refer to those findings in the report on internal control in the second paragraph of the “compliance and other matters” section of the report. The paragraph should use wording similar to “We noted certain matters that are required to be reported under **Government Auditing Standards January 2007 Revision** Paragraph 5.14 and 5.16, and Section 12-6-5, NMSA 1978, which are described in the accompanying schedule of findings and responses as findings 07-X and 07-Y” [Section 12-6-5, GAGAS 5.16 & 5.20 (2003), GAGAS 5.14 & 5.16 (2007) and the example report at www.saonm.org].

J. 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 units (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 exit conference must be held in person, a telephone exit conference will not meet this requirement. 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 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 responses 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. The agency will have at least ten (10) workdays to review the draft audit report and respond to the IPA regarding any issues that need to be resolved prior to submitting the report to the state auditor. The audit report (and any separate component unit audit reports) shall be delivered to the state auditor on or before 5:00 p.m. on the due date or send postmarked by the due date specified in Subsection A of 2.2.2.9 NMAC, with copies of the signed manage-

ment representation letter, the list of "passed audit adjustments," and the completed and signed preliminary review guide with page numbers referenced. **A report will not be considered submitted to the office for the purpose of meeting the deadline, until a copy of the signed management representation letter, the passed adjustments, and the completed preliminary review guide are also submitted to the office.**

(3) **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 business 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 if 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 audit report is officially released to the agency by the state auditor (by an authorizing letter) and the required waiting period of ten business days has passed, the audit report **shall** be presented to a quorum of the governing authority of the agency for approval at a public meeting. See SAS 114 paragraph 34 through 36 for information that should be communicated to those charged with governance.

(e) If the agency would like to waive the ten day waiting period required by Section 12-6-5, NMSA 1978, in order to make the agency audit report a public document immediately upon release by the state auditor, the agency should submit a written request to the state auditor to waive the ten day waiting period.

K. Possible violations of criminal statutes in connection with finan-

cial affairs:

(1) SAS 99, *Consideration of Fraud in a Financial Statement Audit*, was effective for fiscal periods beginning on or after December 15, 2002 (FY04). This SAS significantly changed what auditors were required to do in order to fulfill their responsibility to plan and perform the audit to provide reasonable assurance that the financial statements are free of material misstatement, whether caused by error or fraud (SAS AU Sec. 110.02). There are two types of misstatements of the financial statements, those caused by fraudulent financial reporting and those caused by misappropriation of assets. New procedures are required on every audit and auditors must:

(a) exercise an attitude of professional skepticism (a questioning mind and critical assessment of audit evidence) throughout the entire engagement;

(b) brainstorm as a team about how fraud could occur in the agency;

(c) obtain information needed to identify the risks of material misstatement due to fraud by:

(i) inquiring of management and others within the entity about the risks of fraud;

(ii) considering the results of the analytical procedures performed in planning the audit;

(iii) considering fraud risk factors: incentives/pressures to perpetrate fraud; opportunities to carry out the fraud; or attitudes/rationalizations to justify fraudulent actions; and

(iv) considering other information including inherent risks at the individual account balance or class of transaction level;

(d) assess identified risks after taking into account an evaluation of the agency's programs and controls;

(e) respond to the risk assessment results;

(i) in the overall conduct of the audit;

(ii) in the nature, timing, and extent of the auditing procedures to be performed; and

(iii) by performing procedures addressing the risk due to fraud involving management override of controls;

(f) evaluate audit evidence;

(i) assess fraud risk throughout the audit;

(ii) at the end of the audit evaluate whether accumulated results of procedures affect the fraud risk assessment;

(iii) consider whether identified misstatements may be indicative of fraud, and if so evaluate their implications;

(g) communicate about fraud to management, the audit committee, and others (SAS 99 Paragraph 79 through 82 and Paragraph (3) of Subsection K of 2.2.2.10 NMAC; and

(h) document the auditor's consideration of fraud;

(i) SAS 113 amends SAS 99 (effective FY08) by inserting two new footnotes in SAS 99 that link the auditor's consideration of fraud, assessment of risk and response to the assessed risks.

(2) GAGAS (2007) Paragraphs 4.10 to 4.13 state that "auditors should design the audit to provide reasonable assurance of detecting misstatements that result from violations of provisions of contracts or grant agreements and could have a direct and material effect on the determination of financial statement amounts or other financial data significant to the audit objectives. If specific information comes to the auditors' attention that provides evidence concerning the existence of possible violations of provisions of contracts or grant agreements that could have a material indirect effect on the financial statements, the auditors should apply audit procedures specifically directed to ascertaining whether such violations have occurred. When the auditors conclude that a violation of provisions of contracts or grant agreements has or is likely to have occurred, they should determine the effect on the financial statements as well as the implications for other aspects of the audit. Abuse, involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement. If during the course of the audit, auditors become aware of abuse that could be quantitatively or qualitatively material to the financial statements, auditors should apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives. After performing additional work, auditors may discover that the abuse is subjective, auditors are not required to provide reasonable assurance of detecting abuse."

(3) 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 must be provided to the state auditor.

(4) Section 12-6-6, NMSA 1978, states that 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.

L. Compensated 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.

(2) The statement of net assets, governmental activities column should report both the current (**amount expected to be paid out over the next year**) and long-term portions of the compensated absence liability because the government-wide financial statements report all liabilities. Per GASB 34 Paragraph 31 "liabilities whose average maturities are greater than one year should be reported in two components—the amount **due within one year** and the amount due in more than one year."

(3) A liability for compensated absences should not be reported in the governmental fund balance sheet unless it was actually due and payable at year-end for payments due to retired or terminated employees, but not paid for until shortly after year-end.

(4) The notes to the financial statements should disclose the accounting treatment applied to compensated absences.

(5) GASB 34 Paragraph 119 requires the following disclosures of the agency's long-term compensated absences (and other long term liabilities) presented in the statement of net assets: beginning and end-of-year balances; increases and decreases shown separately; the portion due within one year; and which governmental funds typically have been used to liquidate the liabilities in prior years. GASB 38 Paragraph 18 requires similar detailed disclosure for the short-term portion of the compensated absences.

M. 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.

N. Public monies:

(1) Definition - All monies coming into all agencies i.e., vending machines, fees for photocopies, telephone charges, etc., shall be considered public monies and be accounted for as such. For state agencies, all revenues generated must be authorized by legislation (Section 6-4-2, NMSA 1978 and MAPS Section 3.3).

(2) Compliance Issues - The auditor should test for compliance with:

(a) the requirements of Sections 6-10-10A and B, NMSA 1978, that county and municipal treasurers deposit money in banks, savings and loan association or credit unions located **in their respective counties**; and

(b) the requirements of Section 6-10-17, NMSA 1978, that the public official or public board has **received a joint safe keeping receipt** for pledged collateral from the custodial bank for the collateral delivered by the depository institution.

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

(a) name of depository (i.e., bank, credit union) or statewide human resources accounting and management reporting system (SHARE) fund number;

(b) account name;

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

(i) types of deposits are checking, savings, money market accounts, certificates of deposit; and

(ii) types of investments are state treasurer general fund investment pool (SGFIP); state treasurer local government investment pool (LGIP); U.S. treasury bills, notes, bonds and strips; and U.S. agencies such as FNMA, FHLMC, GNMA, Sallie Mae, SBA, FHA, federal financing bank, federal farm credit, financial assistance corporation, including the specific name of each bond, stock, commercial paper, bankers acceptances, mutual fund, foreign currency, etc;

(d) account 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.

(4) Pledged collateral:

(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.

(b) If the pledged collateral **for deposits in banks, savings and loan associations, or credit unions**, 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 collateral requirements should be calculated separately for each bank and disclosed in the notes as follows, including only the applicable categories, to show compliance and GASB 40 disclosure information:

(i) Total amount of deposit in bank or credit union
\$300,000

(ii) Less: FDIC or NCUSIF coverage* 100,000

(iii) Uninsured public funds 200,000

(iv) Pledged collateral held by agency's

agent in the agency's name (50,000)

(v) Pledged collateral held by the pledging bank's

trust department in the agency's name (75,000)

(vi) Pledged collateral held by the pledging financial institution (12,500)

(vii) Pledged collateral held by the pledging bank's trust

department or agent but not in the agency's name (12,500)

(viii) Uninsured and uncollateralized (\$50,000)

Custodial credit risk is defined as the risk that the government's deposits may not be returned to it in the event of a bank failure. GASB 40 requires the custodial credit risk related to items (vi) and (vii) and (viii) above to be disclosed. To determine compliance with the 50% pledged collateral requirement of Section 6-10-17, NMSA 1978, the following disclosure should also be included for each financial institution.

50% pledged collateral requirement per statute
\$100,000

Total pledged collateral

(150,000)

Pledged collateral
(over) under the requirement
((\$50,000)

[*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 (including bank money market accounts) and \$100,000 for demand deposits deposited within the state in compliance with 12 CFR Subsection 330.15]

(c) **Repurchase agreements** must be covered by 102% of pledged collateral per Section 6-10-10 H, NMSA 1978. Disclosure similar to that shown above is also required for the 102% of pledged collateral.

(d) Per Sections 6-10-16 (A) NMSA, Security deposits of public money, deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States of the State of New Mexico; revenue bonds that are underwritten by a member of the national association of securities dealers, known as "N.A.S.D.", and are rated "BAA" or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank.

(e) The value of collateral consisting of obligations of the state of New Mexico, its agencies, institutions, counties, municipalities or other subdivisions shall be par value. All other securities shall be accepted as security at market value (Section 6-10-16 C, NMSA 1978).

(f) State agency investments in the state treasurer general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the agency notes to the financial statement should refer the reader to the state treasurer's separately issued financial statements which do disclose the collateral pledged to secure state treasurer cash and investments. See Paragraph (14) of Subsection A of 2.2.2.12 for related GASB 40 disclosure requirements.

(g) If an agency has other "authorized" bank accounts, pledged collateral information should be obtained from the bank and disclosed in the agency financial statement notes. The state treasurer monitors pledged collateral related to most state agency bank accounts. In the event pledged collateral information specific to the agency is not available, the following note disclosure should be made. Detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it

holds. However, the state treasurer's office collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(5) Applicable standards:

(a) GASB Statement No. 40, **Deposit and Investment Risk Disclosures**, is effective for financial statements for periods beginning after June 15, 2004 (FY05). This statement requires disclosure of the following when applicable.

(i) "Credit risk is disclosed by describing the credit quality ratings of investments in debt securities as described by rating agencies. Obligations of the U.S. government or obligations explicitly guaranteed by the U.S. government are exempt."

(ii) Custodial credit risk for deposits should be disclosed as described above in subsection (4)(b). "Investment securities are exposed to custodial credit risk when the securities are: uninsured and not registered in the name of the government, and are held by either the counterparty or the counterparty's trust department or agent, but not in the agency's name. Disclosure for investments exposed to custodial credit risk should be by type of investment", the reported amount, and how the investments are held. Investments in external investment pools and in open-end mutual funds are not exposed to custodial credit risk." Custodial credit risk disclosure is required for securities lending collateral that is reported in the statement of net assets and for the underlying securities per guidance in GASB 40 Paragraph 10.

(iii) Concentration of credit risk exists when an agency has investments in any one issuer that represent five percent or more of total investments of the agency or of a fund of the agency. Disclosure by amount and issuer is required when concentration of credit risk exists for an agency. Concentration of credit risk does not apply to investments issued by or explicitly guaranteed by the U.S. government or investments in mutual funds, external investment pools, and other pooled investments.

(iv) Disclosure of an agency's interest rate risk related to debt investments should be organized by investment type, using one of the following five methods: segmented time distribution; specific identification; weighted average maturity; duration; or the simulation model. Pooled investments that do not meet the definition of a 2a7-like pool should disclose interest rate risk information according to one of these methods.

(v) "If an agency's deposits or investments are exposed to foreign currency risk, the government should disclose the U.S. dollar balances of such

deposits or investments, organized by currency denomination and, if applicable, investment type."

(b) SAS No. 101, **Auditing Fair Value Measurements and Disclosures**, was issued January 2003 and is effective for audits of financial statements for periods beginning on or after June 15, 2003 (FY04). The standard requires the auditor to:

(i) obtain audit evidence providing reasonable assurance that fair value amounts and disclosure are in accordance with GAAP;

(ii) understand the agency's process for determining fair value and its controls over that process in order to develop an effective audit approach;

(iii) evaluate whether fair value amounts and disclosures are in accordance with GAAP;

(iv) evaluate: management's intent and ability to carry out planned actions related to the use of fair value amounts and disclosures; the related requirements of presentation and disclosure; and how changes in fair values are reported in the financial statements;

(v) when there are no market prices available, evaluate whether the agency's valuation method used to determine fair value is appropriate;

(vi) evaluate if the agency is applying fair value measurements consistently;

(vii) consider whether to engage a specialist; and

(viii) determine that the audit committee is informed about management's process used to arrive at sensitive accounting estimates, including fair value estimates, and about the basis for the auditor's conclusions about the reasonableness of those estimates.

(6) State treasurer external investment pool (local government investment pool): Agencies that have investments in the state treasurer's short-term investment fund must include the required GASB Statement No. 31 Paragraph 15 disclosure in the notes to their financial statements. The following information may be helpful for this disclosure:

(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; the state treasurer is authorized to invest the short-term investment funds, with the advice and consent of the state board of finance, in accordance with Sections 6-10-10 I through 6-10-10 P and Sections 6-10-10.1 A and E, NMSA 1978;

(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;

(e) the local government investment pool is rated AAAM (credit risk) by Standard & Poors; and

(f) the end of the fiscal year weighted average maturity (interest rate risk in number of days) is available on the state treasurer's website at www.stonm.org.

O. Budgetary presentation:

(1) Prior year balance included in budget:

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

(b) If the agency prepares its budget on the cash basis, the statement 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. **This reconciliation is required at the individual fund level.** If the required budgetary comparison information is included in the basic financial statements, the reconciliation should be included on the statement itself or in the notes to the financial statements. If the budgetary comparison is presented as supplemental information as required by Subsection (3)(c) below, the reconciliation to GAAP basis should be presented at the bottom of the budgetary comparison. If the required budgetary comparison is presented as RSI [for reasons described below in subsection (3)(b) below] the reconciliation should appear in either a separate schedule or in notes to RSI according to the *AICPA Audit and Accounting Guide, State and Local Governments*, (AAG-SLV 11.14).

(3) Budgetary comparison statements and schedules must show the original and final appropriated budget (same as final budget approval by DFA), 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 budgetary 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) The required supplemental

information section is the place where the budgetary 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 budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data. See GASB Statement No. 41, *Budgetary Comparison Schedules -Perspective Differences*, Paragraphs 3 and 10. When budgetary 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 14.53 and Appendix A, Example 14 A.14 in AAG-SLV 14.79 in the *AICPA Audit and Accounting Guide, State and Local Governments (2006)*.

(c) Supplemental information (SI) is the place where all other budgetary comparison information should appear except the general and major special revenue fund budgetary comparisons. Nonmajor governmental funds and proprietary funds that have legally adopted budgets (including budgets approved by a resolution) should have budgetary comparisons appearing in the SI section of the report. Budgetary comparisons for multiple-year capital projects funded by special capital outlay appropriations from the state should include: a budget column showing revenues and the amount appropriated for the capital project, a column showing the current year expenditures; a column showing expenditures for the project to-date; and a column showing the variance between the project to-date expenditures column and the final budget column. It is a requirement of the state auditor that budgetary 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 or RSI see Example 14 A-14 in the *AICPA Audit and Accounting Guide, State and Local Governments (2007)*.

P. Appropriations to agencies:

(1) The budgetary 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. If actual expenditures exceed budgeted expenditures

at the legal level of budgetary compliance, that fact 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. If the agency budgets cash or fund balance that did not exist at the beginning of the fiscal year, a finding should be reported.

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

(a) Special, deficiency, and specific appropriations and capital outlay appropriations funded by severance tax bonds or general obligation bonds of the state must be disclosed in the financial statements. The original appropriation, the appropriation period, 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) The accounting treatment of any unexpended balances should be fully explained in the supplementary schedule or in a note to the financial statements regarding the special appropriations.

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

(1) Internal control:

(a) SAS No. 105, *Amendment to Statement on Auditing Standards No. 95, Generally Accepted Auditing Standards*, is effective for audits of periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS updates the scope of the second standard of field work, revises the third standard of field work, and also adds clarifying terminology to the standards of field work.

(b) SAS No. 109, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*, is effective for audits of periods beginning on or after December 15, 2006 (FY08) with earlier application permitted. SAS 109 requires the auditor to obtain an expanded understanding of the entity and also the environment in which the entity operates. Paragraph 122 of SAS 109 lists additional documentation requirements of this new SAS.

(c) SAS No. 112, *Communicating Internal Control Related Matters Identified in an Audit*, is effective for audits of periods ending on or after December 15, 2006 (FY07), with earlier application permitted. This SAS requires the auditor to communicate in writing, to management and those charged with governance, significant deficiencies and material weakness identified in an audit. See Paragraph (1) of Subsection I of 2.2.2.10 NMAC above, for definitions of significant

deficiencies and material weaknesses. See the additional audit rule requirement per section Paragraph (8) of Subsection I of 2.2.2.10 NMAC above, that the auditor also include in this report deficiencies in internal controls or immaterial violations of provisions of contracts or grant agreements or abuse required to be reported by Section 12-6-5, NMSA 1978, and GAGAS 5.14 and 5.16 (2007), that do not rise to the level of significant deficiencies or material weaknesses under SAS 112.

(2) All financial audits performed under this rule are required to include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. 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.** This requirement does not require an auditor to retest controls previously tested during the performance of a SAS 70 audit, when the auditor is relying on the SAS 70 audit report.

(3) Risk assessment

(a) SAS No. 104, *Amendment to Statement on Auditing Standards No. 1, Codification of Auditing Standards and Procedures ("Due Professional Care in the Performance of Work")*, is effective for periods beginning on or after December 15, 2006 (FY08) with earlier application permitted. The SAS expands the definition of the term reasonable assurance.

(b) SAS No. 110, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*, is effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS provides the auditor with guidance in: (1) determining overall responses to address risks of material misstatement at the financial statement level; (2) designing and performing further audit procedures that are responsive to the assessed risks of material misstatement at the relevant assertion level; and (3) evaluating whether the risk assessments remain appropriate and to conclude whether sufficient appropriate audit evidence has been obtained; and (4) the related documentation.

(c) SAS No. 111, *Amendment to Statement on Auditing Standards No. 39, Auditing Sampling*, is effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS amends SAS No. 39 regarding auditing sampling to incorporate guidance from SAS No. 107, *Audit Risk and Materiality in Conducting an Audit*, and

from SAS No. 99, *Consideration of Fraud in a Financial Statement Audit*, and from SAS No. 110, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*. This SAS also enhances guidance relating to the auditor's judgment about establishing tolerable misstatement for a specific audit procedure and on the application of sampling to tests of controls.

(d) SAS No. 113, *Omnibus Statement on Auditing Standards*, Paragraphs 1 through 5 are effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS clarifies terminology used to describe professional requirements imposed on auditors in the 10 standards. This SAS adds to SAS No. 99, *Consideration of Fraud in a Financial Statement Audit*: (1) footnote 15 linking the auditor's consideration of fraud to the auditor's assessment of risk; and (2) footnote 21 linking the auditor's consideration of fraud and the auditor's response to assessed risks.

R. 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 constitu-

tional 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 8.70).

(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) Per GASB 34 Paragraph 33, 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.

S. Interfund activity: Under the GASB 34 reporting model (AAG-SLV 9.07) interfund activities and balances that must be reported are:

(1) "interfund loans that are generally reported as interfund receivables/payables;

(2) interfund services provided and used that generally appear as revenues

and expenditures/expenses;

(3) interfund transfers that appear as other financing sources/uses or after non-operating revenues/expenses; and

(4) interfund reimbursements that should appear as expenditures/expenses only in the funds that are responsible for them.”

T. Required auditor's reports:

(1) The **Independent Auditor's Report** should follow the examples contained in the *AICPA Audit and Accounting Guide, State and Local Governments (2007)*, Appendix 14A-Illustrative Auditor's Reports. Example A-14 illustrates how to opine on the basic financial statements and the combining and individual fund financial statements presented as supplementary information. See also the guidance provided in Chapter 14, Appendix A Footnote 3 regarding wording that should be used when opining on budgetary statements. All independent auditor's 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 5.05 (2007). This statement should be modified in accordance with GAGAS 1.12 (2007) if some GAGAS requirements were not followed. As applicable, the first sentence of the SAS 29 opinion paragraph should state that the audit was conducted for the purpose of forming opinions on the basic financial statements, the combining and individual financial statements, and the budgetary comparisons.

(2) Dating of the independent auditor's report:

(a) SAS No. 103, **Audit Documentation**, became effective for audits of periods ending on or after December 15, 2006 (FY07) with earlier application permitted.

(b) The independent auditor's report should be dated no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion:

(i) there should be evidence that the audit documentation has been reviewed;

(ii) the agency financial statements including disclosures have been prepared;

(iii) agency management has asserted that it has taken responsibility for the financial statements; and

(iv) the report date will ordinarily be close to the report release date (the date the auditor grants the agency permission to use the auditor's report in connection with the financial statement); delays in releasing the report may require the auditor to perform additional procedures regard-

ing subsequent events per SAS No. 1, **Codification of Auditing Standards and Procedures**.

(v) SAS No. 113, **Omnibus Statement on Auditing Standards-2006**, Paragraphs 7 through 14 are effective for audits of periods ending on or after December 15, 2006 (FY07), with earlier application permitted; this SAS amends SAS numbers 101, 59, 57, and 1 to **change old references to completion of fieldwork to the date of the auditor's report** because SAS 103 changed the date of the audit report from the date of completion of field work to "the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion on the financial statements"; SAS 113 also amends SAS 85 so that the date of the management representations is "the date of the auditor's report."

(3) **The report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards** should follow the AICPA report examples that have been updated for the implementation of SAS No. 112. The report examples are available on the AICPA governmental audit quality center website at www.gaqc.aicpa.org. Click on "Illustrative Auditor's Reports Now Available" and choose "Illustrative Auditor's Reports Under Government Auditing Standards." The state auditor requires these report examples to be modified as described in Paragraph (8) of Subsection I of 2.2.2.10 NMAC above, when the auditor detects deficiencies in internal controls or immaterial violations of provisions of contracts or grant agreements or abuse (that do not rise to the level of significant deficiencies or material weaknesses under SAS 112) that must be reported pursuant to Section 12-6-5, NMSA 1978, and GAGAS 5.14 and 5.16 (2007).

(a) The state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be **dated the same date as the independent auditor's report date**.

(b) Section 12-6-5, NMSA 1978, states that each report shall set out in detail, in a separate section, any violation of law or good accounting practices by the audit or examination. Therefore, all findings must be reported in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards.

(c) No separate management letters shall be issued to the agency by the

auditor. Issuance of a separate management letter to an agency will be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Paragraph (3) of Subsection J of 2.2.2.8 above, regarding this issue.

(4) **The report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133** - The report examples that have been updated for SAS 112 should be used. They are available on the AICPA governmental audit quality center website at www.gaqc.aicpa.org. Click on "Illustrative Auditor's Reports Now Available" and choose "Illustrative Auditor's Reports Under Circular A-133."

(5) One report cover: The state auditor requires the following reports to be **included under one report cover** with the independent auditor's report, rather than presented under separate report covers: Report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards (required by GAGAS and SAS 112); the report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133, (required by OMB Circular A-133), the SAS 29 opinion on the schedule of expenditures of federal awards and the HUD financial data schedule (required by SAS AU 551 and HUD Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards). The report must also contain a table of contents and official roster. An **exemption** from the "one report cover" rule must be obtained from the state auditor in order to present any of the above information under a separate cover.

U. Service organizations:

(1) An auditor should obtain an understanding of each of the five components of the agency's internal control sufficient to plan the audit. This understanding may encompass **controls placed in operation by the agency and controls placed in operation by a service organization** whose services are part of the agency's information system. According to SAS AU 324.03, a service organization's activities are part of an agency's information system if they affect any of the following:

(a) the classes of transactions in the agency's operations that are significant to the agency's financial statements;

(b) the procedures, both automated and manual, by which the entity's transactions are initiated, recorded, processed, and reported from their occurrence to their inclusion in the financial statements;

(c) the related accounting records, whether electronic or manual, supporting information, and specific accounts in the agency's financial statements involved in initiating, recording, processing and reporting the agency's transactions;

(d) how the agency's information system captures other events and conditions that are significant to the financial statements; and

(e) the financial reporting process used to prepare the entity's financial statements, including significant accounting estimates and disclosures.

(2) When an agency uses a service organization that affects the agency's financial statements (as described above), the agency's auditor must obtain an understanding of the internal controls of both the agency and the internal controls of the service organization in order to plan the audit. The auditor's understanding of the service organization's internal controls can be obtained either by the auditor performing procedures to obtain the understanding, or by the auditor relying on a SAS 70 audit performed by another auditor. The understanding obtained should be documented.

(3) Some examples of service organizations and potential service organizations are:

(a) the New Mexico statewide human resources accounting and management reporting system (SHARE) system;

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

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

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

(e) public housing authority fee accountants; and

(f) tax collection authorities.

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

V. 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 on the agency inventory list described below in Subsection Y of 2.2.2.10 NMAC, 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. Hard drive erasure certification is still required even if the asset originally cost less than \$5,000 and was not included in the capital asset inventory. 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 diskings)."

(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 and it applies even if the original purchase price of the computer was less than \$5,000.

W. Joint powers agreements and memorandums of understanding:

(1) All joint powers agreements (JPA) and memorandums of understanding (MOU) must be listed in a supplementary schedule in the audit report. The schedule should include the following information for each JPA or MOU:

(a) participants;

(b) party responsible for operations;

(c) description;

(d) beginning and ending dates of the JPA or MOU;

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

(f) amount the 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 or memorandum of understanding, see Subsection X of 2.2.2.10.NMAC (self-insurance).

X. Self insurance: Those agencies that have self-insurance agree-

ments 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. There should be full disclosure in the notes to the financial statements per the requirements of GASB 10.

Y. Capital asset inventory:

(1) The Audit Act (12-6-10, NMSA 1978) requires agencies to capitalize only chattels and equipment that cost over \$5,000. All agencies are required to update their capitalization policies and implement it in accordance with the law. This change in capitalization threshold should be accounted for prospectively as a change in estimate per APB 20 paragraph 31. Older capital assets that were capitalized under previous lower capitalization thresholds should not be removed from the capital assets list during the implementation of this latest capitalization threshold amount. Any new items received after June 17, 2005 should be added to the inventory list only if they meet the new capitalization threshold. Regarding safeguarding and management of assets that do not meet the capitalization threshold, the state auditor encourages agencies to maintain a separate accountability report for those items that cost \$5,000 or less.

(2) Section 12-6-10, NMSA 1978, requires each agency to conduct an annual physical inventory of movable chattels and equipment on the inventory list at the end of each fiscal year. The agency shall certify the correctness of the inventory after the physical inventory. This certification should be provided to the agency's auditors.

Z. Working paper documentation:

(1) SAS No. 103, *Audit Documentation*, supersedes SAS No 96 and SAS AU 339, *Audit Documentation*, and amends SAS AU 530, *Dating of the Independent Auditor's Report*. This SAS is effective for audits of financial statements for periods ending on or after December 15, 2006 (FY07), with earlier application permitted establishes.

(2) See paragraphs 10, 13, 14, 18, 20, 22, 26, 27, and 34 for some of the specific principles of audit documentation clarified by SAS No. 103. Note that this SAS requires the audit file to be completed 60 days after the report release date.

(3) The Appendix of SAS No. 103 includes references to various other SAS requirements for documentation.

(4) There are additional documentation requirements set forth in several of the other new SAS's that become effective in FY08. The auditor should follow the SAS guidance regarding these documentation requirements.

AA. GASB 34 implementation issues: Agency funds are excluded from the statement of changes in fiduciary net assets (GASB 34 Paragraph 110) because they have no "net assets." Therefore it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the agency funds be included as supplemental information (SI) for all agencies that have agency funds. This schedule should appear toward the end of the table of contents and requires a SAS 29 opinion. See also Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC for more information regarding the presentation of school district agency fund statements of changes in assets and liabilities for agency funds.

BB. 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.

CC. SAS No. 106, *Audit Evidence*: SAS 106 supersedes SAS No. 31, *Evidential Matter*, as amended, and is effective for audits of financial statements for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This statement provides guid-

ance about the third standard of field work, obtaining audit evidence. SAS 106 Paragraph 22 requires tests of controls in two sets of circumstances. However, the audit rule requires tests of controls in every audit, pursuant to Paragraph (2) of Subsection Q of 2.2.2.10 above. SAS 106 also discusses qualitative aspects that the auditor considers with regard to audit evidence.

DD. SAS No. 107 supersedes SAS No. 47, *Audit Risk and Materiality in Conducting an Audit*, as amended, and is effective for audits of financial statements for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. SAS 107 Paragraph 19 requires the auditor to consider audit risk at the individual account balance, class of transactions, or disclosure level.

EE. SAS No. 108, *Planning and Supervision*: This statement supersedes *Appointment of the Independent Auditor* as amended, of Statement on Auditing Standards No. 1 and SAS No. 22, *Planning and Supervision*, as amended. SAS No. 108 is effective for audits of financial statements for periods beginning on or after December 15, 2006 (FY08). This statement requires the auditor to plan the audit so it is responsive to the assessment of the risk of material misstatement and to change the audit strategy as appropriate throughout the audit.

FF. Financial reporting for postemployment benefit plans other than pension plans: GASBS 43 **requirements for OPEB plan reporting** are effective (FY07, FY08, and FY09) one year prior to the effective date of the related statement for the employer (single-employer plan) or for the largest participating employer in the plan (multiple-employer plan). The requirements of the related statement are effective in three phases based on a government's total annual revenues, as defined in that statement, in the first fiscal year ending after June 15, 1999—the same criterion used to determine a government's phase for implementation of GASB 34. The statement establishes uniform financial reporting standards for OPEB plans and supersedes the interim guidance included in Statement No. 26, *Financial Reporting for Postemployment Healthcare Plans Administered by Defined Benefit Pension Plans*. The approach followed in this Statement generally is consistent with the approach adopted in Statement No. 25, *Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans*, with modifications to reflect differences between pension plans and OPEB plans. GASB 43 Paragraphs 16 through 40 provide reporting requirements for OPEB plans that are

administered as trusts, or equivalent arrangements. If the fund used to accumulate assets and to pay benefits in a multiple-employer OPEB plan does not meet the trust-type criteria described in GASB 43 Paragraph 4, the plan administrator or sponsor should report the fund as an **agency fund**, following the guidance of GASB 43 Paragraph 41. GASB 45 "establishes standards for the measurement, recognition, and display of OPEB, expense/expenditures and related liabilities (assets), note disclosures, and if applicable, required supplementary information (RSI) in the financial reports of state and local governmental employers. From an accrual accounting perspective, the cost of OPEB, like the cost of pension benefits, generally should be associated with the periods in which the exchange occurs, rather than with the periods (often many years later) when benefits are paid or provided. This statement improves the relevance and usefulness of financial reporting by (a) requiring systematic, accrual-basis measurement and recognition of OPEB cost (expense) over a period that approximates employees' years of service and (b) providing information about actuarial accrued liabilities associated with OPEB and whether and to what extent progress is being made in funding the plan." Implementation is required in three phases: FY08; FY09; and FY10. A government's total annual revenues in the first fiscal year ending after June 15, 1999, determines which phase applies to it. All state agencies implement GASB 45 in FY08 because they are part of the state.

GG. GASB No. 48, *Sales and Pledges of Receivables and Future Revenues and Intra-Entity Transfers of Assets and Future Revenues*: "The requirements of GASB Statement No. 48 are effective for financial statements for periods beginning after December 15, 2006 (FY08). This statement establishes criteria that governments will use to determine whether the proceeds received from the sale or pledge of receivables and future revenue should be reported as revenue or as a liability. The transaction will be treated as a collateralized borrowing unless the criteria are met that indicate a sale has taken place. The statement also stipulates that governments should not revalue assets that are transferred between financial reporting entity components. The statement also includes guidance to be used for recognizing other assets and liabilities arising from a sale of specific receivables or future revenues, including residual interests and recourse provisions."

HH. GASB No. 49, *Pollution Remediation Obligations*: The requirements of this statement are effective for financial statements for periods beginning after December 15, 2007 (FY09). "This statement addresses accounting and

financial reporting standards for pollution (including contamination) remediation obligations, which are obligations to address the current or potential detrimental effects of existing pollution by participating in pollution remediation activities such as site assessments and cleanups. Once any of five specified obligating events occurs, a government is required to estimate the component of expected pollution remediation outlays and determine whether outlays for those components should be accrued as a liability or, if appropriate, capitalized when goods and services are acquired."

II. GASBS 50, *Pension Disclosures*: This statement is effective for periods beginning after June 15, 2007 (FY08). "This Statement is intended to improve the transparency and usefulness of financial reporting by pension plans and employers by amending Statements 25 and 27 to conform with the applicable note disclosure and RSI modifications adopted in the OPEB Statements, 43 and 45."

JJ. GASB 51, *Accounting and Financial Reporting for Intangible Assets*: This statement is effective for periods beginning after June 15, 2009 (FY10), and earlier application is encouraged. "The objective of this statement is to establish accounting and financial reporting requirements for intangible assets and reduce inconsistencies in the areas of recognition, initial measurement, and amortization, thereby enhancing the comparability of the accounting and financial reporting of such assets among state and local governments."

KK. GASB 52, *Land and Other Real Estate Held as Investments by Endowments*: "This statement is effective for financial statements for periods beginning after June 15, 2008 (FY09). Earlier application is encouraged. "In the first period this statement is applied, the financial statements should disclose the nature of the restatement and its effect." "This statement establishes consistent standards for the reporting of land and other real estate held as investments by essentially similar entities. It requires endowments to report their land and other real estate investments at fair value. Governments also are required to report the changes in fair value as investment income and to disclose the methods and significant assumptions employed to determine fair value, and other information that they currently present for other investments reported at fair value." "This statement does not apply to lands granted by the federal government in connection with a state being admitted to the United States." [2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 4-15-08]

2.2.2.11 THE ACCOUNTABILITY IN GOVERNMENT ACT:

A. This section applies to agencies that have performance measures associated with their budgets. The purpose of the Accountability in Government Act (AGA) (Section 6-3A-1 to 6-3A-9, NMSA 1978) is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

B. Agency 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, HED and PED 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 the 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 docu-

ment 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, 4-15-08]

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: Section 12-6-3, NMSA 1978 states that state agency reports are due no later than 60 days after the financial control division of the department of finance and administration provides the state auditor with notice that the agency's books and records are ready and available for audit. The financial control division mandates that each agency, with the help of its independent auditor, identify a schedule of deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline cannot extend beyond December 15. This requirement does not prevent the auditor from performing interim audit work prior to receipt of the DFA notice of agency preparedness. Once the agency and auditor have certified to the financial control division of the department of finance and administration that the agency's books and records are ready and available for audit, if the auditor or agency find that the scheduled audit deliverables or agreed upon milestones are not accomplished timely and there is a possibility the audit report will be late, the auditor or agency shall immediately write a dated letter to the state auditor describing the problems. The letter must have a concurring signature from the head of the audited agency, the audit committee or board of directors or

equivalent oversight body, or an individual who possesses a sufficient level of authority and responsibility for the financial reporting process, such as the chief financial officer. The financial control division of the department of finance administration must be sent a photocopy of the letter.

(2) Materiality at **the individual fund level** means at the individual statewide human resources accounting and management reporting system (SHARE) fund level for state agencies. The individual SHARE funds should be shown in the combining financial statements and opined on in the independent auditor's report.

(3) Accounts payable at year-end: If goods and services were received by the end of the fiscal year, but not paid for by the end of the fiscal year, a related account payable should be recorded for the respective amount due in both the government-wide financial statements and the fund financial statements (NCGAS 1 Paragraph 70). Per Section 6-10-4, NMSA 1978, the "actual" expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore required a request to pay prior year bills out of current year budget. They will be paid out of the budget of the following fiscal year. An agency's reversions should be calculated using the budget basis expenditures because the agency does not have the legal right to keep the cash related to accounts payable that were not paid timely. This will result in a negative fund balance in the modified accrual basis financial statements of a reverting fund.

(4) 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 (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. Per GASBS 46 Paragraph 6 the definition of "legally enforceable" should be included in determining the net assets that are shown as "restricted." Note that restricted net assets are not the equivalent of reserved fund balances. Encumbrances should not be shown as restricted net assets. The amount of the government's net assets that are restricted by enabling legislation at the end of the reporting period should be disclosed in the notes.

(b) Governmental fund financial statement fund balances should be segregated into reserved fund balances and unreserved and legally designated fund balances (GASB 34 Paragraph 84). In general, an agency should show reserved fund balance related to encumbrances (only for an appropriation period that extends beyond the fiscal year), inventories, and petty cash. All other reservations must be specifically required or authorized by legislation and the notes to the financial statements must disclose the specific legal authority for all such 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 (GASB 34 Paragraph 84).

(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).

(5) Books of record:

(a) DFA maintains a statewide human resources accounting and management reporting system (SHARE). DFA provides: a three-volume set of DFA model accounting practices (MAPs) that describes state agency accounting policies, procedures, and document processing; a GASB 34 implementation guide; and various white papers. These documents provide guidance for an auditor regarding policy and procedure requirements and they are available on DFA's website at www.dfafcd.state.nm.us. **The SHARE data and reports are the original books of record that the auditor is auditing.** If the agency maintains a separate accounting system it should be reconciled with the SHARE system.

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

Appropriation Unit Code	Appropriation Unit Description
200	Personal Services & Employee Benefits
300	Contractual Services
400	Other
500	Other Financing Uses
600	Non-budgeted

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

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

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

(6) 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 (i.e., reversion to state general fund FY 08). The gross amount of the appropriation and the gross amount of the reversion must be shown separately.

(b) Section 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 division 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.

(7) 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 that are outside the agency such as state general fund appropriations, special appropriations, bond proceeds appropriations, reversions to the state general fund, and transfers to/from other state agencies) 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 (SHARE fund number) to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than in the notes, but agency and SHARE cash account numbers must be shown. The schedule should be presented on the modified accrual basis. The IPA is responsible for performing audit procedures on all such inter-agency transfers.

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

(i) Component units of the state of New Mexico for statewide CAFR purposes are the New Mexico lottery authority (blended), the New Mexico finance authority (discretely presented) and the New Mexico mortgage finance authority (discretely presented).

(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

SHARE 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.

(8) 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 2.20.1.10 NMAC, *Valuation of Assets*.

(9) 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.

(10) Independent auditor's report:

(a) The independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Section 11, **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 are intended to "present the financial position and changes in financial position and, where applicable, cash flows of only that portion of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the state that is attributable to the transactions of the department. They do not purport to, and do not, present fairly the financial position of the state as of June 30, 20XX, the changes in its financial position, or where applicable, its cash flows for the year then ended." See Example A.16 in Appendix A of AAG-SLV 14.79 in the *AICPA Audit and Accounting Guide State and Local Governments* (2007).

(b) A statement should be includ-

ed that the audit was made in accordance with generally accepted government auditing standards per GAGAS (2007) Paragraphs 5.05 and 1.12 and 1.13.

(11) Budgetary basis for state agencies: Per the General Appropriation Act, Laws of 2007, Chapter 28, Section 3, item N, "For the purpose of administering the General Appropriation Act of 2007 and approving operating budgets, the state of New Mexico shall follow the modified accrual basis of accounting for governmental funds in accordance with the manual of model accounting practices issued by the department of finance and administration." The budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get paid by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely must be paid out of the next year's budget. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of twelve months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the budget also lapses and encumbrances can no longer be charged to that budget. The legal level of budgetary control should be disclosed.

(12) Bond proceeds presentation:

(a) The state treasurer's office (STO) administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO should not report in its basic financial statements bonds payable that are obligations of the state of New Mexico. The proper reporting of these payables and the related bond face amounts (proceeds) is in the state's comprehensive annual financial report (CAFR). The STO audit report, notes to the financial statements must: (1) explain the following: by statute STO is responsible for making the state's bond payments and keeping the related records; however, it is not responsible for the related debt, the state is; and (2) refer the reader to the detailed supplemental information in the STO audit report and the statewide CAFR. The STO's financial statements include **audited** supplemental information (SI) regarding the state of New Mexico bond obligations. The SI schedules must show: (1) the beginning and end-of-year bond payable balances, increases and decreases (separately presented), and the portions of each bond issuance that are due within one year, as required by GASB 34 Paragraph 119; (2) the details of debt service requirements to maturity required by GASB 38 Paragraph 10; and (3) any violations of bond covenants and related actions taken to address violations of bond covenants, required by GASB 38 Paragraph

9 and Section 12-6-5, NMSA 1978.

(b) State agencies that receive appropriated bond proceeds to administer for project recipients should report those appropriations and related activity as follows so that the primary users of the separate agency audit reports, the legislators, can easily identify specific appropriations. Appropriate reclassifications for GAAP presentation in the statewide CAFR will occur during the CAFR compilation:

(i) A special revenue fund should be used to account for the proceeds and related expenditures.

(ii) In the statement of activities, the proceeds should be reported as general revenue under the caption "bond proceeds appropriations."

(iii) In the statement of revenues, expenditures, and changes in fund balances, the bond proceeds should be reported as revenue using the same caption, "bond proceeds appropriation."

(iv) **The entire amount of the proceeds appropriated should be recognized as revenue and expense once the bonds are sold** and as "due from other state agency" and "due to project recipient." Unexpended balances—that under law or the terms of the bond statement are due to another fund—should be reported as a liability to the appropriate fund. The bond statement identifies the fund owed.

(v) In the notes to the financial statements, agencies should include an explanation that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients and that the agency is not obligated in any manner for the related indebtedness. Agencies should also disclose any restrictions on the use of the proceeds, such as reversions of unexpended balances. (Any restrictions are listed in the bond statement, appropriation act, or both).

(c) The DFA state board of finance deposits bond proceeds into a DFA fund for arbitrage administration purposes. As the proceeds are needed, agencies draw them down. This activity should be reported by DFA as follows:

(i) The entire amount of bond proceeds held in the agency fund for the special revenue funds of DFA should be accounted for in the agency fund as a liability under the caption "due to other funds" and as an asset in the special revenue funds under the caption "due from other funds." For financial reporting purposes, these amounts must be reclassified from DFA's agency funds to assets of the DFA fund they belong to in accordance with GASB 34 Paragraph 111.

(ii) The entire amount of bond proceeds held in the agency fund for the special revenue funds of state agencies, other than DFA, should be accounted

for and reported as a liability in the agency fund under the caption "due to other state agencies" and in the special revenue funds of the recipient administering state agencies as an asset under the caption "due from other state agencies." (Agencies should encourage their independent auditors to confirm with the board of finance the balances due to the agency special revenue funds).

(13) Amounts "due from other state agencies" and "due to other state agencies": If a state agency has amounts "due from" or "due to" other state agencies in its balance sheet, the notes should disclose the amount "due to" or "due from" each agency by name and the related SHARE fund account numbers and the purpose of the account balance.

(14) Investments in the state treasurer's general fund investment pool (GFIP): The GASB 40 disclosures required for investments in the GFIP are:

(a) An explanation that credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations, and a statement that the GFIP is not rated for credit risk (GASB 40 Paragraph 7);

(b) Interest rate risk:

(i) an explanation that interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment;

(ii) disclosure required by GASB 40 Paragraph 15, of the agency's GFIP investment fair value as of the end of the fiscal year, and the maturities of the GFIP for the fiscal year (per DFA or STO); and

(iii) a statement that the agency does not have an investment policy that limits investment interest rate risk.

(c) The disclosure should also refer the reader to the separate audit report for the state treasurer's office for additional information regarding the GFIP.

(15) Format for the statement of activities: State agencies that have more than one program or function must use the financial statement format like GASBS 34, Illustrations B-1 through B-4(b). The simplified statement of activities (GASBS 34, Illustration B-5) should not be used for agencies that have multiple programs or functions. GASB 34 Paragraph 41 requires governments to report direct expenses for each function.

B. PERTAINING TO HOUSING AUTHORITIES:

(1) The state of New Mexico previously had 52 housing authorities until Region I and Region VII were recently dissolved and transferred to the Region III housing authority, and Region II was dissolved and transferred to the Santa Fe housing authority leaving 49 housing authorities

in the state of New Mexico:

(a) regional housing authorities

4

(b) component unit of public housing authorities 2

(c) component units or department of municipalities 33

(d) component units or department of counties 9

(e) 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 an exemption from this requirement is obtained from 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 in cooperation with its auditor must make the determination whether the housing authority is a component unit of the primary government. See Paragraph (1) of Subsection A of 2.2.2.10 NMAC for guidance in this determination. In the event the primary government and 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 should not be a discretely presented 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 granted by the state auditor from the requirement for discrete presentation, 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.

(3) Audits of the public housing authorities that are **departments** of the local government shall be conducted by the same IPA that performs the audit of the local government. Separate audit contracts will

not be approved.

(a) Local governments are encouraged to include representatives from the public housing authorities that are departments in the IPA selection process.

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

(4) Housing authorities that are component units of a local government:

(a) must account for financial activity in proprietary funds;

(b) are authorized by the amendment to Section 12-6-3 (D), NMSA 1978, in Senate Bill 263, "at the public housing authority's discretion, to be audited separately from the audit of its local primary government entity; if a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity;" the amendment further stipulates in Section 12-6-4 (A), NMSA 1978, that "a public housing authority (other than a regional housing authority) shall not bear the cost of an audit conducted solely at the request of its local primary government entity."

(c) Any separate audits of component unit housing authorities must be conducted according to the following requirements.

(i) The primary government 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.

(vi) Any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC.

(vii) The audit report will be released by the state auditor separately from the primary government's report, under a separate release letter to the housing authority.

(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 under a search for UFRS. Additional administrative issues related to the audit of public housing authorities follow.

(a) Housing authority audit contracts must include the cost of the audit firm's SAS 29 opinion on the financial data schedule (FDS) if the public housing authority expended \$500,000 or more of federal funds or is part of a local government that expended \$500,000 or more of federal funds. The PHA must electronically submit 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.**

(b) The IPA shall consider whether any fee accountant used by the housing authority is a service organization according to the criteria of SAS 70. See Subsection U of 2.2.2.10 NMAC, SAS AU 324, and the SAS 98 amendment to SAS 70 for further explanation regarding service organizations and related auditing requirements. If the housing authority has not implemented effective internal controls over the fee accountant's work product, the auditor will have to obtain sufficient understanding of the internal controls the fee accountant has over his/her work product to plan the audit. A service auditor is the auditor who reports on the processing of transactions by a service organization. A service auditor's report on controls placed in operation at the fee accountant's organization should be helpful in providing a sufficient understanding to plan the audit of the housing authority; however, relying on that report alone, the housing authority auditor cannot reduce the assessed level of control risk below the maximum. To do that the

housing authority auditor would have to do one or more of the following:

(i) test the housing authority's controls over the activities of the fee accountant;

(ii) obtain a copy of the fee accountant's auditors' report on controls placed in operation **and tests of operating effectiveness**, or a report on the application of agreed-upon procedures that describes relevant tests of controls; or

(iii) perform tests of the fee accountant's internal controls at the fee accountant's office (SAS AU 324.12).

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

(6) Single audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority schedule of expenditures of federal awards, then the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation the housing authority federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards. See Paragraph 6.11 of *the AICPA Audit Guide, Government Auditing Standards* and *Circular A-133* audits for more information regarding this issue.

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 public education department (PED) 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 PED approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Audit planning level of materiality:

(a) As explained in Paragraphs (1) and (2) of Subsection A of 2.2.2.10 NMAC, the level of planning materiality and required auditor opinion will be at the individual fund level for the primary government and at the individual fund level for the component units.

(b) If a 501(c) 3 component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-1 NMSA 1978, requires that entity to be audited regardless of its materiality in relation to the primary government.

(3) Regional education cooperative (REC) audits:

(a) For accounting purposes,

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 RECs. The IPA shall provide a copy of this report to the participating school districts and the PED 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 PED Regulations 6.23.3.7 through 6.23.3.12.

(d) If applicable, any on-behalf payments for fringe benefits and salaries made by 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.

(4) School district audits must address the following issues:

(a) Audits of school districts shall test for compliance with PED 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*.

(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 PED.

(c) On-behalf payments of salaries and fringe benefits made for school district employees by 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: Under GASB 34 a statement of changes in fiduciary net assets is required for pension trust funds, investment trust funds, and private-purpose trust funds. However, agency

funds have no net assets and will be excluded from this presentation (GASB 34 Paragraph 110). Therefore, it is a requirement of the state auditor that a schedule of changes in assets and liabilities - agency funds for the fiscal year be included as supplemental information in the audit report, showing the changes in agency funds summarized by school.

(f) Capital expenditures by the NM public school facilities authority: School districts must: review capital expenditures made for repairs and building construction projects of the school district by the NM public school facilities authority; determine the amount of capital expenditures that should be added to the capital assets of the school district; and account for those additions properly. The auditor should test the school district capital asset additions for proper inclusion of these expenditures.

(g) Functions of the general fund: The school district audit reports must include financial statements and budgetary comparisons for the following functions of the general fund: operations, transportation, instructional material, and teacherage (if applicable).

(5) 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 public 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. Charter schools chartered by the public education department (PED) pursuant to the Charter Schools Act (Chapter 22, Article 8B, NMSA 1978) are component units of PED for financial reporting purposes. The charter schools must be included in the financial statements of their sponsoring school districts or PED 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. The charter school 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 or PED. 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) When there is not a separate audited financial statement available for a charter school, the fund financial statements for that charter school must be presented in the primary government's financial statement. This modified accrual basis presentation should be presented as supplemental information (SI) according to AAG-SLV 3.20 (2007). 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 a charter school's funds be included in the supplemental information section of the financial report following the fund financial statements and related combining statements, to demonstrate compliance with legally adopted budgets. The individual budgetary comparison schedules are also included in the scope of the audit and must be audited and included in the auditor's opinion.

(6) 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 COUNTIES:

(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 - coun-

ty governments: Counties' audit reports 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 and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Section 7-38-81(C), NMSA 1978, property taxes that have been delinquent for more than ten years, together with any penalties and interest, are presumed to have been paid. The second schedule titled "county treasurer's property tax schedule" must show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASB 33. Property taxes levied in January 2007 are budgeted for the fiscal year July 1, 2007 through June 30, 2008. 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 THE COUNTY TREASURER'S PROPERTY TAXES RECEIVABLE FOR THE YEAR ENDED JUNE 30, 2008	
Property taxes receivable, beginning of year	\$ 641,290
Changes to Tax Roll:	
Net taxes charge d 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, 2008	(4,330,993)
Property taxes receivable, end of year	\$ 773,821
Property taxes receivable by years:	
1999-2007	226,344
2008	547,477
Total taxes receivable	\$ 773,821

(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 higher education department (HED) 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 HED approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Budgetary comparison schedules: The legal level of budgetary control should be disclosed in the notes. The state auditor requires that every college and university's audit report include budgetary comparison schedules as supplementary information (SI). The budgetary comparison schedules must show columns for: the original budget; the revised budget; actuals on the budgetary basis; and a variance column. **The budgetary comparison schedules must be audited and an auditor opinion must be rendered.** A SAS opinion does not meet this requirement. See Section 14.53 of the *AICPA Audit and Accounting Guide State and Local Governments (2006)* (AAG-SLV). The auditor must confirm the final adjusted and approved budget with the HED. The auditor's opinion on the budgetary SI should follow Example A-14 in AAG-SLV 14.79 (2007) and footnote 3 of 14.79. A reconciliation of actual revenue and expense amounts on the budgetary basis to financial statement accrual basis amounts should be disclosed on the budgetary comparison schedule. The reconciliation is required only at the "rolled up" level of unrestricted and restricted - all operations and should include revenues and expenses. The HED approved the following format for audited budgetary comparison schedules. This rule requires that the format be used in reporting the budgetary comparison data as supplementary information.

(a) Unrestricted and restricted - all operations (Schedule 1)
Beginning fund balance: 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
Fund balance budgeted
Total unrestricted and restricted revenues and fund balance budgeted
Unrestricted and restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant, student social and cultural activities, research, public service, internal service, student aid grants and stipends, auxiliary services, intercollegiate athletics, independent operations, 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 fund balance net assets (budgetary basis), ending fund balance
(b) Unrestricted - Non Instruction & General (Schedule 2)
Beginning fund balance: 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
Fund balance budgeted
Total unrestricted revenues and fund balance budgeted
Unrestricted expenditures: Student social and cultural activities, 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: net transfers
Change in fund balance (budgetary basis), ending fund balance
(c) Restricted - Non-Instruction and General (Schedule 3)
Beginning fund balance: 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
Fund balance budgeted
Total restricted revenues and fund balance budgeted
Restricted expenditures: Student and social activities, 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
Net transfers
Change in fund balance (budgetary basis), ending fund balance
(d) Unrestricted - instruction and general (Schedule 4)
Beginning fund balance, 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
Fund balance budgeted
Total unrestricted revenues and fund balance budgeted
Unrestricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total unrestricted expenditures
Net Transfers
Change in net assets (budgetary basis)
Ending fund balance
(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
Fund balance budgeted
Total restricted revenues and fund 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: Institutions must report using the business type activities (BTA) model. The level of planning materiality described in the *AICPA Audit and Accounting Guide, State and Local Governments (2007)*, Section 4.31, must be used for the audit of these institutions. Planning materiality for component units is at the individual component unit level. **If a 501(c) 3 component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-1, NMSA 1978, requires that entity to be audited regardless of materiality.** See Paragraph (1) of Subsection A of 2.2.2.10 NMAC for more information about contracting for these required audits.

(4) Compensated absence liability should be shown as follows: 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 as amended by GASB 39 to qualify as a component unit of an educational institution must be included in the educational institution's audit report **as a discrete component unit**. An exemption must be obtained from the state auditor in order to present any component unit as blended. The **same auditor** must audit the component unit and the educational institution unless an exemption is obtained from the state auditor. **These exemptions must be obtained annually.**

(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) Individual component unit budgetary comparison schedules are required if the component unit has a "legally adopted budget." A component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law.

(c) There is also no level of materiality for reporting findings of component units that do not receive public funds. All component unit findings must be disclosed in the primary government's audit report.

(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 varia-

tions that are expected to have a significant effect on future services or liquidity.

(7) Donor-restricted endowment disclosures required by GASB 34, paragraph 121:

(a) the amounts of net appreciation on investments of donor-restricted endowments that are available for authorization for expenditure by the governing board, and how those amounts are reported in the net assets;

(b) the state law regarding the ability to spend net appreciation; and

(c) the policy for authorizing and spending investment income, such as a spending-rate or total-return policy.

[2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 4-15-08]

2.2.2.13 REVIEW OF AUDIT REPORTS AND WORKING PAPERS:

A. Section 12-6-14(B), 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) A preliminary review will be made of all audit reports received for proper reporting and presentation of financial statements, note disclosures and audit findings. **The office will charge agencies for this audit report review services.**

(2) The office will review the draft report submitted by the IPA to determine if it is presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards.

(3) After the review is completed, the office of the state auditor will fax the review comments (list of deficiencies) to the IPA and the agency. The IPA is required to submit its responses to the review comments and the corrected pages within 20 calendar days of receipt of the list of deficiencies. If all of the corrections are not made, the office will fax another list of deficiencies to the IPA and the agency until all of the corrections have been made to the report. The IPA is required to respond to any subsequent faxes (list of deficiencies) within five calendar days. After all of the report deficiencies have been corrected, the office will fax the IPA and the agency a notice to print and submit the final corrected copies of the audit report to the office. At that point, the IPA is required to submit the required number of bound copies required by the audit contract, and an electronic PDF version of the final corrected report to the office within ten calendar days after receipt of the notice to print. If the IPA does not respond to the list of deficiencies and does not submit the final copies of the

audit report to the office within the time frames established by this rule, the state auditor will take that fact into consideration when reviewing the IPA's next contract or firm profile for approval.

B. Released audit reports may be subject to a comprehensive desk and working paper review by the state auditor. These review checklists used by the office during this process 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 testing of audit firm documentation for:

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

(2) the independence safeguards on nonaudit services, for compliance with GAGAS (2007) Paragraph 3.30 requirements; and

(3) documentation of any additional audit procedures performed after the date of the independent auditor's report, as required by SAS 103 Paragraphs 23 through 26.

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 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 IPA's future audit engagement may be limited in number;

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

(4) the IPA may be denied the issuance of future audit contracts; or

(5) 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 all review comments 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. Revisions to the audit report: 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, 4-15-08]

2.2.2.14 CONTINUING EDUCATION AND QUALITY CONTROL REQUIREMENTS:

A. Continuing professional education: Per generally accepted government auditing standards (GAGAS) (2007) Section 3.46, "Each auditor performing work under GAGAS should complete, every two years, at least 24 hours of CPE that directly relates to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. For auditors who are involved in any amount of planning, directing, or reporting on GAGAS assignments and those auditors who are not involved in those activities but charge 20 percent or more of their time annually to GAGAS assignments should also obtain at least an additional 56 hours of CPE (for a total of 80 hours of CPE in every two year period) that enhances the auditor's professional proficiency to perform audits or attestation engagements." The GAO issued *Government Auditing Standards: Guidance on GAGAS Requirements for Continuing Professional Education*, GAO-05-568G, April 2005. It provides helpful guidance to auditors and audit organizations regarding the implementation of the Yellow Book CPE requirements. The guide is available at www.gao.gov/gov-aud/ybcp2005.pdf

B. U.S. GAO *Government Auditing Standards, 2007 Revision* (GAGAS), Section 3.50 states "each audit organization performing audits or other audits or other attestation engagements in accordance with GAGAS should have an appropriate internal quality control system in place and should undergo an external peer review." Section 3.53 requires "Audit organizations performing audits and attestation engagements in accordance with GAGAS should have an external peer review of their auditing and attestation engagement practices at least once every three years by reviewers independent of the audit organization being reviewed. The external peer review should determine whether during the period under review, the reviewed audit organization's internal quality control system was adequate and whether quality control policies and procedures were being complied with to provide

the audit organization with reasonable assurance of conforming with applicable professional standards. Audit organizations should take remedial, corrective actions as needed based on the results of the peer review."

(1) Per the *AICPA PR Section 100 Standards for Performing and Reporting on Peer Reviews*, a firm's due date for its initial peer review is eighteen months from the date the firm is enrolled in the peer review program or should have enrolled. A firm's subsequent peer review is due three years and six months from the previous peer review year end.

(2) If the firm is unable to complete its external quality control review by the required due date, it will render the firm ineligible to conduct 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 employing organization of the peer reviewers' peer review showing an unqualified opinion (this is a special requirement of the state auditor);

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

(c) the corresponding letter of comments;

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

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

(f) a list of the governmental audits reviewed during the peer review; the office assumes that at least one of these will be a New Mexico governmental audit.

(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) Individuals conducting peer reviews of an audit organization's system of quality control should meet the following requirements per GAGAS (2007) 3.54:

(a) have current knowledge of GAGAS and the government environment relative to the work being reviewed;

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

(c) have knowledge on how to perform a peer review (knowledge can be obtained from on-the-job training, training courses, or both); and

(d) the state auditor also requires that the employing organization of the peer reviewers should have received an unqualified opinion on the review of their own organization's system of quality controls.

(8) The New Mexico public accountancy board determined that performing peer review constitutes the practice of public accountancy; therefore, a CPA from another state who enters New Mexico to perform a peer review for a New Mexico CPA firm must file a notification of intent to practice under the substantial equivalency provision.

(9) The reviewer must be familiar with this rule. This is a requirement of the state auditor that can be achieved by attendance at audit rule training provided by the office.

(10) The review should include [GAGAS (2007) Paragraph 3.55]:

(a) "a review of the organization's internal quality control policies and procedures, including related monitoring procedures, audit and attestation engagement reports, audit and attest documentation, and other necessary documents (for example, independence documentation, CPE records, personnel management files related to compliance with hiring, performance evaluation, and assignment policies);

(b) interviews 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's system of quality control was complied with to provide the organization with reasonable assur-

ance of conforming with professional standards in the conduct of its work. Reviewers should consider the adequacy and results of the reviewed audit organization's monitoring efforts to efficiently plan its peer review procedures; 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's audit or attestation engagement practices was adequate and was being complied with during the year reviewed to provide the audit organization with reasonable assurance of conforming with professional standards for audits and attestation engagements; the report should state the professional standards to which the reviewed audit organization is being held; 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 opinion, reviewers should report a detailed description of the findings and recommendation, either in the peer review report or in a separate letter of comment or management letter, to enable the reviewed audit organization to take appropriate actions; the written report should refer to the letter of comment or management letter if such a letter is issued along with a modified report."

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 may 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. [2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 4-15-08]

HISTORY of 2.2.2 NMAC:

Pre-NMAC Regulatory Filing History:

The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5-14-71; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5-27-71; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the

State of New Mexico, filed 6-1-72; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6-1-72; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2-28-74; SA Rule No. 74-2, Rotation of Assignments, filed 2-28-74; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11-3-78; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5-28-80; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12-17-82; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4-10-84; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1-28-85; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgments and Compensated Absences, filed 4-16-80; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6-12-85; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6-17-85; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6-17-85; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1-20-86; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3-20-86; SA Rule No. 86-3, Professional Services Contracts, filed 7-9-86; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-13-87; SA Rule 87-2, Approval of Audit Contracts, filed 4-2-87; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8-14-87; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-10-88; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-10-89; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-1-90; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5-7-90; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-13-91; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-6-92; SA Rule 93-1, Regulations

Governing the Audits of Agencies of the State of New Mexico, filed 2-25-93; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-94; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5-16-94; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-16-95; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4-2-96.

History of Repealed Material:

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-30-01.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-29-02.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-30-03.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-31-04.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 5-13-05.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-16-06.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-16-07.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-15-08.

Appendix A

Print on Agency Letterhead

Date

Hector H. Balderas, State Auditor
 2113 Warner Circle
 Santa Fe, NM 87505-5499

Dear Mr. Balderas,

In accordance with the requirements of Paragraph (6) of Subsection B of 2.2.2.8 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 ____; and requesting approval of this selection by the State Auditor.

(This section applies only to school districts and universities only). This IPA recommendation has been reviewed and approved by our oversight agency (please circle one) the Higher Education Department (HED) or the Public Education Department (PED) (circle one) as required by Section 12-6-14, NMSA 1978, and as indicated by the following oversight agency signature and date.

Oversight Agency Signature_____
Printed name of signer_____
Date

Please check the appropriate box:

- ☐ This is a multi-year proposal and we will be in the ____ year of a 3 year proposal.
- ☐ This is an annual audit for the period indicated above.

If your agency entered into any contracts with any of the audit firms on the State Auditor's approved list from of audit firms from January 1, 2006, until the date this form was completed, with the exception of an annual financial and compliance audit contract, please list them here.

Contract Date	Contract Amt	Contract Firm	Services Provided by the Auditor
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____

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 - Rp, 2.2.2 NMAC Appendix A, 4-15-08]

Appendix B

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
Section I. <u>Capability of Firm</u>			
A)	The firm has the resources to perform the type and size of audit required. # of firm team members _____ Total audit hours available _____	0-5	
B)	External Quality Control Review (Peer Review) 1. Peer review results: Obtain most recent copy of the external quality control review report including letter of comments 2. - Opinion received _____ Unqualified 10 Qualified 5 If report is less than modified (adverse) STOP HERE. FIRM DOES NOT QUALIFY. 3. Results of reference checks and agency's prior experience with firm (check should include timeliness, planning, technical expertise, etc.).	0-10	
C)	Organization and completeness of proposal or bid for audit services	0-5	
Section I Total			
Section II. <u>Work Requirements & Audit Approach</u>			
A)	Auditor knowledge of agency needs, and product to be delivered	0-5	
B)	Proposal or bid contains a sound technical plan and realistic estimate of time to complete the audit. Start Date _____ End Date _____	0-5	
C)	Plans for using agency staff, including internal auditors.	0-3	
D)	If the proposal or bid is for a multi-year contract, approach for planning and conducting the work efforts of subsequent years.	0-2	
Section II Total			
Section III. <u>Technical Experience</u>		0-20	
A)	Governmental audit experience of audit firm. Name of on-site manager _____		
B)	Audit team experience: Specialization in your type of government (e.g., state agencies, schools, hospitals, counties, cities, etc.), including component units (housing authorities, charter schools, foundations)	0-15 ¹	
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.	0-5	
Section III Total			
Section IV. <u>Firm Strengths or Weaknesses</u>			
Specify _____		0-5	
Section IV Total			
Total All Sections			

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

Appendix B

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

Please note: If you have a multi-year proposal, add the total of each year together to arrive at one total for the combined three year period (example: 3 yr proposal, each years fee is \$5,000 the combined total is \$15,000 which would be used in the calculation below.)	Maximum Points	Points Awarded
<u>COMPLETE THE CALCULATION:</u> Insert the lowest cost proposal (from all proposals received) and divide it by the cost of the proposal the agency is recommending <div style="display: flex; justify-content: flex-end; align-items: center; margin-right: 50px;"> <div style="text-align: right; margin-right: 10px;">\$ _____</div> <div style="text-align: right; margin-right: 10px;">\$ _____</div> <div style="text-align: right;">= _____</div> </div> <div style="display: flex; justify-content: flex-end; align-items: center; margin-right: 50px;"> <div style="text-align: right; margin-right: 10px;">Times (x) by 10</div> <div style="text-align: right; margin-right: 10px;">x <u>10</u></div> <div style="text-align: right;">= Total Points Awarded</div> </div>	10	

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

BREAKDOWN	<input type="checkbox"/> 1 st Year Hours FYE 6/30/___	<input type="checkbox"/> 1 st Year Cost FYE 6/30/___	<input type="checkbox"/> 2 nd Year Hours FYE 6/30/___	<input type="checkbox"/> 2 nd Year Cost FYE 6/30/___	<input type="checkbox"/> 3 rd Year Hours FYE 6/30/___	<input type="checkbox"/> 3 rd Year Cost FYE 6/30/___
Financial Statement Audit						
Federal Single Audit						
Financial Statement Preparation						
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

[2.2.2 NMAC Appendix B - Rp, 2.2.2 NMAC Appendix B, 4-15-08]

[See Appendix C on page 219]

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	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 Retirement 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

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
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
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

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
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	This Statement establishes accounting and financial reporting standards for the nonexchange transactions of state and local governments that engage in nonexchange transactions. It applies to financial statements for periods beginning after June 15, 2000 (FY01).
34	Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments	This Statement establishes accounting and financial reporting standards for general purpose external financial reporting by state and local governments. Implementation was phased in from FY02 to FY04
35	Basic Financial Statement - and Management's Discussion and Analysis - For Public Colleges and Universities	The purpose of this Statement is to enhance the understandability and usefulness of the general purpose external financial reports issued by the public colleges and universities. Implementation was phased in like GASB 34 was.
36	Recipient Reporting for Certain Shared Non-exchange Revenues	This Statement supersedes paragraph 28 of Statement 33, regarding revenue recognition when a government shares its own derived tax revenues or imposed nonexchange revenues with other governments. Implementation was simultaneous with Statement 33.
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)	This Statement establishes standards to be used to report escheat property transactions in government-wide and fund financial statements. This Statement also amends various paragraphs of GASB 34. The Statement was to be implemented simultaneously with GASB 34.
38	Certain Financial Statement - Note Disclosures	This Statement establishes and modified disclosure requirements related to the summary of significant accounting policies, actions taken to address violations of significant finance-related legal and contractual provisions, debt and lease obligations, short-term debt, disaggregation of receivable and payable balances, and interfund balances and transfers. Implementation of the Statement coincided with the phase in implementation of GASB 34.

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
39	Determining Whether Certain Organizations Are Component Units	This Statement amends Statement 14 to provide additional guidance to determine whether certain organizations for which the primary government is not financially accountable should be reported as component units based on the nature and significance of their relationship with the primary government. Generally it requires reporting, as a component unit, an organization that raises and holds economic resources for the direct benefit of a governmental unit. The Statement was effective for financial statements for periods beginning after June 15, 2003 (FY04).
40	Deposit and Investment Risk Disclosures	The Statement addresses common deposit and investment risks related to credit risk, concentration of credit risk, interest rate risk, and foreign currency risk. As an element of interest rate risk, this Statement requires certain disclosures of investments that have fair values that are highly sensitive to changes in interest rates. It requires the deposit and investment policies related to the risks identified in the Statement to be disclosed. The custodial credit risk disclosures previously required by Statement 3 are modified by Statement 40. The Statement became effective for financial statements for periods beginning after June 15, 2004 (FY 05).
41	Budgetary Comparison Schedules- Perspective Differences	This amendment to Statement No. 34 clarifies the budgetary presentation requirements for governments with significant budgetary perspective differences that result in their not being able to present budgetary comparison information for their general fund and major special revenue funds. Those governments are required to present budgetary comparison schedules as required supplementary information (RSI) based on the fund, organization, or program structure that the government uses for its legally adopted budget. The provisions of this statement were to be implemented simultaneously with Statement 34.

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
42	Accounting and Financial Reporting for Impairment of Capital Assets and for Insurance Recoveries	This statement requires governments to report the effects of capital asset impairments in their financial statements when they occur rather than as a part of the ongoing depreciation expense for the capital asset or upon disposal of the capital asset. The Statement also requires all governments to account for insurance recoveries in the uniform manner set forth in the Statement. The provisions of this statement were effective for fiscal periods beginning after December 15, 2004 (FY06).
43	Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans	An OPEB "Plan" must implement the requirements of this Statement in FY07, FY08, or FY09, depending on the when the largest participating government in the "Plan" had to implement GASB 34. The statement establishes uniform financial reporting standards for OPEB "Plans" and supersedes the interim guidance included in Statement No. 26. If the "Plan" is administered as a trust, or the equivalent of a trust, paragraph 16 through 40 apply. The Statement also applies to funds that are used to accumulate assets and pay benefits in a multiple-employer OPEB plan that are not administered as a trust or the equivalent. Paragraph 41 discusses the reporting requirements for those types of "plans." The Statement does not apply to assets that an employer "earmarks" for OPEB purposes within its governmental or proprietary funds by designation of fund balance(s) or net assets, or to assets that an employer transfers to and accumulates in a separate governmental or proprietary fund for that purpose.
44	Economic Condition Reporting: The Statistical Section	This Statement establishes and modifies the requirements related to the supplementary information presented in a statistical section. The more specific requirements of the Statement should be adapted by each type of government in order to meet the overarching objectives. The provisions of this Statement were effective for statistical sections prepared for periods beginning after June 15, 2005 (FY06).

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
45	Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions	Implementation is required in three phases: FY08; FY09; and FY10. A government's total annual revenues in the first fiscal year ending after June 15, 1999, determines which phase applies to it. "This Statement establishes standards for the measurement, recognition, and display of OPEB, expense/ expenditures and related liabilities (assets), note disclosures, and if applicable, required supplementary information (RSI) in the financial reports of state and local governmental employers."
46	Net Assets Restricted by Enabling Legislation	The requirements of this Statement are effective for periods beginning after June 15, 2005, (FY06), with earlier application encouraged. The statement clarifies the meaning of the phrase <i>legally enforceable</i> as it applies to restrictions imposed on net assets.
47	Accounting for Termination Benefits	The requirements of this Statement are effective for periods beginning after June 15, 2005 (FY06), except for termination benefits provided through an existing defined benefit OPEB plan, in which case the Statement should be implemented simultaneously with the requirements of Statement 45. The Statement determines (1) when a liability and expense should be recognized (a) on the accrual basis for voluntary and involuntary termination benefits and (b) on the modified accrual basis; and (2) how health care-related termination benefits should be measured.
48	Sales and Pledges of Receivables and Future Revenues and Intra-Entity Transfers of Assets and Future Revenues	The requirements of this statement are effective for financial statements for periods beginning after December 15, 2006 (FY08). This statement establishes criteria that governments will use to determine whether the proceeds received from the sale or pledge of receivables and future revenue should be reported as revenue or as a liability. The statement stipulates that governments should not revalue assets that are transferred between financial reporting entity components

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
49	Accounting and Financial Reporting for Pollution Remediation Obligations	The requirements of this statement are effective for financial statements for periods beginning after December 15, 2007 (FY09). "Once any of five specified obligating events occurs, a government is required to estimate the component of expected pollution remediation outlays and determine whether outlays for those components should be accrued as a liability or, if appropriate, capitalized when goods and services are acquired."
50	Pension Disclosures	This Statement is effective for periods beginning after June 15, 2007 (FY08). "This Statement is intended to improve the transparency and usefulness of financial reporting by pension plans and employers by amending Statements 25 and 27 to conform with the applicable note disclosure and RSI modifications adopted in the OPEB Statements, 43 and 45."
51	Accounting and Financial Reporting for Intangible Assets	This Statement is effective for periods beginning after June 15, 2009 (FY10), and earlier application is encouraged. The objective of this Statement is to establish accounting and financial reporting requirements for intangible assets and reduce inconsistencies in the areas of recognition, initial measurement, and amortization, thereby enhancing the comparability of the accounting and financial reporting of such assets among state and local governments."
52	Land and Other Real Estate Held as Investments by Endowments	"This Statement is effective for financial statements for periods beginning after June 15, 2008 (FY09). "This Statement establishes consistent standards for the reporting of land and other real estate held as investments by essentially similar entities." "This Statement does not apply to lands granted by the Federal government in connection with a state being admitted to the United States."

[2.2.2 NMAC Appendix C - Rp, 2.2.2 NMAC Appendix C, 4-15-08]

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS No.</i>	<i>Title</i>	<i>AU 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

<i>SAS No.</i>	<i>Title</i>	<i>AU Section</i>
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, Heading 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 No.</i>	<i>Title</i>	<i>AU 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
100	Interim Financial Information	722
101	Auditing for Fair Value Measurements and Disclosures	328
102	Defining Professional Requirements in Statements on Auditing Standards – The SAS language “must” or “is required” must be complied with. However, if the SAS language used is “should,” the auditor is required to comply if the presumed circumstances exist. But in rare instances the auditor may depart if he/she documents the justification and how alternative procedures sufficed.	This SAS was effective upon issuance.
103	Audit Documentation – This SAS supersedes SAS 96 regarding audit documentation requirements. Among other changes in audit documentation requirements, the audit report should not be dated before documentation review, financial statement preparation and management assertion regarding responsibility for the financial statements.	This SAS is effective for financial statement for periods ending on or after December 15, 2006 (FY07), with earlier application permitted

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

SAS

AU

<i>No.</i>	<i>Title</i>	<i>Section</i>
104	Amendment to Statement on Auditing Standards No. 1, Codification of Auditing Standards and Procedures ("Due Professional Care in the Performance of Work") – This SAS expands the definition of the term reasonable assurance. "The auditor must plan and perform the audit to obtain sufficient appropriate audit evidence so that audit risk will be limited to a low level that is, in his or her professional judgment, appropriate for expressing an opinion on the financial statements. The high, but not absolute, level of assurance that is intended to be obtained by the auditor is expressed in the auditor's report as obtaining reasonable assurance about whether the financial statements are free of material misstatement (whether caused by error or fraud.)"	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted.
105	Amendment to Statement on Auditing Standards No. 95, Generally Accepted Auditing Standards – This SAS expands the scope of the second standard of field work from "internal control" to "the entity and its environment, including its internal control" and extends its purpose from "planning the audit" to "assessing the risk of material misstatement of the financial statements whether due to error or fraud." It amends the third standard of field work to replace references to specific audit procedures with "audit procedures" and replaces "evidential matter" with "audit evidence." All three standards of field work are updated to begin with "The auditor must."	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
106	Audit Evidence – This SAS: (1) defines audit evidence; (2) defines relevant assertions and discusses their use in assessing risks and designing appropriate further audit procedures; (3) discusses qualitative aspects that the auditor considers in determining the sufficiency and appropriateness of audit evidence; and (4) and describes various audit procedures and discusses the purposes for which they may be performed.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
107	Audit Risk and Materiality in Conducting an Audit – The auditor should perform substantive procedures for all relevant assertions related to material classes of transactions, account balances, and disclosures. The auditor should document: (1) the levels of materiality and tolerable misstatement including any changes, and the basis on which those levels were determined; (2) a summary of uncorrected misstatements, related to known and likely misstatements; (3) the auditor's conclusion as to whether uncorrected misstatements, individually or in aggregate, do or do not cause the financial statements to be materially misstated, and the basis for the conclusion; and (4) all known and likely misstatements identified during the audit, that have been corrected by management. Uncorrected misstatements should be documented so that the auditor can: (1) separately consider the effects of known and likely misstatements, including uncorrected misstatements identified in prior periods; (2) consider the aggregate effect of misstatements on the financial statements; (3) consider the qualitative factors relevant to the consideration whether misstatements are material.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i> <i>No.</i>	<i>Title</i>	<i>AU</i> <i>Section</i>
108	Planning and Supervision – Planning and supervision continue throughout the audit. The auditor must plan the audit so that it is responsive to the assessment of the risk of material misstatement based on the auditor’s understanding of the entity and its environment, including its internal control. Planning is an interactive process throughout the audit. Firm personnel other than the auditor with final responsibility for the audit are referred to as assistants. “Auditor” refers to either the auditor with final responsibility for the audit or to assistants.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
109	Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement – This SAS explains the audit procedures that the auditor should perform to obtain the understanding of the entity and its environment, including its internal control (risk assessment procedures). It provides guidance regarding understanding specified aspects of the entity and its environment and internal control in order to identify and assess risks of material misstatement, and related further audit procedures. It provides guidance regarding assessing the risks of material misstatement. The auditor should: consider the classes of transactions, account balances, and disclosures; relate the identified risks to what could go wrong at the relevant assertion level; and consider the significance and likelihood of material misstatement for each identified risk. The SAS provides guidance in determining significant risks and requires auditor evaluation of the design of the entity’s controls to determine whether they are adequate and have been implemented. Related documentation guidance is also provided.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
110	Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained – This SAS provides the auditor with guidance: (1) in determining overall responses to address risks of material misstatement at the financial statement level; (2) in designing and performing further audit procedures that are responsive to the assessed risks of material misstatement at the relevant assertion level; and (3) in evaluating whether the risk assessments remain appropriate and to conclude whether sufficient appropriate audit evidence has been obtained; and (4) related documentation.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
111	Amendment to Statement of Auditing Standards No. 39, Audit Sampling – This SAS amends SAS No. 39 to: (1) move guidance from SAS No. 107 Appendix into the text of the statement; (2) to incorporate guidance from SAS No. 99 regarding fraud and SAS No. 110 regarding audit procedures in response to assessed risks and evaluating audit evidence; and (3) to enhance guidance relating to the auditor’s judgment about establishing tolerable misstatement for a specific audit procedure and on the application of sampling to tests of controls.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS No.</i>	<i>Title</i>	<i>AU Section</i>
112	Communicating Internal Control Related Matters Identified in an Audit - This SAS defines the terms “significant deficiency” and “material weakness.” It provides guidance on evaluating the severity of control deficiencies identified in an audit. SAS 112 requires the auditor to communicate, in writing, to management and those charged with governance, significant deficiencies and material weaknesses identified in an audit.	Effective for periods ending on or after December 15, 2006 (FY07), with earlier application permitted
113	Omnibus Statement on Auditing Standards – 2006 - This SAS clarifies terminology used to describe the professional requirements imposed on auditors in the 10 standards. This SAS adds to SAS No. 99: footnote 15 that links the auditor’s consideration of fraud to the auditor’s assessment of risk; and footnote 21 that links the auditor’s consideration of fraud and the auditor’s response to assessed risks.	Effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted
113	Omnibus Statement on Auditing Standards – 2006 – This SAS amends SAS Numbers 101, 59, 57, and 1 to change old references to “completion of fieldwork” to “the date of the auditor’s report” because SAS 103 changed the date of the audit report from the date of completion of fieldwork to “the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion on the financial statements.” SAS 113 also amends SAS 85 so that the date of management representations is “the date of the auditor’s report.”	Effective for periods ending on or after December 15, 2006 (FY07), with earlier application permitted
114	Auditor’s Communication With Those Charged With Governance – This SAS supersedes SAS No. 61, Communication With Audit Committees, as amended. It establishes standards and provides guidance on the auditor’s communication with those charged with governance in relation to an audit of financial statements.	Effective for periods beginning on or after December 15, 2006 (FY08).

[2.2.2 NMAC Appendix D - Rp, 2.2.2 NMAC Appendix D, 4-15-08]

STATE OF NEW MEXICO
(NAME) COUNTY TREASURER'S
PROPERTY TAX SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2008

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 ad valorem									
1999-2007	\$22,211,105	\$519,659	\$21,959,143	\$519,659	\$21,959,143	\$5,644	\$25,618	\$ -	\$ 226,344
2008	2,400,000	1,942,523	1,942,523	1,942,523	1,942,523	-	-	-	547,477
Total General ad valorem	24,701,105	2,462,182	23,901,666	2,462,182	23,901,666	5,644	25,618	-	773,821
Non-rendition fees									
1999-2007	\$ 58,580	-	\$ 58,025	-	\$ 58,025	\$ 195	\$ 555	-	-
2008	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									
1999-2007	\$14,382,000	-	\$14,382,000	-	\$14,382,000	-	-	-	-
2008	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									
1999-2007	\$250,272	-	\$250,272	-	\$250,272	-	-	-	-
2008	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									
1999-2007	\$ 963	-	\$ 963	-	\$ 963	-	-	-	-
2008	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
Municipalities:									
City of Bayard									
1999-2007	\$ 148,500	\$ 901	\$148,193	\$ 901	\$148,193	\$ 150	\$ 307	-	-
2008	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									
1999-2007	\$ 72,000	\$ 43	\$ 71,640	\$ 43	\$ 71,640	\$ 50	\$ 360	-	-
2008	8,000	8,000	8,000	8,000	8,000	-	-	-	-

Appendix E

STATE OF NEW MEXICO
(NAME) COUNTY TREASURER'S
PROPERTY TAX SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2008

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
Total Village of Hurley	80,000	8,043	79,640	8,043	79,640	50	360	-	-
Village of Santa Clara 1999-2007	\$ 45,000	\$ 708	\$44,700	\$ 708	\$44,700	\$ 30	\$ 300	-	-
2008	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 1999-2007	\$ 1,847,583	-	\$ 1,847,278	-	\$ 1,847,278	\$ 75	\$ 305	-	-
2008	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
Presumed paid after ten years per Section 7-38-81(C), NMSA 1978									

[2.2.2 NMAC Appendix E - Rp, Appendix E, 4-15-08]

Appendix F

Contract No. _____

STATE OF NEW MEXICO
AUDIT CONTRACT ADDENDUM
FOR SUBCONTRACTOR

Pursuant to Subsection G of 2.2.2.8 NMAC *Requirements for Contracting and Conducting Audits of Agencies* the Contractor hereby enters into an agreement with _____, hereinafter referred to as the Subcontractor, to subcontract a portion of the services to be performed under this audit contract.

The subcontractor shall perform the following portion(s) of the contracted audit services:

_____.

Responsibility for the audit will

_____ Remain with the Contractor; or
_____ Be shared between the Contractor and Subcontractor.

The audit report will be signed by

_____ The Contractor; or
_____ The Contractor and the Subcontractor.

The method used to pay the subcontractor will be

_____.

SUBCONTRACTOR

CONTRACTOR

(Name)

(Name)

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

AGENCY

STATE AUDITOR

(Name)

BY: _____

BY: _____

HECTOR H. BALDERAS

TITLE: _____

DATE: _____

DATE: _____

[2.2.2 NMAC, Appendix F - Rp, 2.2.2 NMAC, Appendix F, 4-15-08]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

FAMILY SERVICES DIVISION

This is an amendment to 8.8.3 NMAC, Section 11, effective 4/15/2008.

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing care prior to obtaining a background eligibility unless all of the following requirements are met:

(1) the licensee may not be operating under a corrective action plan (child-care), sanctions, or other form of licensing disciplinary serious violations;

(2) until receiving background eligibility the applicant shall at all times be under direct physical supervision;

(3) by the end of the next day after the applicant begins providing care, the applicant shall send the licensing authority a completed application form and fingerprint cards;

(4) within fifteen days after the applicant begins providing care, the applicant shall provide the licensing authority with all information necessary for the background check; and

(5) no more than ~~thirty (30)~~ 45 days shall have passed since the date of the initial application unless the department documents good cause shown for an extension.

B. If a direct provider transfers employment more than 180 days after receiving a eligibility letter from the licensing authority the direct care provider must re-comply with 8.8.3.10 NMAC. A direct care provider may transfer employment for a period of 180 days after receiving a eligibility letter from the licensing authority without complying with 8.8.3.10 NMAC only if the direct care provider submits a preliminary application that meets the following conditions:

(1) the direct provider submits a statement swearing that he or she has not committed any crimes has not been a perpetrator of abuse or neglect and has not been a respondent in a domestic violence petition;

(2) the direct care provider submits an application that describes the prior and subsequent positions with sufficient detail to allow the licensing authority to determine if further background checks or a new application is necessary; and

(3) the licensing authority determines within 15 days that the direct care provider's prior background check is sufficient for the position the direct care provider is going to take.

[8.8.3.11 NMAC - Rp, 8.8.3.11 NMAC, 03/31/06; A, 04/15/08]

NEW MEXICO ENVIRONMENT DEPARTMENT

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 12 SANITARY PRO- JECTS

PART 2 BOARD OF DIREC- TOR TRAINING REQUIREMENTS

20.12.2.1 ISSUING AGENCY:
New Mexico Environment Department.
[20.12.2.1 NMAC - N, 4/15/2008]

20.12.2.2 SCOPE: This part governs the training required of members of the board of directors of mutual domestic associations pursuant to the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978.

[20.12.2.2 NMAC - N, 4/15/2008]

**20.12.2.3 STATUTORY
AUTHORITY:** 20.12.2 NMAC is adopted pursuant to the Sanitary Projects Act, Sections 3-29-6 and 3-29-9 NMSA 1978.

[20.12.2.3 NMAC - N, 4/15/2008]

20.12.2.4 DURATION :
Permanent.

[20.12.2.4 NMAC - N, 4/15/2008]

20.12.2.5 EFFECTIVE DATE:
April 15, 2008, unless a later date is cited at the end of a section.

[20.12.2.5 NMAC - N, 4/15/2008]

20.12.2.6 OBJECTIVE: The purposes of this part are:

A. to standardize the requirement for training and provide minimum criteria for training of members of the board of directors of mutual domestic associations pursuant to the act;

B. to encourage board members to seek additional training to better understand their roles and responsibilities pursuant to the act; and

C. to encourage technical assistance providers to develop training courses and provide guidelines for the content of those courses.

[20.12.2.6 NMAC - N, 4/15/2008]

20.12.2.7 DEFINITIONS:

A. "Act" means the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978.

B. "Board of directors" or "board members" means the directors elected by the mutual domestic association in accordance with its certificate of association and bylaws and responsible for the administration, operation, and maintenance of the association.

C. "Department" means the New Mexico environment department.

D. "Mutual domestic association" means an association organized under the provisions of the act.

E. "Secretary" means the secretary of the New Mexico environment department, the secretary's designee, or any person who properly assumes the role of the secretary in the event of the secretary's recusal or disqualification.

F. "Technical service provider" means any individual, business, learning institution, or entity to include the department that provides assistance in the form of department approved training to any mutual domestic association.

[20.12.2.7 NMAC - N, 4/15/2008]

20.12.2.8 POWERS AND DUTIES OF DEPARTMENT AND SEC- RETARY:

A. The department shall exercise all powers and duties prescribed under this part.

B. The secretary shall have the authority to take all measures necessary to review and approve specific training course content developed by the department or a technical service provider and act on behalf of the department.

[20.12.2.8 NMAC - N, 4/15/2008]

20.12.2.9 INITIAL AND CON- TINUING TRAINING TOPICS:

A. The following topics are the minimum required subject areas for initial training of mutual domestic board of director members:

(1) responsibilities of governing bodies (certificate of association, bylaws, election procedures and Governmental Conduct Act);

(2) Sanitary Projects Act;

(3) Safe Drinking Water Act and drinking water regulations;

(4) Utility Operator Certification regulations;

(5) Open Meetings Act;

(6) Inspection of Public Records

Act;

(7) Audit Act and Requirements for Contracting and Conducting Audits of Agencies;

(8) State Procurement Code;

(9) office of the state engineer reports and requirements; and

(10) basic accounting, budgeting, and rate setting.

B. The department shall maintain a list of approved courses for continuing training.

[20.12.2.9 NMAC - N, 4/15/2008]

20.12.2.10 APPLICATION OF TRAINING REQUIREMENTS:

A. Board members shall

complete a minimum of twelve hours of initial training:

(1) within two years of election or appointment to a board of directors and shall complete a minimum of six hours of training within the first year; and

(2) within two years of re-election, or appointment to a board of directors after interruption in service on a board greater than four years and shall complete a minimum of six hours completed the first year.

B. To maintain certification after completion of the initial training, board members must complete a total number of credits equivalent to two hours of continuing training during each year of their elected or appointed term. Any board member may carry up to six hours of excess credits earned over to the next compliance year(s) within the board member's term of office. Excess credits may not be carried over to a board member's subsequent term of office.

[20.12.2.10 NMAC - N, 4/15/2008]

20.12.2.11 TRACKING AND RECORDATION OF INITIAL AND CONTINUING TRAINING:

A. Mutual domestic associations shall track and record the required and continuing training received by members of their board of directors, including the following information:

(1) course title and content shall be recorded for each board member;

(2) total course hours shall be recorded for each board member; and

(3) date, location and provider of the training shall be recorded for each board member.

B. Mutual domestic associations shall submit to the department a certificate of compliance with the requirement for board training as part of the member accountability report required by the act demonstrating compliance of each board member with the requirements for the initial and continuing training.

C. At the conclusion of any training, a certificate of completion shall be issued to the board member by the technical service provider or entity providing the training that documents the date and location of training, course title and description, total hours of training for each topic, name of the trainer or trainers.

D. Technical service providers will submit to the department a summary of each training event including the date(s) and location(s) of training, course title and description, total hours of training for each topic, name of the trainer or trainers, and a list of attendees that successfully completed the training and the water system they represent. The information reported to the department shall be in

an electronic format as directed by the department.

[20.12.2.11 NMAC - N, 4/15/2008]

20.12.2.12 APPROVAL OF COURSE CONTENT:

A. The department shall approve in writing all training courses and associated credit hours intended to comply with this part.

B. Technical service providers shall submit proposed training to the secretary for approval at least 30 days in advance of any proposed class. Proposals will include a description of course content and time allotted to each topic, and total course credit hours.

C. Each initial course shall consist of all or some of the topics listed in Subsection A of 20.12.2.9 NMAC above.

D. Each continuing training course shall be approved by the department.

[20.12.2.12 NMAC - N, 4/15/2008]

20.12.2.13 EFFECTIVE COMPLIANCE DATE:

A. This part shall become effective 12 months after promulgated.

B. Training approved by the department and attended by mutual domestic board members in the 12 months prior to the promulgation of this part shall be credited to board members toward compliance with the requirements of this part.

[20.12.2.13 NMAC - N, 4/15/2008]

HISTORY OF 20.12.2 NMAC:

[RESERVED]

NEW MEXICO DEPARTMENT OF HEALTH PUBLIC HEALTH DIVISION

TITLE 7 HEALTH CHAPTER 34 MEDICAL USE OF MARIJUANA PART 2 ADVISORY BOARD RESPONSIBILITIES AND DUTIES

7.34.2.1 ISSUING AGENCY:
New Mexico Department of Health, Public Health Division.

[7.34.2.1 NMAC - N, 04/15/2008]

7.34.2.2 STATUTORY AUTHORITY: These requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the authority granted under the Department of Health Act, Section 9-7-6E and the Lynn and Erin Compassionate Use Act, Sections 26-2B-1 through 26-2B-7, (NMSA 2007).

[7.34.2.2 NMAC - N, 04/15/2008]

7.34.2.3 SCOPE: This part gov-

erns the membership, duties, responsibilities and public hearing proceedings of the medical marijuana advisory board.

[7.34.2.3 NMAC - N, 04/15/2008]

7.34.2.4 DURATION:
Permanent.

[7.34.2.4 NMAC - N, 04/15/2008]

7.34.2.5 EFFECTIVE DATE:
04/15/2008, unless a later date is cited at the end of a section.

[7.34.2.5 NMAC - N, 04/15/2008]

7.34.2.6 OBJECTIVE: The objective of this part is to establish membership, duties, responsibilities, and public hearing procedures that govern the medical marijuana advisory board proceedings.

[7.34.2.6 NMAC - N, 04/15/2008]

7.34.2.7 DEFINITIONS:

A. "Act" means the Lynn and Erin Compassionate Use Act, Sections 26-2B-1 through 26-2B-7, (NMSA 2007).

B. "Adequate supply" means an amount of marijuana, in any form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's designated caregiver that is determined by the department to be no more than reasonably necessary to ensure the uninterrupted availability of marijuana for a period of three (3) months which is derived solely from an intrastate source. An adequate supply shall not exceed six (6) ounces of useable marijuana, four (4) mature plants and twelve (12) seedlings or a three (3) month supply of topical treatment.

C. "Advisory board" means the medical marijuana advisory board consisting of eight (8) practitioners representing the fields of but not limited to neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology.

D. "Consent to release of medical information form (MCP-62007-006)" means a signed qualified patient or designated caregiver authorization form to release specific medical information relating to the use of marijuana.

E. "Debilitating medical condition" means:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue

of the spinal cord, with objective neurological indication of intractable spasticity;

- (5) epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

(7) admitted into hospice care in accordance with rules promulgated by the

department; or

(8) any other medical condition, medical treatment or disease as approved by the department; and

(9) which results in pain, suffering or debility for which there is credible evidence that medical use marijuana could be of benefit.

F. "Department" means the department of health.

G. "Designated caregiver" means a resident of New Mexico who is at least eighteen (18) years of age and who has been designated by the patient's practitioner or qualified patient as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the use of marijuana pursuant to the provisions of the act.

H. "Designated caregiver application form (MCP-62007-003)" means the registry identification card application form provided by the medical cannabis program.

I. "Division" means the public health division of the department of health.

J. "Mature plant" means a harvestable female marijuana plant that is flowering.

K. "Medical cannabis program coordinator" means the administrator of the New Mexico department of health, public health division medical cannabis program.

L. "Medical cannabis program" means the administrative body of the New Mexico public health division charged with the management of the medical cannabis program, to include issuance of registry identification cards, licensing of producers and distribution systems, administration of public hearings and administration of informal administrative reviews.

M. "Medical provider certification for patient eligibility form (MCP-62007-002)" means a written certification form provided by the medical cannabis program signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition as defined by the act or this part and would be anticipated to benefit from the use of marijuana.

N. "Minor" means an individual less than eighteen (18) years of age.

O. "Participant enrollment form (MCP-62007-001)" means the registry identification card application form for adult qualified patient applicants provided by the medical cannabis program.

P. "Petitioner" means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment or disease

to be added to the list of debilitating medical conditions that qualify for the use of marijuana.

Q. "Practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 et seq., NMSA (1978).

R. "Usable marijuana" means the dried leaves and flowers of the female marijuana plant, topical treatment or mixture or preparation thereof, but does not include the seedlings, seeds, stalks, and roots of the plant.

S. "Qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the act or this part.

T. "Representative" means an individual designated as the petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker pursuant to the Uniform Health Care Decisions Act, Sections 24-7A-1 et seq. (NMSA 2007).

U. "Secretary" means the secretary of the New Mexico department of health.

V. "Seedling" means a male or female marijuana plant that is not flowering.

W. "Technical evidence" means scientific, clinical, medical or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

X. "Topical treatments" means a transcutaneous therapeutic marijuana extract formulation comprised of water, short carbon chains alcohol, dimethylsulfoxide, polyethylene glycol, polypropylene glycol, glycerin, mineral oil and mixtures thereof.

[7.34.2.7 NMAC - N, 04/15/2008]

7.34.2.8 ADVISORY BOARD MEMBERSHIP REQUIREMENTS AND RESPONSIBILITIES:

A. Advisory board membership. The advisory board shall consist of eight (8) practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology. The practitioners shall be nationally board-certified in their area of specialty and knowledgeable about the use of marijuana. The members shall be chosen for appointment by the secretary from a list proposed by the New Mexico medical society.

B. Duties and responsibilities. The advisory board shall convene at least twice (2) per year to review and rec-

ommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis; issue recommended quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and designated caregivers; and to accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis and all lawful privileges under the act and implementing rules.

C. Advisory board membership term. Each member of the advisory board shall serve a term of two (2) years from the date of appointment by the secretary. No member may be removed prior to the expiration of his or her term with out a showing of good cause by the secretary.

D. Chairperson elect. The advisory board shall elect by majority vote cast of the eight (8) member board a chairperson and alternate. The chairperson or alternate shall exercise all powers and duties prescribed or delegated under the act or this part.

(1) Public hearing responsibilities. The chairperson shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The chairperson shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial resolution of issues arising during the public hearing proceedings or in any public meeting in which a quorum of the advisory board are present.

(2) Voting rights. The chairperson shall only vote in cases of a tie among advisory board members.

(3) Delegation of chair. The chairperson may delegate their responsibility to an alternate. The alternate shall exercise all powers and duties prescribed or delegated under the act or this part.

E. Per diem and mileage. All advisory board members appointed under the authority of the act or this part, will receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act, Sections 10-8-1 et seq., (NMSA 1978). [7.34.2.8 NMAC - N, 04/15/2008]

7.34.2.9 PETITIONS REQUIREMENTS:

A. Petition requirements. The advisory board may accept and review petitions from any individual or association of individuals requesting the addition of a new medical condition, medical treatment or disease for the purpose of participating in the medical cannabis program and all lawful privileges under the act. Except as otherwise provided, a petitioner filing a petition shall file the originals and eight (8) copies

with the medical cannabis coordinator by either personal delivery, express or first class mail. In order for a petition to be processed and forwarded to the advisory board the following information shall be submitted to the medical cannabis program coordinator.

(1) Petition format. Unless otherwise provided by this part or by order of the hearing officer, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed double-sided, if possible, and where appropriate, the first page of every document shall contain a heading and caption. The petitioner shall include in the petition documents a narrative address to the advisory board, which includes:

(a) petition caption stating the name, address and telephone number of the petitioner and the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions;

(b) an introductory narrative of the individual or association of individuals requesting the inclusion of a new medical condition, medical treatment or disease to include the individual or association of individuals' relationship or interest for the request whether that interest is professional or as a concerned citizen;

(c) the proposed benefits from the medical use of cannabis specific to the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions listed under the act; and

(d) any additional supporting medical, testimonial, or scientific documentation.

(2) Statement of intent to present technical evidence. If the petitioner wishes to present technical evidence at the hearing the petition shall include a statement of intent. The statement of intent to present technical evidence shall include:

(a) the name of the person filing the statement;

(b) the name of each witness;

(c) an estimate of the length of the direct testimony of each witness;

(d) a list of exhibits, if any, to be offered into evidence at the hearing; and;

(e) a summary or outline of the anticipated direct testimony of each witness.

B. Qualified patient applicant petitioner. If the petitioner is submitting their requests as a potential qualified patient applicant the petitioner shall attach an original medical practitioner's certification for patient eligibility form (MCP-62007-002) provided by the medical cannabis program coordinator which includes the following information.

(1) The name, address, telephone number and clinical licensure of the petitioner's practitioner.

(2) The petitioner's name, date of birth.

(3) The medical justification for practitioner's certification of the petitioner's debilitating medical condition.

(4) The practitioner's signature and date of signature.

(5) The name, address and date of birth of the petitioner.

(6) The name, address and telephone number of the petitioner's practitioner.

(7) The name, address and date of birth of the petitioner's designated caregivers, if applicable.

(8) A reasonable xerographic copy of the petitioner's New Mexico driver's license photograph or comparable New Mexico state or federal issued photo identification card verifying New Mexico residence.

(9) Documented parental consent if applicable to the petitioner.

(10) If applicable the petitioner's potential debilitating medical condition.

(11) The length of time the petitioner has been under the care of the practitioner providing the medical provider certification for patient eligibility.

(12) The petitioner's signature and date.

(13) A signed consent for release of medical information form (MCP-62007-006) provided by the medical cannabis program.

C. Petitioner confidentiality. The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a public hearing petition request. Individual names on the list shall be confidential and not subject to disclosure, except:

(1) to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of the act or this part;

(2) as provided in the federal Health Insurance Portability and Accountability Act of 1996.

D. Department notification. The medical cannabis program coordinator shall review each petition request and within reasonable time after receipt issue notice of docketing by certified mail upon the petitioner, each advisory board member, and the advisory board legal counsel. The notice of docketing shall contain the petition caption and docket number, the date upon which the petition was received and scheduling date of the advisory board public hearing. A copy of this rule shall be included with a notice of docketing sent to

the petitioner.

E. Examination allowed. Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any public hearing proceeding. Inspection shall be permitted in accordance with the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 et seq., (NMSA 1978), but may be limited by the Health Insurance Portability and Accountability Act of 1996. Documents subject to inspection shall be made available by the medical cannabis program coordinator, as appropriate. Unless waived by the department, the cost of duplicating documents or tapes filed in any public hearing proceeding shall be borne by the person seeking the copies.

F. Notice of withdrawal. A petitioner may withdraw a petition at any time prior to a decision by the advisory board by filing a notice of withdrawal with the medical cannabis program coordinator. [7.34.2.9 NMAC - N, 04/15/2008]

7.34.2.10 ADVISORY BOARD PUBLIC HEARING PROCEDURES:

A. Public hearing requirement. The advisory board shall convene by public hearing at least twice (2) per year to accept and review petitions requesting the inclusion of medical conditions, medical treatments or diseases to the list of debilitating medical conditions. Any meeting consisting of a quorum of the advisory board members held for the purpose of evaluating, discussing or otherwise formulating specific opinions concerning the recommendation of a petition filed pursuant to this rule, shall be declared a public hearing open to the public at all times.

B. Location of the public hearing. Unless otherwise ordered by the advisory board the public hearing shall be in held in the city of Santa Fe, New Mexico at a location sufficient to accommodate the anticipated audience.

C. Public hearing notice. The medical cannabis program coordinator shall, upon direction from the advisory board chairperson, prepare a notice of public hearing setting forth the date, time and location of the hearing, a brief description of the petition, and information on the requirements for public comment or statement of intent to present technical evidence, and:

(1) no later than thirty (30) days prior to the hearing date, send copies, with requests for publication, to at least one newspaper of general circulation and other means the department determines an acceptable manner of notice;

(2) mail a copy to each interested

participant who has filed an entry of appearance for public comment or who has expressed, in writing to the department or the advisory board, an interest in the public hearing that is the subject of the petition;

(3) immediately upon receipt of an entry of appearance to present public comment or technical evidence that is received after the initial mailing, mail a copy to such interested participant; and

(4) file an affidavit certifying how and when notice was given with a copy of the notice of hearing and affidavits of publication attached.

D. Public hearing agenda. The department shall make available an agenda containing a list of specific items to be discussed or information on how the public may obtain a copy of such agenda.

E. Postponement of hearing. Request for postponement of a public hearing will be granted, by the advisory board for good cause shown.

F. Statement of intent to present technical evidence. Any individual or association of individuals who wish to present technical evidence at the hearing shall, no later than fifteen (15) days prior to the date of the hearing, file a statement of intent. The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) indication of whether the person filing the statement supports or opposes the petition at issue;

(3) the name of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary or outline of the anticipated direct testimony of each witness.

G. Ex parte discussions. At no time after the initiation and before the conclusion of the petition process under this part, shall the department, or any other party, interested participant or their representatives discuss ex parte the merits of the proceeding with any advisory board member.

H. Public hearing process. The advisory board chairperson shall conduct the public hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

(1) A quorum of the advisory board shall consist of three (3) voting members.

(2) The advisory board chairperson or alternate shall convene each public hearing by:

(a) introduction of the advisory

board members;

(b) statutory authority of the board;

(c) statement of the public hearing agenda; and

(d) recognition of the petitioner.

(3) Petitioner comment period.

The petitioner or by representative may present evidence to the advisory board. The advisory board shall only consider findings of fact or scientific conclusions of medical evidence presented by the petitioner or by representative to the advisory board prior to or contemporaneously with the public hearing.

(4) Public comment period. The advisory board may provide for a public comment period. Public comment may be by written comment, verbal or both.

(a) Written comment. Any individual or association of individuals may submit written comment to the advisory board either in opposition or support of the inclusion of a medical conditions, medical treatments or diseases to the existing list of debilitating medical conditions contained under the act. All written comment shall adhere to the requirements of Subsection F of this section.

(b) Public comment. Any member of the general public may testify at the public hearing. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.

I. Recorded minutes.

Unless the advisory board orders otherwise the hearing will be tape recorded. The advisory board shall keep recorded minutes of all its public hearings. The recorded minutes shall include at a minimum the date, time and place of the public hearing, the names of board members in attendance and those absent, the substance of the petition considered and a record of any decisions and votes taken that show how each member voted. Any person, other than the advisory board, desiring a copy of a transcript must order a copy from the medical cannabis program coordinator. Any person, other than the advisory board, desiring a copy of hearing tapes must arrange copying with the medical cannabis program coordinator at their expense.

[7.34.2.10 NMAC - N, 04/15/2008]

7.34.2.11 ADVISORY BOARD RECOMMENDATION TO THE DEPARTMENT:

A. Advisory board recommendation. Upon final determination the advisory board shall provide to the secretary a written report of finding, which recommends either the approval or denial of

the petitioner's request. The written report of findings shall include a medical justification for the recommendation based upon the individual or collective expertise of the advisory board membership. The medical justification shall delineate between the findings of fact made by the advisory board and scientific conclusions of credible medical evidence.

B. Department final determination. The department shall notify the petitioner by certified mail within ten (10) days of the secretary's determination. A denial by the secretary regarding the inclusion of a medical conditions, medical treatments or diseases to the existing list of debilitating medical conditions contained under the act shall not represent a permanent denial by the department. Any individual or association of individuals may upon good cause re-petition the advisory board. All requests shall present new supporting findings of fact, or scientific conclusions of credible medical evidence not previously examined by the advisory board.

[7.34.2.11 NMAC - N, 04/15/2008]

7.34.2.12 SEVERABILITY: If any part or application of these rules is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Failure to promulgate rules or implement any provision of these rules shall not interfere with the remaining protections provided by these rules and the act.

[7.34.2.12 NMAC - N, 04/15/2008]

HISTORY OF 7.34.2 NMAC:
[RESERVED]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an emergency amendment to 11.4.12 NMAC, Section 8, effective 4-1-08.

The statutory mission of the Workers' Compensation Administration is to assure the quick and efficient delivery of benefits to an injured worker at a reasonable cost to employers who are subject to the insurance requirements of the Workers' Compensation Act. Under existing Uninsured Employers' Fund (UEF) procedures, entitlement to benefits involves a two part process, both of which can be fairly lengthy.

The first process requires a determination that the worker is eligible for benefits. This determination includes a finding that worker was a statutory employee on the date of the accident and that his employer was required to carry workers' compensation insurance and failed to do so. Either worker or employer can appeal the eligibility

determination requiring additional time for completion.

Once the eligibility determination is finalized, the claim progresses to the second process, which is the compensability determination by the UEF's outside adjusting company to assure the job accident arose out of and within the course and scope of employment.

The WCA has determined that its mission may be better accomplished if the two part process is combined for six months during which time all first time filed claims for UEF benefits, on or after the effective date of this emergency rule, will be processed by the Clerk of the Court in the same manner as non-UEF claims and subject to the procedures set forth in NMSA 1978, Section 52-5-5.

11.4.12.8 PROCEDURES FOR SUBMISSION OF CLAIMS: The workers' compensation administration is initiating a pilot program where the eligibility of any UEF claims filed on or after April 1, 2008, will be determined at mediation pursuant to NMSA 1978, Section 52-5-5. Subsections A through G will apply to claims filed before April 1, 2008. Subsections H through J will apply to all claims filed on or after April 1, 2008. All other sections of Part 12 remain unchanged and apply to all claims.

A. Claims may be submitted by any written request for payment addressed to the uninsured employers' fund that states the name, social security number and address of the injured worker, the name and address of the employer for whom the worker was working when the worker was injured or became ill and the date of injury or onset of occupational illness.

(1) If a claim for benefits is submitted to the clerk on a complaint form and names the fund as a party, the clerk will not accept such complaints for filing or assign the complaint for mediation until an eligibility determination is made and is final, notwithstanding the provisions of any other rule.

(2) The clerk is authorized and directed to transfer any complaint naming the fund to the fund administrator for eligibility determination. The clerk shall date stamp the complaint upon receipt. No further proceedings on the complaint shall take place, until the eligibility determination is made and is final, notwithstanding the provisions of any other rule.

(3) The date of presentation to the fund shall be deemed to be the earliest date shown on the claim or complaint by an official WCA date stamp.

(4) If a claim is presented to

the fund administrator prior to the running of the statute of limitations, the date of presentation shall toll the statute of limitations for purposes of filing against the fund.

B. All claims naming the fund as a party shall be submitted to the fund administrator for an eligibility determination.

(1) Only those claims for injuries or illnesses that arose from accidents or exposures occurring on or after June 22, 2003, shall be eligible to make claims against the fund.

(2) Only claims that would have been subject to the terms of the Workers' Compensation Act or Occupational Disease Disablement Law at the time of the injury or exposure shall be eligible to make claims against the fund.

(3) Only claims by workers employed by those employers who, despite the obligation to do so, were not insured pursuant to the Workers' Compensation Act shall be eligible to make claims against the fund.

(4) A worker shall not be eligible to make a claim against the fund if the worker has filed a valid election pursuant to Section 52-1-7 NMSA 1978.

(5) No claim that is eligible for payment by an insurer's guaranty fund, a self-insurer's guaranty fund, or pursuant to the joint and several liability provisions contained in the by-laws or other authorizing documents of a certified group self-insurer shall be eligible to make claims against the fund unless that source of payments is demonstrated by the worker to be insolvent and unable to assume the claim.

(6) A district court determination that the employer of a worker making the claim was not insured at the time of the worker's injury or occupational illness shall be conclusive with respect to the issue of insurance coverage only. In such cases, all other eligibility issues are reserved for the fund.

C. The fund shall notify the parties of the eligibility determination in writing, via certified mail, return receipt requested, at the addresses shown on the claim within fifteen (15) working days of receipt of the notification of the claim against the fund as determined by the earliest date stamp appearing on the face of the claim. If the claim is not eligible, the notice shall inform the worker why the claim is not eligible.

(1) Failure to claim the notice of denial from the post office shall not operate to toll the time limits set herein.

(2) Failure to claim the notice will be treated as actual delivery for purposes of further proceedings upon return of the notice to the WCA by the post office.

D. If a party wants a

review of the eligibility determination, a request for review shall be filed with the clerk within fourteen (14) days from the date of actual or constructive receipt of the eligibility determination. The request for review shall contain all the information required in Rule 11.4.12.8 NMAC and shall specify the reason or reasons for disagreement with the eligibility determination.

(1) The director or his designee shall conduct such hearing without undue delay.

(a) The director or his designee shall hold a hearing on any request for review of an eligibility determination.

(b) At any hearing on eligibility, the claimant shall have the burden of proving that the claim arose under the Workers' Compensation Act or Occupational Disease Disablement Law and that the employer was uninsured.

(c) At any hearing on eligibility, the records of the WCA shall be rebuttably presumed to establish the insurance status of the employer as of the date of injury.

(d) At any hearing on eligibility, the rules of evidence shall be relaxed to the extent necessary to achieve substantial justice.

(e) With respect to any hearing on eligibility, no pre-hearing discovery or motions practice shall be permitted without specific authorization from the director or his designee.

(f) Telephonic and video conferencing appearances shall be permitted, to the extent permitted by law, to facilitate the appearance of the parties.

(2) The director or his designee shall issue an order within 15 working days of the hearing, which order shall be transmitted to the parties via first class US mail at their last known address.

(3) If a party wishes to contest the decision of the director or his designee, he or she may file a writ of certiorari to the district court to appeal the decision. Proceedings for a writ of certiorari shall be governed by SCRA 1-075.

E. After the determination of eligibility is made, if either party wishes to resume resolution of the dispute brought in the complaint, that party shall file a request to resume dispute resolution with the clerk.

F. If a mediator or WCJ determines that it is more likely than not that a complaint before them presents a claim that is eligible for payment by the uninsured employers' fund, the mediator or WCJ shall amend the caption of the complaint to name the fund as a party. Any complaint amended pursuant to this provision shall be forthwith returned to the WCA clerk for further processing pursuant to the

provisions of this rule, notwithstanding the provisions of any other rule.

G. The fund may seek a stay of the time limits prescribed in this part, for good cause shown, by presenting the request to the director or designee with notice to all parties to the claim against the fund.

H. For all claims filed on or after April 1, 2008, claims shall be submitted on a complaint for workers' compensation benefits naming the uninsured employers' fund. The complaint shall contain the name, social security number and address of the injured worker, the name and address of the employer for whom the worker was working when the worker was injured or became ill and the date of injury or onset of occupational illness.

(1) The date of presentation to the fund shall be deemed to be the earliest date shown on the claim or compliant by an official WCA date stamp.

(2) If a claim is presented to the fund administrator prior to the running of the statute of limitations, the date of presentation shall toll the statute of limitations for purposes of filing against the fund.

I. Eligibility for benefits for all claims filed on or after April 1, 2008.

(1) The determination of worker's eligibility for benefits shall be made at the mediation conference required by NMSA 1978, Section 52-5-5.

(2) Only those claims for injuries or illnesses that arose from accidents or exposures occurring on or after June 22, 2003, shall be eligible to make claims against the fund.

(3) Only claims that would have been subject to the terms of the Workers' Compensation Act or Occupational Disease Disablement Law at the time of the injury or exposure shall be eligible to make claims against the fund.

(4) Only claims by workers employed by those employers who, despite the obligation to do so, were not insured pursuant to the Workers' Compensation Act shall be eligible to make claims against the fund.

(5) A worker shall not be eligible to make a claim against the fund if the worker has filed a valid election pursuant to Section 52-1-7 NMSA 1978.

(6) No claim that is eligible for payment by an insurer's guaranty fund, a self-insurer's guaranty fund, or pursuant to the joint and several liability provisions contained in the by-laws or other authorizing documents of a certified group self-insurer shall be eligible to make claims against the fund unless that source of payments is demonstrated by the worker to be insolvent and unable to assume the claim.

(7) A district court determination that the employer of a worker making

the claim was not insured at the time of the worker's injury or occupational illness shall be conclusive with respect to the issue of insurance coverage only. In such cases, all other eligibility issues are reserved for the fund.

J. If a mediator or WCJ determines that it is more likely than not that a complaint before them presents a claim that is eligible for payment by the uninsured employers' fund, the mediator or WCJ shall amend the caption of the complaint to name the fund as a party. Any complaint amended pursuant to this provision shall be forthwith returned to the WCA clerk for further processing pursuant to the provisions of NMSA 1978, Section 52-5-5, notwithstanding the provisions of any other rule.

[11.4.12.8 NMAC - N, 10/15/03; A, 11/15/04; A/E, 4/1/08]

End of Adopted Rules Section

Other Material Related to Administrative Law

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for Architects

PO Box 509
Santa Fe, NM
505-982-2869

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, May 2, 2008. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

NEW MEXICO HOISTING OPERATORS LICENSURE EXAMINING COUNCIL

NOTICE OF MEETING

The New Mexico Hoisting Operators Licensure Examining Council will hold a regular meeting on Friday, May 16, 2008 - 1:30 p.m. at the Construction Industries Division - 5200 Oakland Avenue NE - Albuquerque, New Mexico 87113.

The New Mexico Operators Licensure Examining Council will discuss and vote on items that need attention. If you have any items for discussion, please submit them to the Executive Director, Carmen Gomez at the above address no later than May 9, 2008. A copy of the Agenda will be available at her office prior to said meeting.

If you are an individual with a disability who wishes to attend the meeting, but need a reader, amplifier, qualified sign language interpreter, any form of auxiliary aid or service to participate please call Ms. Gomez

at (505) 222-9809 at least two weeks prior to the meetings or as soon as possible.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC COMMENT

The Department is posting Form ACF #202 TANF Caseload Reduction Report on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html> for comment on the estimates and methodology used to complete the report.

Individuals wishing to provide comments or request a copy of the ACF #202 should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals may submit written or recorded comments. Written or recorded comments must be received no later than May 1, 2008 by 5:00 P.M. Please send comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to: michael.rogers@state.nm.us or via fax to 505-827-7259.

NEW MEXICO COMMISSION OF PUBLIC RECORDS HISTORICAL RECORDS ADVISORY BOARD

Commission of Public Records
New Mexico State Records Center &
Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

NOTICE OF REGULAR MEETING

The New Mexico Historical Records Advisory Board has scheduled a regular meeting for Friday, May 09, 2008 from 9:00 a.m. to 12:00 noon. The meeting will be held in the Commission Room of the New Mexico State Records Center and Archives, which is an accessible facility, at 1209 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 meeting, please contact

Randy Forrester at 505-476-7936 of the State Records Center and Archives at least one week prior to the meeting. Public documents, including the agenda and minutes will be available 24 hours before the meeting.

End of Other Related Material Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2008

Volume XIX	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 29
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 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 14
Issue Number 16	August 15	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 14
Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

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.