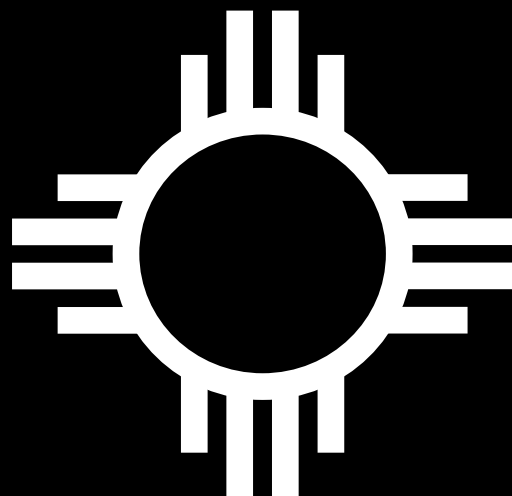


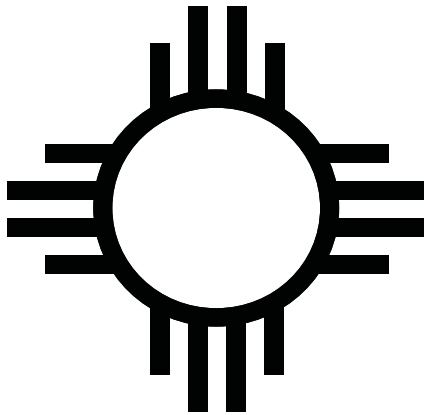
NEW MEXICO REGISTER



Volume XXI
Issue Number 3
February 12, 2010

New Mexico Register

Volume XXI, Issue Number 3
February 12, 2010



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

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Administrative Law Division
Santa Fe, New Mexico
2010

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New Mexico Register

Volume XXI, Number 3

February 12, 2010

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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.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, February 25, 2010**, beginning at 9:00 a.m., at the **Santa Fe Community College - Jemez Rooms 2-3, 6401 Richards Avenue, Santa Fe, New Mexico 87508**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; Fiscal Year 2010 2nd Quarter Depredation Report; Presentation of the Fiscal Year 2009 Financial Statements and Audit Report; General Public Comments (comments limited to 3 minutes); Proposed Big Game, Turkey, Migratory Bird, Upland Game and Associated Rules Development Strategy; Development of a New Rule Titled the Antelope Private Land Use System Rule; Initiation of the Biennial Review; Disposal of Forfeited and No Longer Utilized Weapons; Disposal of Department Aircraft; Legislative Update; and Closed Executive Session.

The following rules are available for public comment and consideration for adoption by the Commission:

* Designate Reasonable Notice to the Public for Commission Meetings held During the 2010 Calendar Year (19.30.3, NMAC); and

* Proposed Changes to the Fisheries Rule (19.31.4, NMAC).

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8029. Please contact Ms. Quintana at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please also contact Ms. Quintana if a summary or other type of accessible form is needed.

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **March 15th - 16th, 2010 at 9:00 a.m. in the Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM** for the purpose of conducting a regular Board meeting.

Interested persons wishing to comment and or present proposed language regarding rule hearings must submit documentation via fax, mail or email to William Harvey, William.Harvey@state.nm.us or Debra Wilhite, debra.wilhite@state.nm.us no later than 72 hours prior to board meeting, if in attendance please provide 15 copies for distribution to board members.

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda and any proposed rule, which will be available March 5, 2010. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting March 5, 2010 through the Board's website: www.rld.state.nm.us/pharmacy.

The Board will address:

Rule Hearings:

16.19.4.17 NMAC Pharmacists

16.19.22. NMAC Support Personnel and Pharmacy Technicians

Hearings, Board Orders and Surrenders:

Approval of Applications:

Public Requests:

Committee Reports:

Other Board Matters:

*Executive Director's Report:
Case presentations*

Published in the Albuquerque Journal February 16, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE)
 APPLICABILITY OF THE LOCATION)
 CONTROL STATUTE)

Case No. 09-00231-
 UT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("NMPRC" or "Commission") proposes to promulgate a new rule regarding the applicability of the Location Control Statute, NMSA 1978 Section 62-9-3. This matter comes before the Commission upon the Workshop Report that is filed in this proceeding on January 21, 2010 by the Office of General Counsel Staff; whereupon, having reviewed the record and being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has jurisdiction over electric utility companies in the State of New Mexico. N.M. Const., Art. XI, Section 2, NMSA 1978 Section 62-1-1, *et seq.* The proposed new rule would be adopted under the authority granted the Commission by the New Mexico Constitution, Art. XI, Section 2, the Public Regulation Commission Act (*see* NMSA 1978, Sections 8-8-4 and 8-8-15), and the State Rules Act, NMSA 1978, Section 14-4-2(C).

2. The Location Control Statute, 1978 NMSA Section 62-9-3 ("Statute") states, in pertinent part:

"A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services. It is recognized that such plants, lines and facilities will be needed to meet growing demands for electric services and cannot be built without in some way affecting the physical environment where these plants, facilities and transmission lines are located. The legislature therefore declares that it is the purpose of this section to provide for the supervision and control by the commission of the location within this state of new plants, facilities and transmission lines for the generation and transmission of electricity for sale to the public.

B. No person, including any municipality, shall begin the construction of any plant designed for or capable of operation at a capacity of three hundred thousand kilowatts or more for the generation of electricity for sale to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or of transmission lines in connection with such a plant, on a location within this state unless the location has been approved by the commission. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities designed for or capable of operations at a nominal voltage of two hundred thirty kilovolts or more, to be constructed in connection with and to transmit electricity from a new plant for which approval is required.

* * *
 D. No approval shall be required for additions to or modifications of an existing plant or transmission line.
 * * *

I. Upon consideration of the application and the standards set forth in Subsection G of this section, the commission may authorize construction, extension, rebuilding or improvement of the transmission line or facilities notwithstanding the prior disapproval of the county or municipal agency, board or commission. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting."

3. In 2004, the New Mexico Legislature enacted regulations to specify the contents of an application for approval of the location of a large capacity plant or transmission line pursuant to the Statute at 17.9.592 NMAC.

4. On March 31, 2009, in Case No. 08-00184-UT, the Commission issued

its Order on Issues Reserved for Future Disposition and on PNM's Exceptions to the Hearing Examiner's Recommended Decision, in which it ordered that a new case shall be docketed for the purpose of holding a workshop to develop guidance on the applicability of the Statute.

5. On June 18, 2009, the Commission issued an Order Docketing Workshop ("Workshop Order") commencing the workshop process. The Workshop Order stated, "[t]he scope of the workshop should encompass some of the issues raised in Case No. 08-00184-UT as well as issues raised in the course of the workshop. Issues should include the meaning of the terms "modification" and "addition" as used in the Statute, but not "transmission line" or "new plant for which approval is required", as these terms have already been defined in Commission Rule 592 (17.9.592 NMAC)".

6. Workshops were held on August 3, August 27, October 19, November 18, and December 7, 2009. Attendees included representatives from Public Service Company of New Mexico ("PNM"), Southwestern Public Service Company ("SPS"), El Paso Electric Company ("EPE"), Tri-State Generation and Transmission Association ("Tri-State"), Natural Resources Defense Council ("NRDC"), Coalition for Clean, Affordable Energy ("CCAEE"), Western Resources Advocates ("WRA"), the New Mexico Renewable Energy Transmission Authority ("RETA"), the New Mexico Attorney General's Office ("AG"), and the New Mexico Public Regulation Commission ("Commission") Staff ("Staff") and Office of General Counsel ("OGC").

7. On January 20, 2010, the Commission's Office of General Counsel ("OGC") filed the Workshop Report, which sets out the issues and results of the five workshop sessions that took place over the course of five months. The Workshop Report cites as the basis for the workshops the need for clarity concerning the application of the Statute, especially when activity that may be subject to the Statute could fall under the exception provision of the Statute above, at Section 62-9-3D as an addition or modification of an existing plant or transmission line. This need became apparent in the course of Case No. 08-00184-UT and was articulated in the June 18, 2009 Order Docketing Workshop, which stated that the scope of the Workshop should include the meaning of the terms "addition" and "modification".

8. According to the Workshop Report, workshop participants agreed that certain 'safe harbor' provisions should be adopted to identify certain

activities that would always fall under the definition of an addition or modification of the Statute and thus be exempt from its application. Workshop participants also agreed that certain provisions be included dealing with the aesthetics of materials used for transmission lines and consistency of structures, particularly visually, with the landscape of the area.

9. Workshop participants did not agree on whether the terms “addition” and “modification” should be defined. Specifically, the electric utilities opposed the inclusion of the definitions as either circular or employing words requiring further definition and as unnecessary on the basis that the safe harbor provision sufficiently described facility installations that constitute modification and additions.

10. Participants also did not agree on three of the eight activities proposed by the electric utilities as safe harbor activities. Specifically, Commission Staff (“Staff”) and the New Mexico AG opposed the inclusion in the list of safe harbor activities the following three provisions:

a) Erection of temporary facilities (for 12 months or less) within the existing right-of-way, or within 1,200 feet of the existing right-of-way, not adjacent to a developed residential, commercial or industrial area; and

b) Relocation of a transmission line up to three (3) miles in length and within the existing right-of-way, or within 1,200 feet of the existing right-of-way, not adjacent to a developed residential, commercial or industrial area.

For a third provision, Staff and AG partially agreed, objecting to the use of the terms modifications and additions, but agreeing to “replacement to transmission-related electric stations . . .” in the following provision:

c) Modifications, additions or replacements to transmission-related electrical stations located within the existing right-of-way, or within 1,200 feet of such electrical stations, not adjacent to a developed residential, commercial or industrial area.

11. The phrases “[e]rection of temporary facilities for 12 months or less” and “relocation of a transmission line up to three miles in length” were opposed by Staff and AG representatives as contrary to the purpose of the Statute and without substantial evidence to support their inclusion in the proposed rule. The phrase “[m]odifications or additions to transmission-related electrical stations” was

opposed by Staff and AG representatives on the basis that the phrase purports to provide an example of a safe harbor activity, which activity is generally described as “additions or modifications” in the language preceding the proposed examples. Therefore, use of the same phrase in one of the examples is circular and adds no additional information.

12. Workshop participants also did not agree on the inclusion in each safe harbor provision the phrase “or within 1,200 feet of the existing right-of-way”. Representatives of the Commission Staff and the AG opposed the phrase as being unsupported by substantial evidence, particularly with respect to effects on wildlife and wildlife habitat and contrary to the purpose of the Statute to take into consideration adverse effects upon the environment and quality of life of the people of the state.

12. Because the parties could not agree on a number of issues, they agreed to present two different versions of a draft rule to the Commission in the Workshop Report, one draft prepared by the participating utility companies (“Draft Rule A”) and the other prepared by Commission Staff (Draft Rule B”). Draft Rules A and B are attached to the Workshop Report.

13. In the interest of avoiding confusion to the public, the Commission should adopt one of the two versions of a draft rule. The Commission should adopt Draft Rule B as its Proposed Rule because it more closely follows the guidance given in the Workshop Order (i.e., to address the meaning of “modification” and “addition”) and because the remaining language it contains is not objected to by other parties. Additional language in Draft Rule A not included in Draft Rule B can be proposed as comments in the rulemaking process by the proponents of the provisions, who can, at that time, provide supporting evidence.

14. It has come to the Commission’s attention that two state agencies, the New Mexico Energy, Minerals and Natural Resources Department (“EMNRD”) and the New Mexico Game & Fish Department (“NMF&G”) were inadvertently left out of the Workshop process. These agencies should be requested to provide comments in the rulemaking process, as issues raised in the workshops implicate their areas of expertise.

15. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

16. All interested persons

should be afforded the opportunity to receive notice of, and to comment upon, the attached Proposed Rule and any other issues of relevance to this proceeding.

17. Remarks made during the Workshops, and any items of information that have been submitted heretofore, are not evidence and are not part of the record of the rulemaking. Any person having submitted such information who desires it to be considered hence as part of the rulemaking process should file it as a formal comment.

18. A copy of the proposed rule to be considered for promulgation is attached hereto as “Exhibit 1.” Additional copies of the proposed rule can be obtained from:

Mr. Ron X. Montoya
Records Management Bureau
1120 Paseo de Peralta
Santa Fe, New Mexico 87504
Telephone: (505) 827-6940.

IT IS THEREFORE ORDERED:

A. A rulemaking proceeding shall be, and hereby is, instituted in this proceeding.

B. The Commission seeks comment from all interested persons concerning whether the proposed rule, attached as an Exhibit to this Order, should be adopted.

C. This Notice of Proposed Rulemaking shall constitute due and lawful notice to all potentially interested persons.

D. Bruce Thompson, PhD, Energy, Minerals and Natural Resources Department and Robert S. Jenks, New Mexico Game and Fish Department, shall be included on the official Certificate of Service for this rulemaking.

E. Any person wishing to comment on the proposed rule may do so by submitting written comments no later than **February 22, 2010**. Any person wishing to respond to comments may do so by submitting written response comments no later than **March 8, 2010**. Comments suggesting changes to the proposed rule 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 provided in a format consistent with that of the New Mexico Administrative Code (“NMAC”).

F. The record in this case

shall close on the earlier of the date of a Final Order in this case or **April 23, 2010**.

G. All pleadings, including comments, shall bear the caption and case number set out on the first page of this Notice. Comments on the Proposed Rule shall be filed with the Commission's Records Division, at the address set out herein at ¶ 15

H. A public hearing on the proposed rule amendments, to be presided over by Commission Chairman David W. King or his designee, shall be held beginning at **1:00 P.M. on March 25, 2010**, at the offices of the Commission, at the following location:

4th Floor Hearing
Room
PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico
87501

I. All persons attending the hearing should be prepared to address the issues set forth herein. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ana C. Kippenbrock at 827-6947 at least 48 hours prior to the commencement of the Hearing.

J. Pursuant to NMSA 1978, Section 8-8-15(B), this Notice of Proposed Rulemaking, including Exhibit 1, shall be mailed at **least thirty days prior to the hearing date** to all persons who have made a written request for advance notice and to all electric utility companies subject to the jurisdiction of the Commission. Copies of this Notice of Proposed Rulemaking shall be provided promptly by e-mail or by facsimile transmission to any persons who have so requested.

K. This Notice of Proposed Rulemaking shall be published at least once at least thirty days prior to the hearing date in the New Mexico Register and two newspapers of regular circulation in the State of New Mexico. Affidavits attesting to the publication of this Notice of Proposed Rulemaking as described above shall be filed in this docket.

L. In addition, this Notice shall be posted on the Commission's official Website.

M. Copies of any forthcoming final order adopting a new

rule shall be mailed, along with copies of the particular rules amended, to all affected electric utility companies, all commentors in this case, and all individuals requesting such copies.

N. This Notice of Proposed Rulemaking is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 21st day of January, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION

DAVID W. KING, CHAIRMAN

JEROME D. BLOCK, VICE CHAIRMAN

JASON A. MARKS, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

SANDY JONES, COMMISSIONER

NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

**NEW MEXICO FINANCIAL
INSTITUTIONS DIVISION**

NOTICE OF FINANCIAL INSTITUTIONS DIVISION PROPOSED RULE

Notice is hereby given that the Financial Institutions Division of the Regulation and Licensing Department proposes to promulgate a new rule, Certification of Qualified Entities As Solar Energy Improvement Financing Institutions, 12.15.16 NMAC. The draft rule may be viewed at <http://www.rld.state.nm.us/news.html>. Interested persons shall file their written comments on the proposed rule by no later than 5:00 P.M. March 15, 2010. Comments on the proposed rule shall be sent to:

Maria Lujan, Licensing Specialist
Financial Institutions Division
Toney Anaya Building
2550 Cerrillos Road, 3rd Floor
Santa Fe, New Mexico 87505
Phone # 505-476-4692
Fax # 505-476-4670
Email address: Maria.lujan@state.nm.us

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

PRIVATE INVESTIGATIONS ADVISORY BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Private Investigations Advisory Board will hold a Rule Hearing on March 15, 2010 and will convene at 9:00 am. Following the Rule Hearing the New Mexico Private Investigations Advisory Board will convene a regular board meeting to adopt the rules and take care of regular business. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, 2nd floor, Rio Grande Room, Santa Fe, NM.

Portions of the meeting may be closed to the public while the Board is in Executive Session to discuss licensing matters pursuant to Section 10-15-1.H of the Open Meetings Act.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.48 NMAC: Part 1 General Provisions, Part 2 Requirements for Licensure, Part 3 Standards of Practice, Part 4 Mandatory Firearms Training, Part 5 Fees, Part 6 Continuing Education, Part 7 License Renewal, Inactive Status and Reinstatement

If you would like a copy of the proposed changes you may access the website at www.rld.state.nm.us after February 12, 2010 to get a draft copy. In order for Board members to review the comments in their meeting packets prior to the meeting, public comments must be received in writing no later than March 1st, 2010. Persons wishing to present their comments at the hearing will need to bring (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) 476-4650 at least two weeks prior to the meeting or as soon as possible.

Anita Villegas, Administrator
PO Box 25101- Santa Fe, New Mexico
87504

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

SAA Rule No. 95-13, Employment Programs for the Elderly (filed 04/13/95) repealed 02/12/2010 and replaced by 9.2.13 NMAC Employment Programs for Older Workers, effective 02/12/2010.

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS CHAPTER 2 AGE PART 13 EMPLOYMENT PROGRAMS FOR OLDER WORKERS

9.2.13.1 ISSUING AGENCY:
New Mexico Aging and Long-Term Services Department.
[9.2.13.1 NMAC - Rp, SAA Rule No. 95-13, 02/12/2010]

9.2.13.2 SCOPE: These rules apply to members of the public and organizations that apply to participate in one or more of the programs created in this part.
[9.2.13.2 NMAC - N, 02/12/2010]

9.2.13.3 STATUTORY AUTHORITY: NMSA 1978, Sections 9-23-1 et seq. and 28-4-1 et seq.
[9.2.13.3 NMAC - Rp, SAA Rule No. 95-13.1, 02/12/2010]

9.2.13.4 DURATION: Permanent.
[9.2.13.4 NMAC - N, 02/12/2010]

9.2.13.5 EFFECTIVE DATE: 02/12/2010, unless a later date is cited in the history note at the end of a section.
[9.2.13.5 NMAC - N, 02/12/2010]

9.2.13.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the federal and state funded programs administered by the employment programs bureau of the aging network division of the aging and long-term services department and to comply with Older Americans Act Sections 501 through 518, (codified as amended at 42 U.S.C. Section 3056); and implementing regulations, 20 CFR Part 641 (as amended).
[9.2.13.6 NMAC - N, 02/12/2010]

9.2.13.7 DEFINITIONS: The following words and terms, when used in this section, shall have the following

meanings unless the context clearly indicates otherwise.

A. "Aging network" means programs and services for older adults throughout New Mexico that receive federal or state funds under contract with the department or area agencies on aging. The aging network includes, but is not limited to, programs sponsored by tribal governments, local governments and private, non-profit organizations.

B. "Applicant" means a member of the public who completes an application to become a participant in one of the programs created in this part.

C. "Community service" means social, health, welfare and educational services; legal and other counseling services and assistance; library, recreational services, conservation, maintenance or restoration of natural resources, community betterment or beautification, pollution control or environmental quality efforts, economic development or other types of service, which the department approves, excluding building and construction, except that which is normally performed by the department, or work which primarily benefits private profit-making organizations.

D. "Department" means the New Mexico aging and long-term services department (ALTSD).

E. "Equitable distribution plan" means the process of allocating positions based on age and income census data as required pursuant to 20 CFR Sections 641.140, 641.360, 641.365 and 641.879 (Older Americans Act regulations as amended).

F. "Golden opportunities for life-long development (GOLD) mentor program" means a program administered by the department to provide civic engagement through community service and training opportunities for participants.

G. "Gold mentors" are participants in the gold mentor program; they provide life skills and employment assistance to clients working to overcome barriers.

H. "Host agency" is an agency or organization selected by the department where an eligible employment program participant is placed in a subsidized position for work experience and training.

I. "New Mexico senior employment program" means the state funded employment and training program designed to provide community service employment opportunities for older adults that enable them to remain actively engaged in their communities.

J. "Older Americans Act of 1965" (Older Americans Act) means

Sections 501 through 518, title V, "The Older American Community Service Employment Act", Pub. L. 89-73, as amended by Pub. L. 109-363, enacted Oct. 16, 2006, (codified as amended at 42 U.S.C. Section 3056), and implementing regulations, 20 CFR Part 641 (as amended).

K. "Participants" are applicants who:

(1) have been deemed eligible for training under the programs set forth in this part and have been placed in subsidized on-the-job training; or

(2) have been hired and placed in community service and training opportunities.

L. "Pay period" means the two-week period as established and published by the New Mexico department of finance and administration.

M. "Position" is an on-the-job training or community service opportunity created by one of the programs set forth in this part.

N. "Poverty level" is the level established and periodically updated by the United States department of health and human services.

O. "Program year" is the period of July 1 through June 30.

P. "Senior community service employment program" (SCSEP) means the federal employment and training program funded pursuant to the provisions of Title V of the Older Americans Act, sections 501 through 518.

Q. "Subsidized on-the-job training" is participation in the programs set forth in this part that fund wages for hours worked using federal or state monies.

R. "Supervisor" is the individual designated by the host agency or the department to oversee the work of a participant.

S. "Transition" is the movement of a participant from on-the-job training to unsubsidized employment.

T. "Unsubsidized employment" is work in the public or private sector not funded from one of the programs set forth in this part.

[9.2.13.7 NMAC - Rp, SAA Rule No. 95-13.2, 02/12/2010]

9.2.13.8 SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM (SCSEP):

A. Position allocation.

(1) The department will follow an equitable distribution plan pursuant to Section 507 of the Older Americans Act and 20 CFR Sections 641.140, 641.360, 641.365 and 641.879 (as amended) and endeavor to allocate positions to each county in New

Mexico based on the projected percentage of individuals meeting the eligibility requirements of this section.

(2) When allocating positions, the equitable distribution of all senior community service employment program resources available through federal contractors operating in New Mexico will be considered.

(3) When a participant exits subsidized on-the-job training and a vacancy occurs, the vacant position is removed from the host agency and will be placed in a statewide pool and reassigned as follows:

(a) any inequities in the equitable distribution plan will be noted and the most under-served counties will have priority to receive the position;

(b) applicants will be sought or taken from a waiting list, if one exists;

(c) federally-mandated priorities and preferences will be implemented in accordance with Section 518 of the OLDER AMERICANS ACT and 20 CFR Sections 641.515 through 641.530 (as amended);

(d) chosen applicants will be assessed for their employment goals;

(e) host agencies that provide training which matches applicant goals will be chosen;

(f) in the event of more than one host agency that matches applicant goals, priority will be given to the host agency that demonstrates ability to provide training resulting in the unsubsidized employment of participants.

B. Eligibility requirements are:

(1) an applicant shall be 55 years of age or older in order to be determined eligible, no applicant may be determined ineligible because of advanced age, and no upper age limitation may be used;

(2) an applicant's income shall meet the eligibility requirements specified in the Older Americans Act in order to be determined eligible;

(3) an applicant shall be a resident of New Mexico, unless a cross-border agreement with a neighboring state exists, in order to be determined eligible;

(4) any additional requirements of the Older Americans Act, such as that an applicant be unemployed, will be implemented; and

(5) after completing an application, an applicant may need to disclose additional information or submit to additional screening in order to qualify for a specific placement at the discretion of the department and the host agency, including, but not limited to: background checks or proof of applicable licensure; (for example, work with young children or vulnerable adults may require a criminal background check, large vehicle operation may require a special driver's license, operation of heavy

equipment or lifting heavy loads may require additional medical disclosure) failure to fully disclose information relevant to meeting the qualifications for a position may result in termination, change, or lack of placement.

C. An eligible applicant who has been accepted as a participant shall be offered a physical examination at the time of enrollment and annually thereafter. The participant may waive this benefit and shall do so in writing.

D. Senior community service employment program trainee participants are excluded from membership in the public employees retirement association.

E. Eligible participants shall be placed in on-the-job training positions that provide community service. Participants may not engage in political activities pursuant to Older Americans Act Section 502 (b)(1)(P) implemented at 20 CFR Section 641.836 (as amended).

F. Wages shall be at least the prevailing federal, state or local minimum wage, whichever is higher.

G. In compliance with the Fair Labor Standards Act of 1938, 29 U.S.C. Chapter 8 Section 201 et seq. (as amended), participants are not allowed to donate extra volunteer hours at work sites unless the volunteer work is substantially different than that required by their subsidized positions.

H. The department may transfer a participant from one host agency to another.

I. The department shall determine whether an agency or organization is eligible to be designated a host agency, pursuant to Older Americans Act Section 502(b)(1)(D) implemented at 20 CFR Sections 641.140 and 641.844 (as amended). Before a position can be assigned to the host agency, a proper agreement shall be executed.

J. The department shall develop and maintain policy and procedure manuals. Such manuals will designate participant benefits and other policies and procedures to enable the smooth operation of the program.

K. Participants shall be reimbursed mileage, per diem and other expenses only in accordance with policies and procedures developed by the department.

L. No waivers of the eligibility requirement under the senior community service employment program may be granted by the department.

[9.2.13.8 NMAC - Rp, SAA Rule No. 95-13.3, 02/12/2010]

9.2.13.9 NEW MEXICO SENIOR EMPLOYMENT PROGRAM:

A. The department will work in collaboration with area agencies on aging and other aging network providers to

allocate positions within each planning and service area.

B. Eligibility requirements are:

(1) an applicant shall be 55 years of age or older in order to be determined eligible, no applicant may be determined ineligible because of advanced age, and no upper age limitation may be used; and

(2) an applicant's income shall meet the income eligibility requirements specified in the Older Americans Act Section 518 Paragraphs (3) and (4) as implemented at 20 CFR Part 641 (as amended) in order to be determined eligible; and

(3) an applicant shall be a resident of New Mexico in order to be determined eligible;

(4) after completing an application, an applicant may need to disclose additional information or submit to additional screening in order to qualify for a specific placement at the discretion of the department and the host agency, including, but not limited to: background checks or proof of applicable licensure; (for example, work with young children or vulnerable adults may require a criminal background check, large vehicle operation may require a special driver's license, operation of heavy equipment or lifting heavy loads may require additional medical disclosure) failure to fully disclose information relevant to meeting the qualifications for a position may result in termination, change, or lack of placement.

C. An eligible applicant who has been accepted as a participant shall be offered a physical examination at the time of enrollment and annually thereafter. The participant may waive this benefit and shall do so in writing.

D. New Mexico senior employment program trainee participants are excluded from membership in the public employees retirement association.

E. Eligible participants shall not be placed in on-the-job training positions in which they engage in political or religious activities.

F. Wages shall be at least the prevailing federal, state or local minimum wage, -- whichever is higher.

G. In compliance with the Fair Labor Standards Act of 1938, 29 U.S.C. Chapter 8 Section 201 et seq. (as amended), participants are not allowed to donate extra volunteer hours at work sites unless the volunteer work is substantially different than that required by their subsidized positions.

H. The department may transfer a participant from one host agency to another.

I. The department shall determine whether an agency or organization is eligible to be designated a host agency. Before a position can be assigned to the host agency, a proper agreement shall be

executed.

J. The department shall develop and maintain policy and procedure manuals. Such manuals will designate participant benefits and other policies and procedures to enable the smooth operation of the program.

K. Participants shall be reimbursed mileage, per diem and other expenses only in accordance with policies and procedures developed by the department.

L. Waivers of age and income eligibility requirements may be granted by the department on a case-by-case basis.

[9.2.13.9 NMAC - Rp, SAA Rule No. 95-13.4, 02/12/2010]

9.2.13.10 GOLD MENTOR PROGRAM:

A. GOLD mentor positions are created as funding is available. Allocation of positions under this program is developed in consultation with funding entities. Considerations for allocation of positions may include the number of clients available for mentors to serve in a particular region and the availability of suitable office space.

B. Eligibility requirements are:

(1) GOLD mentors shall be 50 years of age or older in order to be deemed eligible;

(2) mentors shall be residents of New Mexico to be deemed eligible;

(3) there are no income eligibility criteria;

(4) after completing an application, an applicant may need to disclose additional information or submit to additional screening in order to qualify for a specific placement at the discretion of the department and the host agency, including, but not limited to: background checks or proof of applicable licensure; (for example, work with young children or vulnerable adults may require a criminal background check, large vehicle operation may require a special driver's license, operation of heavy equipment or lifting heavy loads may require additional medical disclosure) failure to fully disclose information relevant to meeting the qualifications for a position may result in termination, change, or lack of placement.

C. GOLD mentor trainee participants are excluded from membership in the public employees retirement association.

D. The department shall develop and maintain policy and procedure manuals. Such manuals will designate mentor benefits and other policies and procedures to enable the smooth operation of the program.

E. The GOLD mentors shall be reimbursed mileage, per diem and

other expenses only in accordance with policies and procedures developed by the department.

F. Waivers of age eligibility requirements may be granted by the department on a case-by-case basis.

[9.2.13.10 NMAC - N, 02/12/2010]

9.2.13.11 GRIEVANCE PROCEDURE:

A. An applicant who has been determined ineligible for enrollment or placement in the programs created under this part may:

(1) request a reconsideration regarding ineligibility from the employment programs bureau chief, either in person, by telephone, or in writing, within five calendar days of receipt of the notice of ineligibility determination;

(2) the bureau chief shall have ten calendar days from receipt of the request for reconsideration to review the documentation and make a second determination of eligibility;

(3) if the applicant still believes that the determination is incorrect, the applicant's next step is to contact the aging network division director in writing within ten calendar days of receipt of the bureau chief's ineligibility determination, challenging the reasons given for ineligibility, and providing accompanying documentation;

(4) after reviewing the challenge and accompanying documentation, the division director shall make a determination affirming or reversing the determination of eligibility by the bureau chief within ten calendar days of receiving the challenge; the division director's determination shall be final.

B. Any participant who believes that he or she has been subject to unfair treatment, discrimination, or harassment by a supervisor, manager, co-worker or a host agency may proceed as follows.

(1) Step 1: The participant may discuss a problem or grievance with the participant's supervisor, either in person, by telephone, or in writing, within five calendar days of the occurrence of the problem. The supervisor shall then work with the participant to provide a solution or an explanation within ten additional calendar days. If more time is required for the supervisor to provide a meaningful response, the participant will be notified of this fact and advised of the anticipated response date. In no event shall the supervisor extend the response date by more than 30 days from receipt of first notice. However, if the participant finds it difficult to discuss the problem with the supervisor, the participant may proceed directly to step 2.

(2) Step 2: If the problem or grievance remains unresolved to the

participant's satisfaction after following Step 1, or if the participant found it difficult to discuss the problem with the supervisor, the participant may proceed to the host agency's next level of authority. The participant may discuss the problem with this level of authority, either in person, by telephone, or in writing, within five calendar days of the event giving rise to the grievance or the response of the supervisor in step 1. This level of authority shall then work with the participant to provide a solution and/or explanation within ten additional calendar days. If the participant feels that the problem continues to remain unresolved, the participant may proceed to step 3.

(3) Step 3: If the participant is unable to receive a satisfactory answer or resolution to the problem from the host agency in step 2, the participant may then submit a written grievance to the employment programs bureau chief within five days after the participant receives the response from the host agency in step 2. This written grievance shall include the following: the nature of the grievance, relevant facts and specific actions, and the requested relief or course of action. The bureau chief shall contact the participant within ten calendar days after receiving the written grievance, to obtain additional information relevant to the grievance. The bureau chief may investigate the grievance and shall provide a written determination. This shall be mailed to the participant within 20 calendar days after the bureau chief's receipt of the grievance unless additional time is required for investigation. If additional time is required, the participant will be notified of that fact and advised of the response date. In no event shall the bureau chief extend the response date by more than 30 days from receipt of first notice.

(4) If the problem or grievance remains unresolved to the participant's satisfaction following step 3, the participant may follow the appeal procedure outlined 9.2.13.12 NMAC.

[9.2.13.11 NMAC - N, 02/12/2010]

9.2.13.12 RIGHT OF APPEAL OF PARTICIPANTS:

A. Participants in programs created under this part have a right of appeal in the following circumstances:

(1) when participation has been involuntarily terminated by written notification from the department; or

(2) when deemed ineligible for continued enrollment by written notification from the department; or

(3) when, after following the grievance procedure outlined in Subsection B of 9.2.13.11 NMAC, the problem or grievance remains unresolved.

B. Appeal procedures for program participants who meet the criteria set forth in Subsection A of this section:

(1) an appeal, pursuant to Subsection A of this section, shall be submitted in writing to the director of the aging network division within five working days following receipt of the notice of action;

(2) the aging network division director shall contact the participant within ten calendar days after receiving the written appeal to confirm receipt of the appeal and provide an opportunity to obtain additional information relevant to the appeal;

(3) after affording the applicant the opportunity to produce additional relevant information, the aging network division director shall provide a written decision in response to the appeal within 25 calendar days following contact with the participant;

(4) the aging network division director's decision shall be final and binding;

(5) complaints of violations of federal law that cannot be resolved within 60 days as a result of this appeal procedure may be filed with the employment and training administration of the United States department of labor or other appropriate entities.

[9.2.13.12 NMAC - N, 02/12/2010]

HISTORY OF 9.2.13 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives: SAA Rule No. 95-13, Employment Programs for the Elderly, filed 4/13/95.

History of Repealed Material: SAA Rule No. 95-13, Employment Programs for the Elderly (filed 4/13/95) repealed 02/12/2010.

Other History:

SAA Rule No. 95-13, Employment Programs for the Elderly (filed 4/13/95) was renumbered, reformatted and replaced by 9.2.13 NMAC, Employment Programs for Older Workers, effective 02/12/2010.

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 February 12, 2010. It will be replaced with 2.2.2 NMAC, *Requirements for Contracting and Conducting Audit of Agencies*, which will become effective February 12, 2010.

NEW MEXICO OFFICE OF THE STATE AUDITOR

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

2.2.2.1 ISSUING AGENCY:

Office of the State Auditor

[2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 2-12-10]

2.2.2.2 SCOPE: Agencies as defined by the Audit Act and independent public accountants (IPAs) interested in contracting to perform audit services for those agencies.

[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 2-12-10]

2.2.2.3 S T A T U T O R Y

AUTHORITY: The Audit Act, Section 12-6-12 NMSA 1978, requires the state auditor to promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with auditing standards generally accepted in the United States of America. The regulations become effective upon filing in accordance with the State Rules Act, Chapter 14, Article 4 NMSA 1978. The Audit Act, Chapter 12, Article 6 NMSA 1978, requires the state auditor to conduct financial and compliance audits of every agency in accordance with governmental auditing, accounting and financial reporting standards, and local, state and federal laws, rules, and regulations. The Audit Act further establishes a tiered system of financial reporting for local public bodies in which the amount of a local public body's annual revenue determines whether the local public body is subject to an agreed upon procedures engagement. The Audit Act also gives the state auditor the authority to cause the financial affairs and transactions of an agency to be audited in whole or in part, in addition to the annual audit.

[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 2-12-10]

2.2.2.4 D U R A T I O N :

Permanent

[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 2-12-10]

2.2.2.5 EFFECTIVE DATE:

February 12, 2010, unless a later date is cited at the end of a section.

[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 2-12-10]

2.2.2.6 OBJECTIVE: The objective is to establish policies, procedures, rules and requirements for contracting and conducting audits and certain agreed upon procedures engagements of governmental agencies of the state of New Mexico [2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 2-12-10]

2.2.2.7 DEFINITIONS:

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

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

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

D. "CFR" means code of federal regulations.

E. "CPE" means continuing professional education.

F. "COSO" means committee on sponsoring organizations of treadway commission.

G. "DFA" means the New Mexico department 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 generally accepted government auditing standards.

M. "GASB" means governmental accounting standards board.

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

O. "GSD" means the New Mexico general services department.

P. "HED" means the New Mexico higher education department.

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

R. "IPA" means independent public accountant.

S. "IRC" means internal revenue code.

T. "Local public body" means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district

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

V. "NMAC" means New Mexico administrative code.

W. "NMSA" means New Mexico statutes annotated.

X. "Office" means office of the state auditor.

Y. "OMB" means the United States office of management and budget.

Z. "PED" means the New Mexico public education department.

AA. "PHA" means public housing authority.

BB. "REAC" means real estate assessment center.

CC. "REC" means regional education cooperative.

DD. "RSI" means required supplemental information.

EE. "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.

FF. "SAS" means the AICPA's statement on auditing standards.

GG. "Tier" refers to which type of IPA procedures (if any) that a local public body is required to obtain by Subsection B of Section 12-6-3, NMSA 1978.

HH. "UFRS" means uniform financial reporting standards.

II. "U.S. GAO" means the United States government accountability office.

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 2-12-10]

2.2.2.8 THE AUDIT CONTRACT:

A. Section 12-6-3 NMSA 1978 (Annual and Special Audits) mandates 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 independent auditors approved by him; (2) the comprehensive annual financial report for the state be thoroughly examined and audited

each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him; and (3) the audits be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. Subsection B of Section 12-6-3 NMSA 1978 establishes a tiered system of financial reporting for local public bodies in which the amount of a local public body's annual revenue determines whether the local public body is subject to agreed upon procedures engagements. See 2.2.2.16 NMAC for information applicable to local public bodies. 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(B) of the 1999 Public Accountancy Act states that a firm with an office in New Mexico must hold a permit issued pursuant to this section of the 1999 Public Accountancy Act (61-28B-1 NMSA 1978) in order to provide attest services including audits of financial statements. A permit is also required for a firm that does not have an office in New Mexico but performs attest services for a client whose principal place of business is in New Mexico. Pursuant to Subsection A of 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 another state shall be presumed to have qualifications substantially equivalent to New Mexico's requirements if the person meets the requirements of Section 26, Subsection A of the act. Except as otherwise provided in 2.2.2.16 NMAC, 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) 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) 2.2.2.9 NMAC, report due dates;

(b) 2.2.2.13 NMAC, review of audit reports and working papers; 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 professional services from an IPA for an audit: It is unnecessary for the agency to include a copy of this audit rule when mailing requests for proposals to IPAs because it is posted on the state auditor's website at www.osanm.org.

(1) Upon receipt of notification to proceed from the office, the agency shall identify all elements or services to be solicited and request quotations or proposals for each applicable element of the annual financial audit as follows:

(a) financial statement audit;

(b) federal single audit (if applicable);

(c) financial statement preparation (if applicable);

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

(e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(2) IPA services that cost **no more than \$50,000 excluding gross receipts tax** on each year's contract should be considered small purchases. The agency **may** procure audit services for one year only. The agency **is encouraged** to procure the audit services using a multi-year proposal (not to exceed three years) in which the cost of audit service is \$50,000 or less in each year (excluding gross receipts taxes). 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.

(3) For IPA services that cost **over \$50,000 excluding gross receipts tax for each year of the contract**, the agency shall seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (Chapter 13,

Article 1 NMSA 1978); GSD Rule 1.4.1 NMAC, *Procurement Code Regulations*, if applicable; and 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 Circular 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) 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 an evaluation process, preferably executed by a selection committee. Members of component units such as charter schools, housing authorities, etc., are encouraged to be included in the IPA selection process. As part of their evaluation process, agencies may and are strongly encouraged to consider the following criteria when selecting an IPA:

(a) the capability of the IPA, including: (i) whether the IPA has the resources to perform the type and size of the audit required; (ii) the results of the IPA's most recent external quality control review (peer review); and (iii) the organization and completeness of the IPA's proposal or bid for audit services;

(b) the work requirements and audit approach of the IPA, including: (i) the IPA's knowledge of the agency's need and the product to be delivered; (ii) whether

the IPA's proposal or bid contains a sound technical plan and realistic estimate of time to complete the audit; (iii) plans for using agency staff, including internal auditors; and (iv) if the proposal or bid is for a multi-year contract, the IPA's approach for planning and conducting the work efforts of subsequent years;

(c) the IPA's technical experience, including: (i) the governmental audit experience of the IPA and the specialization in the agency's type of government (e.g., state agencies, schools, hospitals, counties, cities, etc.), including component units (housing authorities, charter schools, foundations); and (ii) the IPA's attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and the agency.

(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 June 1. In the event that the due date falls on a weekend or holiday the due date will be the next work day. 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) agencies should follow the sample letter provided at www.osanm.org indicating the name of the firm being recommended, the fiscal year end being audited, the type of services procured, 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; part 1 of the evaluation form must include information regarding the bids that were obtained by the agency; if bids were not obtained, the agency is required to submit a detailed explanation regarding why the bids were not obtained; furthermore, the agency must include a separate page or pages explaining the evaluation process the agency used to select the IPA and the agency's rationale for choosing the selected IPA; if the agency is in year 2 or 3 of a multi-year proposal, the agency shall submit a copy the evaluation form from the previous year;

(c) a list of all professional services contracts the agency entered into with its IPA and all professional services contracts the agency entered into for special audits or agreed-upon procedures relating to financial fraud, waste or abuse, since the previous firm profile was submitted to the office, including the contract date amount, and a description of the services provided; and

(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(A) NMSA 1978); an agency should use the sample cover letter provided at www.osanm.org 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(A) 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 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 recommendation or agreed upon procedures professional services contract recommendation under 2.2.2.16 NMAC that does not serve the best interests of the public or the agency or local public body because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) the following criteria for required auditor rotation apply: (i) the IPA is prohibited from conducting the agency audit or agreed upon procedures engagements for a period of two years because the IPA already conducted those services for that agency for a period of: (a) six consecutive years and for at least one of those years the audit fees exceeded \$50,000, excluding gross receipts tax; or (b) ten consecutive years and each year the audit fees did not exceed \$50,000, excluding gross receipts tax; (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 has 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 or agreed upon procedures report;

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

(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 or agreed upon procedures contract recommendations of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit or agreed upon procedures report on time;

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

(d) performed nonaudit services for an agency or local public body it is performing an audit or an agreed upon procedures for, 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 or agreed upon procedures report review 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 or agreed upon procedures reports or working papers; or

(k) released the audit report

or agreed upon procedures report to the agency, local public body or the public before the audit release letter or the letter acknowledging receipt of the agreed upon procedure report receipt, described in Subsection G of 2.2.2.16, was received from the office; or

(1) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded or continue in a contract;

(3) an audit or agreed upon procedures contract recommendation for any audit or agreed upon procedures services 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 or local public body was previously designated for audit or agreed upon procedures services by an IPA.

D. The state auditor shall provide audit contract forms to the agency via email, which must be used by the agency. The state auditor may provide audit contract forms to the agency via U.S. mail if specifically requested 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 office's IPA approval letter;

(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) in the compensation section of the contract, be sure to indicate the dollar amount that applies to each element of the contracted procedures that will be performed.

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, or if performing an engagement pursuant to 2.2.2.16 NMAC. 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 or agreed upon procedures engagements of agencies or local public bodies 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. If approved by 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 the related subcontractor form available at www.osanm.org.

H. The GAGAS *July 2007 Revision* was issued by the United States government accountability office (GAO) on July 27, 2007. It is effective for financial audits and attestation engagements for periods beginning on or after January 1, 2008 (FY09). According to **GAGAS 3.02**, the general standard on independence is: "In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, must be **free from personal, external, and organizational impairments to independence and must avoid the appearance of such impairments of independence.**" As required by GAGAS 3.03, "Auditors and audit organizations must maintain independence so that their opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by objective third parties with knowledge of the relevant information." As required by GAGAS 3.22, the audit organization must apply the following two overarching independence principles when assessing the impact of performing a nonaudit service for an audited program or entity: "Audit organizations must not provide nonaudit services that involve performing management functions or making management decisions and audit organizations must not audit their own work or provide nonaudit services in situations in which the nonaudit services are significant or material to the subject matter of the audits. To ensure compliance with the independence standards, the following rules apply to the approval of professional service contracts for nonaudit services:

(1) An IPA who performs the agency's annual financial audit shall not enter into any special audit or nonaudit service contract without the prior written approval of the state auditor. The original professional services contract must be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA. The contract must include the contract fee, start and completion date, and the specific

scope of services to be performed by the IPA. Requests for approval of professional service contracts should be submitted to the office with the **original** version of the signed agreement by the 5th of each month. The office will review the requests and respond to the agency and the IPA by the 25th of each month. Upon completion of the nonaudit services, the IPA must provide the state auditor with a copy of any report submitted to the agency.

(2) Except as provided in Subsection C of 2.2.2.15 NMAC, an agency and an IPA who does not perform that agency's annual financial audit shall submit a copy to the state auditor of each professional services contract entered into between the agency and the IPA for a special audit, agreed upon procedures or any other nonaudit services. The contract shall not require approval by the state auditor but shall be submitted to the state auditor within 30 days of execution.

(3) The state auditor will not approve any contract for the following nonaudit services to be provided by the same IPA who performs the agency's annual financial audit: maintaining or preparing the audited agency's basic accounting records or 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; determining account balances or determining capitalization criteria; designing, developing, installing, or operating the entity's accounting system or other information systems that are material or significant to the subject matter of the audit; providing payroll services that are material to the subject matter of the audit or the audit objectives or involve making management decisions; recommending a single individual for a specific position that is key to the entity or program under audit, ranking or influencing management's selection of the candidate, or conducting an executive search or a recruiting program for the audited entity; developing an entity's performance measurement system when that system is material or significant to the subject matter of the audit; developing an entity's policies, procedures, and internal controls; performing management's assessment of internal controls when those controls are significant to the subject matter of the audit; providing services that are intended to be used as management's primary basis for making decisions that are significant to the subject matter under audit; carrying out internal audit functions, when performed by external auditors; and serving as voting members of an entity's management committee or board of directors, making policy decisions that affect future direction

and operation of an entity's programs, supervising entity employees, developing programmatic policy, authorizing an entity's transactions, or maintaining custody of an entity's assets (GAGAS 3.29).

I. The state auditor will approve progress and final payments for the annual audit contract as follows:

(1) Section 12-6-14(A) NMSA 1978 (Contract Audits) also provides that "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."

(2) Section 12-6-14(B) 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 the receipt of services before any payments are made to the IPA. **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% 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(B) 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 made 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 must be reported as an audit finding in the audit report of the agency. If this statute is violated, the IPA may be removed from the list of approved auditors.

J. Preparation of 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 audit report due date 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 journal entries and the supporting documentation to the agency which reconciles the financial statements in the audit report to the books.

(4) If the IPA prepared the financial statements for management's review and approval, in conformance with Subsection H of 2.2.2.8 NMAC including documenting the safeguards as required by GAGAS 3.30, the fact that the auditor prepared the financial statements must be disclosed in the exit conference page of the audit report. If the IPA prepared the financial statements, **the auditor must determine whether a SAS 115 audit finding should be reported.** For examples of deficiencies see SAS 115 Exhibit B, examples of circumstances that may be deficiencies, significant deficiencies, or material weaknesses

K. Audit documentation:

(1) As required by SAS 103 Paragraph 32, the IPA's audit documentation must be retained for a minimum of five years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor.

(3) The audit documentation of a predecessor IPA must be made available to a successor IPA in accordance with SAS No. 84 and the predecessor auditor's contract. Any costs incurred will be borne by the requestor. If the successor IPA finds that the predecessor IPA's audit documentation does not comply with applicable auditing standards and this rule, or do not support the 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) GAGAS (**July 2007 Revision**) Sections 4.05 through 4.08 provide standards regarding auditor communication requirements in financial audits and broadens the parties with whom auditors must communicate during the planning stages of the audit. Section 4.06 states "auditors should communicate certain information in writing to management of the audited entity, those charged with governance, and to the individuals contracting for or requesting the audit." SAS 114, was 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 planned work and level of assurance to be provided related to internal control over financial reporting and compliance with laws, regulations, and provisions of contracts or grant agreements including: (i) planned testing of compliance with applicable state and federal laws and regulations shown in Subsections G and H 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 4.07); or (iii) any agreed upon procedures such as 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.

(2) 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 auditor's opinion on the financial statements.

(3) 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 4.06). The appropriate officials of the agency may include:

(a) the head of the audited agency;

(b) the audit committee or board of

directors or equivalent oversight body; or

(c) the individual who possesses a sufficient level of authority and responsibility for the financial reporting process, such as the chief financial officer (see GAGAS Appendix I, Paragraphs A1.05 through A1.07 for additional information).

(4) In those 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 4.06).

(5) GAGAS 4.07 acknowledges the AICPA and GAGAS standards concerning tests of internal control over financial reporting and compliance with laws, regulations, and provisions of contracts or grant agreements in a financial statement audit, and the supplemental reporting prescribed by laws or regulations to meet the needs of certain report users. SAS 115 is effective for audits of financial statements for periods ending on or after December 15, 2009 (FY10). It provides guidance on evaluating the severity of deficiencies identified during an audit and defines the terms "significant deficiency" and "material weakness." SAS 115 requires the auditor to communicate deficiencies and material in writing, to both management and those charged with governance. The written communication should address significant deficiencies of material weaknesses related to both current year findings and prior year findings that were not corrected. In addition, Paragraph (8) of Subsection I of 2.2.2.10 below requires the auditor to report any deficiencies in internal controls, 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 115.

(6) Within 10 days of the entrance conference, the IPA shall submit to the state auditor a copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates, which should 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.

(7) All communications 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 management's **responses to the audit findings in writing** to facilitate effective communication. Any violation of law or good accounting practice including instances

of noncompliance or internal control weaknesses must be reported 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.

M. Contract amendments:

(1) Contract amendments to contracts for audit services or nonaudit services, agreed upon procedures services, or nonaudit services shall be approved in writing by the state auditor if the original contract requires state auditor approval pursuant to 2.2.2 NMAC. If the original contract was made on contract forms provided by the office, pursuant to 2.2.2 NMAC, then any amendments to those contracts should be made on the contract amendment form available at www.osanm.org. Notwithstanding the delivery dates of the contract, **audit report due dates are not subject to amendment.**

(2) Contract amendments submitted for state auditor approval shall include a detailed explanation of:

(a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment;

(b) how the work to be performed is beyond the scope of work outlined in the original contract; and

(c) when the auditor or agency became aware of the work needed to be performed.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee contract amendments will only be approved for extraordinary circumstances or a significant change in the scope of an audit; for example, if an audit contract did not include a federal single audit, a contract amendment will be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and special procedures required by a regulatory body or a local, state or federal grantor. Contract amendments will not be approved to perform additional procedures to achieve an unqualified opinion. Contract amendments will not be approved for audit procedures required by generally accepted auditing standards or government auditing standards. The state auditor shall also consider the auditor independence requirements of Subsection H of 2.2.2.8 NMAC when reviewing contract amendments for approval. Requests for contract amendments should be submitted to the office with the **original** version of the signed contract amendment by the 5th of each month. The office will review the requests and respond to the agency and the IPA by the

25th of each month. Requests for contract amendments submitted after the 5th of each month will not be reviewed and responded to by the office until the 25th of the following month.

(4) 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, 2-12-10]

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, and local workforce investment boards: **December 1;** mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts that are defined as "local public bodies" per Section 12-6-2(B) NMSA 1978, see Subsection H of 2.2.2.16 NMAC for report due dates;

(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 requires that each agency submit a management representation letter documenting management's responsibility for the accounting records, the agency has recorded all transactions properly in SHARE,

and the agency is ready and available for audit; in addition, the financial control division mandates that each agency, with the help of its independent auditor, identify and submit with the management representation letter a schedule of audit deliverables and agreed to milestones for the audit; the milestones ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time; once the financial control division receives the management representation letter, the schedule of deliverables, and milestones, the financial control division will notify the state auditor in writing the expected audit deadline for the agency; 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); once the agency and auditor have certified to the financial control division 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 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 must also be notified that the report will be late; however, that notification must exclude confidential audit information; the management representation letter that agencies must submit to the financial control division can be found in the fiscal year's closing instructions at www.dfa.cd.state.nm.us under the FYxx year-end closing link;

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

(3) An organized bound hard copy of the report should be submitted for review by the office with the following: a copy of

the signed and dated engagement letter if not previously submitted; a copy of the signed management representation letter; a list of the passed audit adjustments, clearly labeled "passed adjustments" (or memo stating there are none); and a copy of the completed state auditor report review guide (available at www.saonm.org). The report review guide should reference applicable page numbers in the audit report and be signed by the person completing the review guide. The audit manager or person responsible for the firm's quality control system should either complete the report 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 list of passed adjustments, and the completed report 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 report review guide for each separate audit 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 report review guide are also submitted to the office. If a due date falls on a weekend or holiday, or if the office is closed due to inclement weather, 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 the due date to be considered filed by the due date. The state auditor will grant no extensions of time to the established due dates.

(4) SAS No. 103 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.

(5) **As soon as the auditor becomes aware that circumstances exist that will make an agency's 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 a specific explanation regarding why the report will be late and a concurring signature by the agency.** At the time the audit report is due, if circumstances still exist that will make the report late, the IPA or agency may consult the state auditor regarding the opinion to be

rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the 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 does not accept facsimile or emailed versions of the audit reports for review.** The IPA shall deliver to the state auditor a hard copy of the audit report for review by 5:00 p.m. on the day the report is due. Reports postmarked by the due date will be considered received by the due date. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the IPA and the office may take action in accordance with Subsection C of 2.2.2.13 NMAC.

(2) The IPA should review the report using the appropriate report review guide available on the office’s 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 report review guide or sign off as having reviewed the completed questionnaire.

(3) The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. After its review of the audit report pursuant to 2.2.2.13 NMAC, the office will authorize the IPA to print and submit the final audit report; the required number of hardcopies specified in the audit contract and an electronic version of the audit report, in PDF format, must be delivered to the state auditor within two business days. The office will not release the report until the electronic version of the report is received by the office.

(4) 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 or the public prior to it being officially released by the state auditor will result in an audit finding. The agency or the IPA shall ensure that every member of the agency’s governing authority receives 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. If the office rejects and returns a substandard audit report to the IPA, the office will consider the audit report late if the corrected report is not submitted by the due date. The IPA will also be required to report a finding for the late audit report.

[2.2.2.9 NMAC - Rp, 2.2.2.9 NMAC, 2-12-10]

2.2.2.10 G E N E R A L CRITERIA:

A. Scope of annual financial audit:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and any component units of the primary government.

(a) Entities must be reported as component units within the financial statements of the primary government, if the primary government is financially accountable for the entity (GASBS 14 Paragraph 10) or if the nature and significance of the entity to the primary government warrants inclusion (GASBS 39 Paragraphs 5 and 6). The primary government, in conjunction 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 GASBS 14 and 39. The flowchart at GASBS 14 Paragraph 132 is useful for this determination. All agencies that meet the criteria of GASBS 14 or 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 (GASBS 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 a detailed explanation, conclusion and supporting documentation. 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 notes to the financial statements (summary of significant accounting policies-financial reporting entity).

(b) If a primary government has no component units, that fact should be disclosed in the notes to the financial statements (summary of significant accounting policies - financial reporting entity). If the primary government has component units that are not included in the financial statement due to materiality, that fact must also be disclosed in the notes. However, if the primary government is a school, college, or university, Section 6-5A-1(4)a 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 statutorily 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 Section 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) The following supplemental information (SI) pertaining to component units should be included in the scope of the audit and opined on (as allowed by SAS 98):

(i) component unit fund financial statements, and the combining and individual fund financial statements if separately issued financial statements of the component units are not available (AAG-SLV 3.20); and (ii) individual fund budgetary comparisons when a legally adopted budget exists for a fund if separately issued financial statements are not available; the office interprets a "legally adopted budget" to exist any time the agency prepares a budget and 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 as follows:

(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 included as part of the basic financial statements consistent with GASBS 34 footnote 53 and AAG-SLV 11.13.

(b) The scope of the audit includes the following statements and schedules which the auditor is required to audit and give an opinion on 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 following required supplemental information, if applicable, and include it in the auditor's opinion (AAG-SLV 14.53). Budgetary comparisons 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 the combining and individual fund financial statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.20); (ii) combining and individual fund financial statements; and (iii) individual fund budgetary comparison statements for the remaining funds that have a legally adopted budget **including any major capital project or debt service funds, nonmajor governmental funds, enterprise funds and**

internal service funds that are not presented as part of the basic financial statements.

(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) management's discussion and analysis (GASBS 34.8-.11); (ii) RSI data required by GASBS 25 and 27 for defined pension plans; (iii) RSI schedules required by GASBS 43 for postemployment benefit plans other than pension plans; (iv) RSI schedules required by GASBS 45 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and (v) schedules derived from asset management systems (GASBS 34 Paragraphs 132 and 133).

(f) The audit engagement and audit contract compensation include the following audit work on the remaining supplemental information schedules presented in the audit report (whether the report is client-prepared or auditor-submitted). (i) Some examples of remaining SI schedules are: the schedule of pledged collateral required by Subparagraph (a) of Paragraph (4) of Subsection N of 2.2.2.10 NMAC; the schedule of changes in assets and liabilities for agency funds required by Subsection Z of 2.2.2.10 NMAC; the school district schedule of cash reconciliation required by Subparagraph (b) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC. (ii) The auditor should subject the information on the remaining SI schedules to the auditing procedures applied in the audit of the basic financial statements. (iii) In addition, the school district schedule of cash reconciliation (SI) should be subjected to audit procedures that ensure the cash per the schedule reconciles to the PED reports as required by Subparagraph (b) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC. (iv) The auditor's report should include either an opinion on whether the accompanying information is fairly stated in all material respects in relation to the basic financial statements taken as a whole or a disclaimer of opinion.

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 state law that 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 or non-reverting status of a fund or 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 papers "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 as amended by *Interim Guidance on Reporting Deficiencies in Internal Control for GAGAS Financial Audits and Attestation Engagements*;

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

(3) **OMB Circular A-13, Audits of States, Local Governments and Non-Profit Organizations (July 28, 2003 revision which raised the threshold for Single Audits from \$300,000 to \$500,000 of federal expenditures)** as amended;

(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; and

(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. Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB and other applicable pronouncements, and GASB illustrations trends for financial statements.

F. IPAs who perform government audits are expected to maintain professional libraries including current editions of the publications and standards noted above. The audit guides published by the practitioners publishing company (PPC)

or similar authors are practice aides only and are not considered to be authoritative.

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

(1) Procurement Code (Section 13-1-1 to 13-1-199 NMSA 1978) and state purchasing regulations 1.4.1 NMAC;

(2) Per Diem and Mileage Act (Section 10-8-1 to 10-8-8 NMSA 1978) and Regulation Governing the Per Diem and Mileage Act and Mileage Act 2.42.2 NMAC, Emergency Amendment to Section 11, Mileage dated June 19, 2009 available at <http://www.dfa.nm.us/html/indexmn.html>; and Per Diem and Mileage Act Rule Change of June 19, 2009 available at <http://fmb.nmdfa.state.nm.us/content.asp?CustComKey=260039&CategoryKey=260153&pn=Page&DomName=fmb.nmdfa.state.nm.us>;

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

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

(5) Public School Finance Act (Section 22-8-1 to 22-8-48 NMSA 1978);

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

(7) Public Employees Retirement Act (Section 10-11-1 to 10-11-141 NMSA 1978). Auditors should test to **ensure 100% of payroll is reported to PERA**. This is a 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 Section 10-11-8 and Section 10-11-3 (2005) NMSA 1978;

(8) Educational Retirement Act (Section 22-11-1 to 22-11-53 NMSA 1978);

(9) Sale of Public Property (Section 13-6-1 to 13-6-8 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) State Budgets (Section 6-3-1 to 6-3-25 NMSA 1978), state agencies only;

(13) Lease Purchase Agreements (New Mexico Constitution Article IX, Section 8 and 11; Section 6-6-11 to 6-6-12

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

(18) Laws of 2009, 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(l) NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2009 may be expended for payment of agency-issued credit card invoices."

(19) Retiree Health Care Authority Act (RHCA) (Section 10-7C-1 to 10-7C-19 NMSA 1978). Auditors should test to **ensure 100% of payroll is reported to NMRHCA**. RHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978. As of June 30, 2010 the contribution rates will increase. See the applicable statute for more information.

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) as amended;

(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*, revised May 10, 2004;

(e) OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, revised October 7, 1994 and further 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) as amended;

(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 "nonqualified 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 575-527-6900 ext. 232, in Albuquerque, NM at 505-837-5610, or in Santa Fe, NM at 505-986-5260.

I. Audit findings:

(1) Pursuant to the GAO's *Interim Guidance on Reporting Deficiencies in Internal Control for GAGAS Financial Audits and Attestation Engagement* (November 2008), "auditors may satisfy the internal control reporting requirements in GAGAS Paragraph 5.11 by including in the GAGAS report on internal control all identified 'material weaknesses' and 'significant deficiencies' following the new definitions and requirements from SAS 115." GAGAS Paragraphs 5.10 and 5.11 states 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 and material weakness." See SAS 115 Paragraphs 6 and 7 for the updated definitions of a significant deficiency and a material weakness. Auditors should also follow the updated examples of 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* available on the office website or at <http://gaqc.aicpa.org/>, by selecting "Government Auditing Standards Report Illustrations with SAS No. 115 Terminology."

(a) Per SAS 115 Paragraph 8, the auditor must evaluate control deficiencies found during audit procedures. Evaluation guidance is provided by SAS 115 Paragraphs 8 through 16. SAS 115 Paragraph 15 lists specific indicators of material weaknesses in internal controls.

(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, illegal acts or abuse must be reported. (iii) All violations of provisions of laws, regulations, contracts, grant agreements and other matters must be reported.

(2) GAGAS Section 4.09 (July 2007 Revision) requires 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 including the prior year number, the title of the finding, and whether the finding has been resolved or repeated in the current year. 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 audit findings:

(a) All current-year audit findings must have a reference number such as 2007-1, 2009-3, and 2010-1 and a short title that summarizes the finding. Any unresolved prior year findings must be repeated in the current year using the original finding number to preserve the audit trail.

(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 5.32 (July 2007 Revision). The agency shall respond, in writing, to the IPA's audit findings within 10 workdays. The agency's responses to the audit findings and the corrective action plan should be included in the finding after the recommendation. When the audited agency's comments are inconsistent or in conflict with findings, conclusions, or recommendations in the

draft report, or when planned corrective actions do not adequately address the auditor's recommendations, the auditors should evaluate the validity of the audited agency's comments. If the auditors disagree with the comments, they should explain their reasons for disagreement after the agency's response. Conversely, the auditors should modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence (GAGAS 5.37). Lack of agency responses within the 10 days does not warrant a delay of the audit report. If the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, indicate that the responses to the findings were not received and the reason why after the recommendation (GAGAS 5.38).

(c) Each audit finding (including unresolved prior-year findings) shall specifically state and describe the following: (i) condition (provides a description of a situation that exists and should include the extent of the condition and an accurate perspective; the number of instances found and the dollar amounts involved, if any, should be reported in the condition); (ii) criteria (should identify the required or desired state or **what is expected** from the program or operation; should cite the specific section of law, regulation, ordinance, contract, or grant agreement if applicable); (iii) effect (the logical link to establish the **impact or potential impact of the difference** between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks; (iv) cause (identifies the reason or explanation for the condition or the factors responsible for the **difference** between what the auditors found and what is required or expected; the cause will serve as a basis for the recommendation); (v) recommendation addressing each condition and cause; and (vi) agency response (agency's comments about the finding including 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 reported as a current-year compliance finding. If appropriate in the auditor's professional judgment, the finding should also be reported as a significant deficiency in the operation of internal control over financial reporting.

(5) If an agency has entered into any professional services contract with the IPA who performs the agency's annual financial audit and the contract was not approved by the state auditor, 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 Section 12-6-5(A) NMSA 1978 and will require an additional finding in the audit report.

(8) When auditors detect deficiencies in internal controls or immaterial violations 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, but do not rise to the level of significant deficiencies or material weaknesses under SAS 115, 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 also noted certain matters that are required to be reported under *Government Auditing Standards* 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 10-5 and 10-6." (See the report example 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, or the governing authority's designee, 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 unless a telephonic exit conference is approved in writing by the state auditor. The date of the conference(s) and the names and titles of personnel attending must be stated in the last page of the audit report.

(2) The IPA shall deliver to the agency a complete and accurate draft of the audit report (stamped "draft"), a list of the "passed audit adjustments," and a copy of all the adjusting journal entries before the exit conference. The draft audit report shall include the MD&A, independent auditor's report, a complete set of financial statements, notes to the financial statements, required schedules, audit findings that include responses from agency management, status of prior-year audit findings, and the reports on internal control and compliance required by government auditing standards and the Single Audit Act. The agency will have at least five (5) workdays to review the draft

audit report and respond to the IPA regarding any issues that need to be resolved prior to the agency accepting responsibility for the financial statements by signing and dating the management representation letter.

(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 has been officially released by the state auditor and 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 (Section 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 five calendar days after the date it is released by the state auditor to the agency being 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 five calendar days has passed, the audit report **shall** be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meeting Act, if applicable. The presentation of the audit report should be documented in the minutes of the meeting. See SAS 114 Paragraph 34 through 36 for information that should be communicated to those charged with governance.

K. Possible violations of criminal statutes in connection with financial affairs:

(1) 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 an 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 represents potential fraud or illegal acts. Because the determination of abuse is subjective, auditors are not required to provide reasonable assurance of detecting abuse."

(2) An agency or IPA, pursuant to Section 12-6-6 NMSA 1978 (Criminal Violations), shall notify the state auditor immediately, in writing, upon discovery of any violation of a criminal statute in connection with financial affairs. The notification shall include an estimate of 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 the requirements of this rule subject to the **prior written approval** of the state auditor. A copy of the audit report must be provided to the state auditor.

(3) Section 12-6-6 NMSA 1978 states that the state auditor, immediately upon discovery of any violation of a criminal statute in connection with financial affairs, shall 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 GASBS 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) GASBS 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. GASBS 38 Paragraph 12 requires similar disclosures for the short-term debt activity during the year even if no short-term debt is outstanding at year-end.

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, code of federal regulation, 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) If the agency has material derivatives or securities investments the auditor should seek the assistance of audit firm staff or of a specialist from outside the firm, that has the skill or knowledge required to plan and perform auditing procedures for

specific assertions about derivatives and securities. See the related requirements at: SAS AU 332, *Auditing Derivative Instruments, Hedging Activities, and Investments in Securities*, Paragraphs .05 and .06; and SAS AU 336, *Using the Work of a Specialist*.

(3) Compliance issues - The auditor should test for compliance with:

(a) the requirements of Sections 6-10-10(A) 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.

(4) List of individual deposit accounts and investment accounts required by Section 12-6-5(A) 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, state treasurer, state investment council) and the statewide human resources accounting and management reporting system (SHARE) fund number (state agencies only);

(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;

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

(f) the following rule pertains to audits of state agencies; with the implementation of the SHARE system, both the "book" and "bank" information reside on this unified system; there are no longer stand-alone systems providing single-source information; bank balance information is now available and retrievable at each state agency being audited; this information is identical to what DFA or the state treasurer can obtain from the system; the office of

the state treasurer no longer can act in the capacity of an independent third-party to provide account balance confirmations to other agencies or auditors, IPAs can now access account balance information by having the agency run a query in SHARE; **therefore, IPAs and state agencies should not request bank confirmations from the office of the state treasurer.**

(5) 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** or note 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 to show compliance and GASB 40 disclosure information (for line items iv-viii, delete the line items if custodial credit risk category does not apply):

(i) Total on deposit in bank or credit union	\$450,000
(ii) Less: FDIC or NCUSIF coverage*	<u>250,000</u>
(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	<u>(12,500)</u>
(viii) Uninsured and uncollateralized	<u>(\$50,000)</u>
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. Per GASBS 40.8, the notes to the financial statements should disclose the amount of deposits subject to custodial credit risk for categories (vi), (vii) or (viii).

To determine compliance with the 50% pledged collateral requirement of Section 6-10-17 NMSA 1978 the following disclosure must be made for each financial institution:

50% pledged collateral requirement per statute	\$100,000
Total pledged collateral	<u>(150,000)</u>

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

*The unlimited FDIC coverage on non-interest bearing accounts expired December 31, 2009. But the President signed a bill in May 2009, postponing the expiration date of the increased FDIC insurance limits on most bank deposit accounts until December 31, 2013. Coverage limits refer to the total of all deposits an accountholder has in the same ownership categories at each FDIC-insured institution. Government accounts have \$250,000 of FDIC insurance per official custodian. See <http://www.fdic.gov/deposit/deposits/DIfactsheet.html> for additional information.

(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% pledged collateral requirement.

(d) Per Sections 6-10-16(A) NMSA, "Deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or 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) Securities which are of obligations of the state of New Mexico, its agencies, institutions, counties, municipalities or other subdivisions shall be accepted as securities at 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 office of the state treasurer's general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the notes to the financial statements should refer the reader to the state treasurer's separately

issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments. See Paragraph (14) of Section A of 2.2.2.12 NMAC for related GASBS 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 notes to the financial statements. 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 office of the state treasurer's collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(6) New applicable standards: The requirements of GASBS 53, *Accounting and Financial Reporting for Derivative Instruments*, are effective for financial statements for periods beginning after June 15, 2009 (FY10). "A key provision in this statement is that derivative instruments covered in its scope, with the exception of synthetic guaranteed investment contracts (SGICs) that are fully benefit-responsive, are reported at fair value. For many derivative instruments, historical prices are zero because their terms are developed so that the instruments may be entered into without a payment being received or made. The changes in fair value of derivative instruments that are used for investment purposes or that are reported as investment derivative instruments because of ineffectiveness are reported within the investment revenue classification. Alternatively, the changes in fair value of derivative instruments that are classified as hedging derivative instruments are reported in the statement of net assets as deferrals."

(7) State treasurer's external investment pool (local government investment pool): Agencies that have investments in the state treasurer's short-term investment fund must disclose the information required by GASB Statement No. 31 Paragraph 15 in the notes to the 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(O) 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 amounts were invested;

(d) participation in the local government investment pool is voluntary;

(e) the current credit risk rating per the state treasurer's website at www.stonm.org/NewMexiGrowLGIP; and

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

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) or the budgetary comparisons shall include the amount of **fund balance** on the budgetary basis 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) or the budgetary comparisons shall include the amount of **prior-year cash balance** required to balance the budget (or fund balance on the cash basis).

(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 (preferred) or in the notes to the financial statements. If the budgetary comparison is presented as supplemental information as required by Subparagraph (c) of Paragraph (3) 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 Subparagraph (b) of Paragraph (3) 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). Also, the notes to the financial statements should disclose any excess of expenditures over appropriations at the legal level of budgetary control.

(3) Budgetary comparisons must show the original and final appropriated budget (same as final budget approval by DFA, HED or PED), 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 comparisons 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 AAG-SLV 14.79 (Example A-14) in the *AICPA Audit and Accounting Guide, State and Local Governments (latest edition)*.

(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. 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 A-14 in the *AICPA Audit and Accounting Guide, State and Local Governments (latest edition)*.

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 control, that fact must be reported in a finding and disclosed in the notes to the financial statements. 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 since budget deficits are generally not allowed. 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 internal control and risk assessment in a financial statement audit: 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.

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 constitutional requirement of approval by the voters. This is the teaching of the **Connelly** case relied on by the court in **Montano**. **Montano** did not reverse **Connelly**, **Seward** and the other cases which have consistently limited the application of constitutional restrictions to debts which are paid out of general tax revenues.

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

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

(a) Modified accrual basis of accounting for fund financial statements: (i) At the time of the lease purchase, the aggregate purchase liability should be reported as an expenditure and as "other financing source" in the governmental fund that acquired or constructed the general asset (NCGAS 5 Paragraph 14 and AAG-SLV 7.34). (ii) Subsequent governmental fund lease payments should be recognized as expenditures in the accounting period in which the fund liability is incurred, if measurable (NCGAS 1 Paragraph 8 (a) and AAG-SLV 8.12).

(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 GASBS 34 Paragraph 112 interfund activities and balances that must be reported are:

(1) interfund loans reported as an interfund receivable in the fund that loaned the money and as an interfund payable in the fund that borrowed the money;

(2) interfund services provided and used (for a price close to the external exchange value) reported as a revenue in the fund that sold the services and as an expenditure or expense in the fund that used the services;

(3) interfund transfers that reported as other financing sources or uses in the fund financial statements, or after nonoperating revenues/expenses in the proprietary funds; and

(4) interfund reimbursements that 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 (latest edition)*, 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 that the audit was performed in accordance with auditing standards generally accepted in the United States of America and with applicable *Government Auditing Standards* per GAGAS 5.05 (July 2007). This statement should be modified in accordance with GAGAS 1.12b (July 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) **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. 115. The report examples are available on the AICPA

governmental audit quality center website at <http://gaqc.aicpa.org/>. Then select "Government Auditing Standards Report Illustrations with SAS No. 115 Terminology." 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 115) that must be reported pursuant to Section 12-6-5, NMSA 1978 and GAGAS 5.14 and 5.16 (July 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**.

(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, using the report example on the office website at www.osanm.org.

(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 L of 2.2.2.8 above, regarding this issue.

(3) **The report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133** - Report examples that have been updated for SAS 115 should be used if they have been made available. Check the AICPA governmental audit quality center website at <http://gaqc.aicpa.org/> to determine whether the updated report examples are available.

(4) One report cover: The state auditor requires the following reports to be **included under one report cover**: the independent auditor's report; 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 5.07 and SAS 115); and the report on

compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133, if applicable, the independent auditor's report must include 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 an 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: If the agency uses a service organization to process certain transactions, the auditor should follow the applicable guidance provided in SAS AU 324 on factors the independent auditor should consider. Some examples of service organizations and potential service organizations are:

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

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

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

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

(5) public housing authority fee accountants; and

(6) tax collection authorities.

V. Disposition of property:

(1) Sections 13-6-1 and 13-6-2 NMSA 1978 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" or effectively make "inaccessible," all licensed software and any electronic media pertaining to the agency. Hard drive erasure or destruction 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 diskling)."

(3) The agency will certify in writing the proper erasure or destruction 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 agreements should disclose the data in the notes to the financial statements. The note should include the name of the agency that is providing the insurance and the amount of contribution by the agency to the fund during the year. There should be full disclosure in the notes to the financial statements per the requirements of GASBS 10.

Y. Capital asset inventory:

(1) The Audit Act (Section 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(A) 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. GASBS 34 implementation issues: Agency funds are excluded from the statement of changes in fiduciary net assets (GASBS 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. The schedule should show additions and deductions for each agency fund except for school districts. School districts should see Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC for more information regarding the presentation of the statements of changes in assets and liabilities - agency funds for school districts. This schedule should appear toward the end of the table of contents and requires a SAS 29 opinion in the independent auditor's report.

AA. Accounting for forfeited property:

(1) Seized property should be accounted for in an agency fund before the "judgment of forfeiture" per 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.

BB. Tax increment development districts: According to Subsection C of Section 5-15-9 NMSA 1978 tax increment development districts (TIDDs) are political subdivisions of the state, and they are separate and apart from the municipality or county in which they are located. Subsection B of Section 5-15-10 NMSA 1978, states that the district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges. However, in the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors. Therefore, a TIDD and its audit firm will have to apply the criteria of GASB 14 Paragraph 132 to determine whether the TIDD is a component unit of the municipality or county that approved it, or whether the TIDD is a related organization of the municipality or county that approved it. If the TIDD is determined to be a related organization per the GAAP requirements, then the TIDD will have to contract separately for an audit separate from the audit of the municipality or county that approved it.

CC. GASBS 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.”

DD. GASBS 53, **Accounting and Financial Reporting for Derivative Instruments**: The requirements of this statement are effective for financial statements for periods beginning after June 15, 2009 (FY10). Some examples of derivative instruments used by governments include interest rate and commodity swaps, interest rate locks, options (caps, floors, and collars), swaptions, forward contracts, and futures contracts. GASB Statement 53 requires that changes in fair value be reported with the investment **revenue classification**, for derivative instruments classified as investments either because they were entered into for investment purposes or because they have been determined to be ineffective in reducing exposures to identified risks. GASB Statement 53 requires that changes in the fair value be reported in the statement of net assets as **deferrals** for derivative instruments classified as hedging derivative instruments. Hedging derivative instruments are the derivative instruments that have been determined to be effective in reducing exposures to identified financial risks. Much of GASBS 53 is on the subject of methods of evaluating the effectiveness of derivative instruments in reducing exposure to identified risks. Required disclosures include: (1) disclosures similar to other investments; (2) the objectives, terms, and risks of hedging derivative instruments; and (3) a summary of derivative instrument activity with the location of the fair value amounts reported in the financial statements. [2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 2-12-10]

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 (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 should apply the limited procedures described at SAS AU 558.07 (a) through (e) on the agency's schedule of performance data.

D. The IPA generally has no reporting requirement regarding the schedule of performance data. However, when one of the criterion listed at SAS AU 558.08 (a) through (d) exists, the auditor should add an explanatory paragraph to the report on the audited financial statements. Examples of the required explanatory paragraphs are available at SAS AU 558.08. [2.2.2.11 NMAC - Rp, 2.2.2.11 NMAC, 2-12-10]

2.2.2.12 **S P E C I F I C CRITERIA**: The specific criteria should be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, the state statutes and regulations (NMAC) should be reviewed while planning governmental audits.

A. PERTAINING TO AUDITS OF STATE AGENCIES:

(1) Due dates for agency audits: Section 12-6-3(C) NMSA 1978 states that state agency reports are due no later than 60 days after the financial control division of DFA provides the state auditor with notice that the agency's books and records are ready and available for audit. The financial control division requires that each agency submit a management representation letter documenting management's responsibility for the accounting records, the agency has recorded all transactions properly in SHARE, and the agency is ready and available for audit. In addition, the financial control division mandates that each agency, with the help of its independent auditor, identify and submit with the management representation letter a schedule of deliverables and agree to milestones for the audit. The milestones ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. Once the financial control division receives the management representation letter, the schedule of deliverables and milestones, the financial control division will notify the state auditor in writing regarding the expected audit deadline for the agency. 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). 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 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 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 must also be notified that the report will be late. However, that notification must exclude confidential audit information. The management representation letter that agencies must submit to the financial control division can be found in the fiscal year's closing instructions at www.dfafcd.state.nm.us under the FYxx year-end closing link.

(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. All the individual SHARE funds should be reported in the financial statements and opined on in the independent auditor's report.

(3) **Accounts payable at year-end**: If goods and services were received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable should be reported 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 the financial control division 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 budgetary basis expenditures because the agency does not have the legal authority to obligate the state for liabilities once the appropriation period has lapsed. Thus the agency cannot 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. GASBS 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 (GASBS 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 (GASBS 34 Paragraph 84).

(c) The statement of fiduciary net assets (fiduciary fund financial statement) should show net assets as “held in trust for...” (GASBS 34 Paragraph 108 and Example E-1).

(5) Book of record:

(a) The state maintains the centralized accounting system statewide human resources accounting and management reporting system (SHARE). **The SHARE data and reports are the original book of record that the auditor is auditing.** Each fiscal year, the agency is required to record all audit adjusting journal entries in SHARE. The financial information in SHARE is to agree to the agency’s audited financial statements, with the exception of accounts payable as explained in Paragraph (3) Subsection A of 2.2.2.12 NMAC (accounts payable). If the independent auditor finds that the agency did not record all audit adjusting journal entries, the auditor must include this instance of noncompliance with Section 6-5-2.1 and 6-5-4.1 NMSA 1978. If the agency maintains a separate accounting system, it should be reconciled with the SHARE system and all applicable

adjustments should be recorded in SHARE periodically throughout the fiscal year. The financial control division provides to agencies: the manual of model accounting practices (MAPs), various white papers, yearly closing instructions, and various accounting guideline memos. These documents provide guidance for an auditor regarding policy and procedures requirements and they are available on the financial control division’s website at www.dfafcd.state.nm.us under manuals, white papers and processing standards, FY’xx year-end closing, and memorandums and notices links.

(b) The SHARE chart of accounts reflects the following appropriation unit levels. The statement of revenues and expenditures in the audit report should be presented in accordance with GAAP, by function or program classification and object code. 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 09). The gross amount of the appropriation and the gross amount of the reversion must be shown separately.

(b) Section 6-5-10(A) 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 (GASBS 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 reports of state agencies, 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 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 fund 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 (GASBS 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 (GASBS

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 (Section 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 not intended to present the financial position and changes in financial position of the primary government, the state, but just the financial position and the changes in financial position of the department. The auditor should follow Example A.16 in Appendix A of AAG-SLV 14.79 in the *AICPA Audit and Accounting Guide State and Local Governments (latest edition)*.

(b) A statement should be included 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 accrued by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely or accrued by statutory deadline must be paid out of the next year's budget. As previously stated in Paragraph (3) of Subsection A of 2.2.2.12 NMAC (accounts payable), if goods and services were received by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts 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). If an agency needs to recognize additional accounts payable that were not accrued by the statutory deadline, then the budgetary statements and the fund financial statements will require a reconciliation of expenditures, see Paragraph (2) of Subsection O of 2.2.2.10 NMAC (budgetary presentation). Since SHARE is the book of record for the state, all transactions are recorded in SHARE under the modified accrual basis of accounting except for accounts payable not meeting the statutory deadline; therefore, the "actual" expenditures in the budgetary comparison schedules shall equal the expenditures as recorded in SHARE for the fund. 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 in the notes to the financial statements. The financial control division has prepared standardized budgetary comparison schedules for single year and multiple-year appropriations and a standard budgetary basis disclosure. These examples can be obtained from the financial control division's website at www.dfafcd.state.nm.us under the CAFR Unit link.

(12) Accounting for special capital outlay appropriations financed by bond proceeds:

(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 GASBS 34 Paragraph 119; (2) the details of debt service requirements to maturity required by GASBS 38 Paragraph 10; and (3) any violations of bond covenants and related actions taken to address violations of bond covenants, required by GASBS 38 Paragraph 9 and Section 12-6-5 NMSA 1978.

(b) State agencies that receive or administer any special capital outlay appropriations from the state legislature that are financed by bond proceeds should account for the transactions as follows: (i) The transactions should be recognized in accordance with GASB Statement 33, *Accounting and Financial Reporting for Non-Exchange Transactions*, as detailed in the instructions "Accounting and Financial Statement Presentation of Appropriation Bond Proceeds," that are posted on the financial control division's website at www.dfafcd.state.nm.us under the memorandum and notices and the CAFR unit links. The other financing sources - transfers in and receivable should be recognized when all the eligibility requirement established by the board of finance (2.61.6 NMAC) have been met and the resources are available (when the board of finance approves the draw down request). (ii) In the statement of activities, the bond proceeds for the capital project should be reported as transfers in - general obligation bond appropriation or severance tax bond appropriation." In the statement of revenues, expenditures, and changes in fund balances - special revenue fund, the bonds proceeds should be reported under other financing sources as transfers in - general obligation bond proceeds or severance tax bond proceeds." The expense should be reported at the program level in the statement of activities, and the expenditure should be reported at the appropriation unit level in the fund financial statements. A special revenue fund should be used to account for the bond proceeds and related expenditures. Refer to the financial control division's instructions

to review the applicable journal entries and research documentation, which are available on the financial control division website www.dfafcd.state.nm.us under the CAFR unit and the memorandums and notices links. (iii) In the notes to the financial statements, agencies should disclose that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients, and the agency is not obligated in any manner for the related indebtedness. Agencies should also disclose the specific revenue recognition policy for these appropriations as provided by the financial control division on their website www.dfafcd.state.nm.us under the CAFR unit link. (iv) The budgetary comparisons for the capital project activity should be presented in accordance with the instructions "budgetary presentation for multi-year appropriations," posted on the financial control division's website at www.dfafcd.state.nm.us under the CAFR unit link. (v) the financial control division has prepared a standard disclosure for the restatement, if applicable, of the change in the recognition of appropriated bond proceeds that is available on the financial control division's website at www.dfafcd.state.nm.us under the CAFR unit link.

(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, the name of each agency, the SHARE fund account numbers and the purpose of the account balance.

(14) Investments in the state treasurer's general fund investment pool (SGFIP): These investments should be recorded as investments on the statement of net assets and the balance sheet, not as cash or cash equivalents. The notes to the financial statements should contain the following disclosures for the SGFIP as required by GASBS 40:

(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 SGFIP is not rated for credit risk (GASBS 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 GASBS 40 Paragraph 15, of the agency's SGFIP investment fair value as of the end of the fiscal year, and the maturities of the SGFIP 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 SGFIP.

(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. GASBS 34 Paragraph 41 requires governments to report direct expenses for each function.

(16) Oversight duties of the department of finance and administration's financial control division: On October 3, 2008, the state controller and the state auditor distributed a letter to agencies regarding the CAFR unit's request for agencies' draft financial statements for the preparation of the comprehensive annual financial report (CAFR) for the state. Agencies were concerned about violating Paragraph (4) of Subsection C of 2.2.2.9 NMAC, delivery and release of the audit report. Section 6-5-2.1.S NMSA provides the financial control division to "have access to and authority to examine books, accounts, reports, vouchers, correspondence files and other records, bank accounts, money and other property of a state agency." In addition, Section 6-5-4.1, NMSA 1978 mandates that financial control division shall compile the CAFR. After some consideration and discussion of the conflicting regulations, the state controller and the state auditor concluded, "Pursuant to these rules, Sections 6-5-4.1 and 12-6-5 NMSA 1978 should be construed to give effect to both statutes and the corresponding administrative rules. Therefore, an agency shall provide a copy of its draft audited financial statements to financial control division in order that the division may compile the CAFR. This specific requirement can be viewed as an exception to the general requirement of Section 12-6-5 NMSA 1978. However, the agency may only release that information to financial control division and not the public. The agency's audit report also is not public record unless released in accordance with Section 12-6-5 NMSA 1978." To review the entire letter, the DFA-financial control division oversight letter, go to the financial control division website at www.dfafcd.state.nm.us, under the memorandums and notices link.

(17) Component units of the state that benefit a specific agency: If a component unit of the state of New Mexico benefits a specific agency of the state, the financial statements of the agency that is benefited must include the component unit financial statements by discrete presentation.

B. PERTAINING TO HOUSING AUTHORITIES:

(1) Housing authorities within

the state of New Mexico consist of regional housing authorities, component units or departments of local governments, component units of housing authorities, and a component unit of the state of New Mexico.

(2) The financial statements of a housing authority must be included in the financial audit report of the primary government by discrete presentation unless an exemption from this requirement has been 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 GASBS 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 the Municipal Housing Law, Section 3-45-1 NMSA 1978.

(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. The IPA shall follow applicable guidance at SAS AU 324 regarding service organizations.

(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 6.12 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 is provided at www.osanm.org. It may be used for the PED approval signature. The IPA recommendation is due to the state auditor on or before June 1. In the event that the due date falls on a weekend or holiday the due date will be the next work day.

(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 Rule 6.23.3.7 through 6.23.3.12 NMAC.

(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.

(e) The audit report of each REC 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 shall account for cash in the same categories used by the REC in its monthly cash reports to the PED. If there are differences in cash per the REC financial statements and cash per the REC accounting records, the IPA should provide the adjusting entries to the REC to reconcile cash per the financial statements to cash per the REC accounting records. However, if cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report, then the IPA should write a finding stating that the PED reports do not reconcile to the REC accounting records.

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

(a) Audits of school districts shall test for compliance with public education

department (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 is also required for each charter school of the district and each charter school of the PED. This schedule will account for cash in the same categories as used by the district in its monthly cash reports to the PED. Sections 6.20.2.13(D) and (E) of NMAC, state that "the cash basis of accounting is used for budgeting and reporting to PED. The financial statements are prepared on the accrual basis of accounting. If there are differences between the financial statements, school district records and department records, the IPA should provide the adjusting entries to the school district to reconcile the report to the school district records." However, if there is some difference between the school district records and the PED report amounts, other than those explained by the adjusting entries, then the IPA should write a finding stating that the PED reports do not reconcile to the school district records.

(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; inter-entity cooperation is encouraged. If information cannot be obtained from those sources, employer governments should make their best estimates of the amounts" (GASBS 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 GASBS 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 (GASBS 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 for each school district and each charter school. The schedules should show the changes (both additions and deductions) in the agency funds summarized by school or for each activity.

(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 individual fund financial statements and budgetary comparisons for the following functions of the general fund: operational, 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 or authorized by the public education department (PED) 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 or to the PED, 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 GASBS 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 (Section 22-8B-1 through 17 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) The financial statement for charter schools should be presented and opined on in the following manner. (i) All charter schools should be reported as 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 separate audited financial statements are not available for a charter school, the fund financial statements for that charter school must be presented in the primary government's financial statements on the modified accrual basis of accounting. If applicable, combining and individual fund financial statements should also be presented for the nonmajor funds. The financial statements should be presented as supplemental information (SI) according to AAG-SLV 3.20 (latest edition).

(d) The state auditor requires that individual fund budgetary comparison statements for all of the charter school's funds must be included in the supplemental information section of the financial statements following the fund financial statements and the combining statements for the nonmajor funds to demonstrate compliance with legally adopted budgets. The budgetary comparisons 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 - county governments: audit reports for counties must include two supplementary schedules. The first one is a "tax roll reconciliation of changes in the county treasurer's property taxes receivable" showing the June 30 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 GASBS 33. Property taxes levied in January 2009 are budgeted for the fiscal year July 1, 2009 through June 30, 2010. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, a finding is required to be reported.

(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, 2010	
Property taxes receivable, beginning of year	\$ 641,290
Changes to Tax Roll:	
Net taxes charged to treasurer for fiscal year	4,466,602
Adjustments:	
Increases in taxes receivables	3,066
Charge off of taxes receivables	(6,144)
Total receivables prior to collections	5,104,814
Collections for fiscal year ended June 30, 2010	(4,330,993)
Property taxes receivable, end of year	<u>\$ 773,821</u>
Property taxes receivable by years:	
2001-2009	226,344
2010	547,477
Total taxes receivable	<u>\$ 773,821</u>

(4) An example of the schedule titled "county treasurer's property tax schedule" may be found on the office website at www.osanm.org.

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 at www.osanm.org may be used for the HED approval signature. The IPA recommendation is due to the state auditor on or before June 1. In the event the due date falls on a weekend or holiday the due date will be the next work day.

(2) Budgetary comparisons: The legal level of budgetary control per 5.3.4.10 NMAC should be disclosed in the notes to the financial statements. The state auditor requires that every college and university's audit report include budgetary comparisons as supplementary information (SI). **The budgetary comparisons must be audited and an auditor's opinion must be rendered.** A SAS 29 opinion does not meet this requirement. See Section 14.53 of the *AICPA Audit and Accounting Guide, State and Local Governments (2008)* (AAG-SLV). The budgetary comparisons must show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column. The auditor must confirm the final adjusted and approved budget with the HED. The auditor's opinion on the budgetary comparisons should follow Example A-14 in AAG-SLV 14.79 (2008) and footnote 3. A reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements should be disclosed at the bottom of the budgetary comparisons (preferred) or in the notes to the financial statements. 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 which must be used for the budgetary comparisons:

(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
Changes 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 should present their financial statements using the business type activities (BTA) model. The level of planning materiality described in the *AICPA Audit and Accounting Guide, State and Local Governments (2008)*, 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 GASBS 14 as amended by GASBS 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.

(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 comparisons 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 variations that are expected to have a significant effect on future services or liquidity.

(7) Required note disclosure for donor-restricted endowments:

(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 (GASBS 34 Paragraph 121.

[2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 2-12-10]

2.2.2.13 REVIEW OF AUDIT REPORTS AND AUDIT DOCUMENTATION:

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 the contracts approved by the state auditor are subject to review. The office will review all reports submitted by the IPA to determine if the reports are presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards. The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date.

B. Released audit reports are subject to a comprehensive report and audit documentation review by the state auditor. Reviews of audit documentation maintained by the audit firm may include the review of:

(1) continuing professional education (CPE) for compliance with GAGAS Paragraph 3.46 requirements;

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

(3) working papers to determine compliance with governmental auditing, accounting and financial reporting standards issued by GASBS, AICPA, GAO, and OMB Circular A-133, and the requirements of this rule; and

(4) 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 its review of an audit report, the office finds significant deficiencies that warrant a determination that the audit was not made in a competent manner in accordance with the provisions of the contract and applicable standards, requirements or this rule, any or all of the following action(s) may be taken:

(1) as instructed by the office, the IPA may be required to correct the deficiencies and if necessary, 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) After the review is completed, the office will issue a letter to advise the IPA about 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 review and present any information the IPA deems appropriate.

E. Revisions to 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 any oversight agencies and the state auditor.

[2.2.2.13 NMAC - Rp, 2.2.2.13 NMAC, 2-12-10]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing professional education: U.S. GAO *Government Auditing Standards, July 2007 Revision* (GAGAS), Section 3.46 states "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/govaud/ybcpe2005.pdf.

B. Peer review: (GAGAS), Section 3.50 states "each audit organization performing audits or other audits or other attestation engagements in accordance with GAGAS must establish a system of quality control that is designed to provide the audit organization with reasonable assurance that the organization and its personnel comply with professional standards and applicable legal and regulatory requirements; and have an external peer review at least once every 3 years." Section 3.56 states "The audit organization should obtain an external peer review sufficient in scope to provide a reasonable basis for determining whether, for the period under review, the reviewed audit organization's system of quality control was suitably designed and whether the audit organization is complying with its quality control system in order to provide the audit organization with reasonable assurance of conforming with applicable professional standards."

(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 whichever is earlier. 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) proof that the firm your peer reviewer is associated with received a peer review rating of "pass" under the updated peer review standards, or an "unmodified" rating under the pre-January 1, 2009 standards, as required by the state auditor (a copy of the report should be submitted);

(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 a peer review rating of less than "pass with deficiencies" (under the January 1, 2009 standards) or a rating of less than **modified** (under the pre-January 1, 2009 standards) 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) The peer review should meet the requirements of Government Auditing Standards set forth in GAGAS Paragraphs 3.55 through 3.60.

(8) The New Mexico public accountancy board's substantial equivalency provision has been replaced with mobility. Under the mobility provision in the statute, a CPA may enter the state and perform work,

provided he holds a current, valid license from some state. If the CPA is performing any type of attest work his firm must apply for a firm permit. The peer review function falls within the category of attest work, which means that the firm must have a New Mexico firm permit.

(9) **The reviewer should 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.**

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, 2-12-10]

2.2.2.15 SPECIAL AUDITS AND EXAMINATIONS:

A. Special audit and examination:

(1) Pursuant to Section 12-6-3 NMSA 1978 the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. The state auditor may initiate a special audit or examination based on information or a report received from an agency, IPA or member of the public. The state auditor shall have available to him all documents necessary to perform a thorough special audit or examination of every agency. Additionally, pursuant to Section 12-6-11 NMSA 1978, when necessary for an audit or examination, the state auditor may apply to the district court of Santa Fe county for issuance of a subpoena to compel the attendance of witnesses and the production of books and records.

(2) The state auditor may conduct fact-finding procedures in connection with reports of financial fraud, waste and abuse in government.

(3) Pursuant to Section 12-6-6 NMSA 1978 and Subsection K of Section 2.2.2.10 NMAC, every agency and IPA shall notify the state auditor immediately, in writing, upon discovery of any violation of a criminal statute in connection with financial affairs. In addition, upon discovery, the state auditor shall immediately report a violation of a criminal statute in connection with financial affairs to the proper prosecuting officer and furnish the officer with all data

and information in his possession relative to the violation.

(4) An agency, IPA or member of the public may report financial fraud, waste or abuse in government to the state auditor. Reports may be submitted directly to the office orally or in writing. Reports may also be made telephonically or in writing through the fraud hotline or website established by the office for the confidential reporting of financial fraud, waste, and abuse in government. Reports may be made telephonically to the fraud hotline by calling 1-866-OSA-FRAUD (1-866-672-3728) or reported in writing through the office's website at <https://www.reportlineweb.com/welcome.aspx?client=osa>. Reports received or created by the office are audit information and audit documentation in connection with the state auditor's statutory duty to examine and audit the financial affairs of every agency, or in connection with the state auditor's statutory discretion to audit the financial affairs and transactions of an agency in whole or in part.

B. Confidentiality:

(1) The identity of a person making a report directly to the office orally or in writing, or telephonically or in writing through the office's fraud hotline or website, alleging financial fraud, waste, or abuse in government is confidential audit information and may not be disclosed, unless the person making the report agrees to the disclosure of that person's name.

(2) A report alleging financial fraud, waste, or abuse in government that is made directly to the office orally or in writing, or telephonically or in writing through the office's fraud hotline or website, and any resulting special audit or examination, is confidential audit documentation and may not be disclosed except as provided in Paragraph (3) of this subsection to an independent auditor in connection with an audit examination, audit, or other existing or potential engagement regarding the financial affairs or transactions of an agency.

(3) The office shall disclose audit information and audit documentation that is confidential under this section if required by Section 12-6-6 NMSA 1978.

(4) The office may disclose audit information or audit documentation that is confidential under this subsection:

(a) to an independent auditor approved by the state auditor in connection with an examination, audit, or other existing or potential engagement regarding the financial affairs transactions of an agency;

(b) to refer to the appropriate agency a report of financial fraud, waste or abuse in government, provided such disclosure does not undermine the independence or validity of the audit process;

(c) to ensure coordination and cooperation between agencies related to a

report of financial fraud, waste or abuse in government provided such disclosure does not undermine the independence or validity of the audit process; or

(d) after a report of a special audit or examination is released and becomes public pursuant to the Section 12-6-5 NMSA 1978, provided that disclosure of the audit information or audit documentation is consistent with the Inspection of Public Records Act, the Audit Act, and this rule.

C. Reports of special audit or agreed-upon procedures relating to financial fraud, waste or abuse in government:

(1) An agency or an IPA shall not enter into a professional services contract for a special audit or agreed-upon procedures relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract must be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA. The contract must include the contract fee, start and completion date, and the specific scope of services to be performed by the IPA.

(2) All reports of special audits or agreed-upon procedures made pursuant to contract and that relate to financial fraud, waste or abuse in government are subject to review by the state auditor. Upon completion of the report, the IPA shall deliver the organized and bound report to the state auditor with a copy of the signed and dated engagement letter if not previously submitted and a copy of the signed management representation letter.

(3) The IPA is required to respond to all review comments as directed by the office. After its review of the report, the office will authorize the IPA to print and submit the final report. The required number of hardcopies specified in the contract and an electronic version of the report, in PDF format, must be delivered to the state auditor within the time specified by the office pursuant to the authorization to print and submit the final report. The office will not release the report until the electronic version of the report is received by the office.

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

(5) Neither the IPA nor agency personnel shall release any information to the public relating to the special audit or agreed-upon procedures until the report has been officially released by the state auditor and becomes public record.

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 2-12-10]

2.2.2.16

A N N U A L

PROCEDURES REQUIRED FOR LOCAL PUBLIC BODIES WITH REVENUES LESS THAN \$500,000:

A. Pursuant to Section 12-6-3(B) NMSA 1978, the annual revenue of a local public body determines the type of financial reporting a local public body shall submit to the office. Local public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts. The annual revenue of a local public body shall be calculated on a cash basis, excluding capital outlay funds, federal and private grants.

B. Annually, the state auditor shall provide local public bodies written authorization to proceed with obtaining services to conduct a financial audit or other procedures. Upon receipt of the authorization, a local public body shall determine its annual revenue in accordance with Subsection A of 2.2.2.16 NMAC. The following requirements for financial reporting apply to the following annual revenue amounts:

(1) If a local public body's annual revenue is less than \$10,000 and the local public body did not directly expend at least 50% of, or the remainder of, a single capital outlay award, then the local public body is exempt from submitting and filing quarterly reports and budgets for approval to the local government division of the department of finance and administration and from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC.

(2) If a local public body's annual revenue is \$10,000 or more but less than \$50,000, the local public body shall comply with the requirements of Section 6-6-3 NMSA 1978; and is exempt from any financial reporting to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC.

(3) If a local public body's annual revenue is less than \$50,000, and the local public body expended at least 50% of, or the remainder of, a single capital outlay award, then the local public body shall procure the services of an IPA for the performance of a tier 3 agreed upon procedures engagement in accordance with the tier 3 agreed upon procedures checklist on the state auditor's website.

(4) If a local public body's annual revenue is \$50,000 or more, but less than \$250,000, then the local public body shall procure the services of an IPA for the performance of a tier 4 agreed upon procedures engagement in accordance with the tier 4 agreed upon procedures checklist on the state auditor's website.

(5) If a local public body's annual revenue is \$50,000 or greater, but less than \$250,000, and the local public

body expended any capital outlay funds, then the local public body shall procure the services of an IPA for the performance of a tier 5 agreed upon procedures engagement in accordance with the tier 5 agreed upon procedures checklist on the state auditor's website.

(6) If a local public body's annual revenue is \$250,000 or greater, but less than \$500,000, the local public body shall procure services of an IPA for the performance of a tier 6 agreed upon procedures engagement in accordance with the tier 6 agreed upon procedures checklist on the state auditor's website.

(7) If a local public body's annual revenue is \$500,000 or more, the section shall not apply and the local public body shall procure services of an IPA for the performance of a financial and compliance audit in accordance with other provisions of 2.2.2 NMAC.

(8) Notwithstanding the annual revenue of a local public body, if the local public body expended \$500,000 or more of federal funds subject to a federal single audit during the fiscal year then the local public body must procure a Single Audit in accordance with 2.2.2.8 NMAC.

C. A local public body that is exempt from financial reporting to the state auditor pursuant to Paragraph (1) and (2) of Subsection B of 2.2.2.16 NMAC shall submit written certification to the local government division and the state auditor certifying:

(1) the local public body's annual revenue for the fiscal year; and

(2) that the local public body did not expend 50% of or the remainder of a single capital outlay award.

D. A local public body required to perform an agreed upon procedures engagement shall procure the services of an IPA in accordance with the procedures below.

(1) Upon receipt of notification to proceed from the office, the local public body shall identify all elements or services to be solicited and request quotations or proposals for the applicable agreed upon procedures engagement pursuant to Subsection A of 2.2.2.16 NMAC. A local public body is strongly encouraged to select an IPA on the state auditor's list of audit firms approved to perform audits of New Mexico government agencies. However, local public body may select an IPA who has:

(a) a New Mexico firm permit to practice;

(b) current liability insurance; and

(c) a current peer review, if applicable.

(2) IPA services that cost less than \$50,000 excluding gross receipts tax on each year's contract should be considered small purchases in accordance with the

Procurement Code (Chapter 13, Article 1 NMSA 1978. The local public body **may** procure professional services for one year only. The local public body **may** procure the required services using a multi-year proposal (not to exceed three years) in which the cost of service is \$50,000 or less in each year (excluding gross receipts taxes). The local public body 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 local public body on the date the contractor signs the contract.

(3) For IPA services that cost \$50,000 or more excluding gross receipts tax on each year's contract, the local public body shall seek competitive sealed proposals and contract for services in accordance with the Procurement Code (Chapter 13, Article 1 NMSA 1978). Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the local public body as part of the competitive sealed proposal.

(4) The local public body may 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 shall 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 local public body shall use the procedures described above in Paragraphs (2) and (3) of Subsection D of 2.2.2.16 NMAC to solicit services.

(5) The local public body shall evaluate all competitive sealed proposals or quotations received using an evaluation process, preferably executed by a selection committee. Members of component units such as housing authorities, etc., should be included in the IPA selection process. As part of their evaluation process, local public bodies may and are strongly encouraged to consider the following criteria when selecting an IPA:

(a) the capability of the IPA, including: (i) whether the IPA has the resources to perform the type and size of the agreed upon procedures required; (ii) the results of the IPA's most recent external quality control review (peer review); and (iii) the organization and completeness of the IPA's proposal or bid for agreed upon procedures services;

(b) the work requirements and

approach of the IPA, including: (i) the IPA's knowledge of the local public body's need and the product to be delivered; (ii) whether the IPA's proposal or bid contains a sound technical plan and realistic estimate of time to complete the agreed upon procedures engagement; (iii) plans for using local public body staff, including internal auditors; and (iv) if the proposal or bid is for a multi-year contract, the IPA's approach for planning and conducting the work efforts of subsequent years;

(c) the IPA's technical experience, including: (i) the governmental audit experience of the IPA and the specialization in the local public body's type of government; and (ii) the IPA's attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and agreed upon procedures services.

(6) After completing the evaluations for each IPA and making the IPA selection, a local public body shall submit the following information to the state auditor on or before June 1. In the event the due date falls on a weekend or holiday the due date will be the next work day. Local public bodies 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 sample cover letter is provided at www.osanm.org. The letter shall indicate: (i) the IPA selected to perform the professional services; (ii) the local public body's total revenue for the fiscal year determined in accordance with Paragraph (1) of Subsection B of 2.2.2.16 NMAC above; (iii) the type of professional services procured, based on the entity's revenue for the fiscal year; (iv) whether the entity expended \$500,000 or more of federal funds during the fiscal year; (v) whether the recommendation is related to a multi-year procurement award, and if so, to which year of the award the recommendation applies.

(b) The fully completed and signed evaluation form for the IPA being recommended. If the local public body is in year 2 or year 3 of a multi-year proposal, the local public body shall submit a copy of the evaluation form from the previous year.

(c) If the IPA is not on the state auditor's list of audit firms approved to perform audits of New Mexico government agencies, the local public body or the IPA shall submit: (i) firm contact information; (ii) a copy of the firm's current New Mexico firm permit to practice; (iii) proof of current liability insurance; (iv) a copy of the firm's current peer review, if applicable.

(d) An explanation regarding why the agency selected an IPA that did not appear on the state auditor's list.

(e) a list of any professional services contracts the local public body entered into with its IPA and all professional

services contracts the local public body entered into for special audits or agreed-upon procedures relating to financial fraud, waste or abuse.

E. The state auditor shall consider and approve or disapprove a professional services contract recommendation pursuant to Subsection C of 2.2.2.8 NMAC. Upon receiving the state auditor's approval of the IPA recommendation and type of professional services to be provided, the local public body shall complete the contract forms provided by the state auditor via email. The state auditor may provide audit contract forms to the agency via U.S mail if specifically requested by the agency. Only forms provided by the state auditor will be accepted and shall bear original signatures. The forms shall be completed and returned with the required number of copies within fifteen (15) calendar days as stated in the office's IPA approval letter. Any contract amendments will be processed in accordance with Paragraphs (1) and (3) of Subsection M of 2.2.2.8 NMAC.

F. Requirements of the IPA selected to perform the agreed upon procedures:

(1) The IPA will provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. See Paragraph (4) of Subsection M of 2.2.2.8 NMAC for applicable restrictions on the engagement letter.

(2) The IPA may not subcontract any portion of the services to be performed under the contract with the local public body.

G. Progress payments:

(1) Progress payments up to 90% of the contract amount do not require state auditor approval and may be made by the local public body if the local public body monitors the progress of the services procured pursuant to Subsection A of 2.2.2.16 NMAC. If requested by the state auditor, the local public body shall provide a copy of the approved progress billing(s).

(2) Final payment from 91% to 100% may be made by the local public body only after the state auditor has stated in a letter to the entity that the agreed upon procedures report has been released by the state auditor and the engagement letter and management representation letter have been received by the state auditor.

H. Report due dates: For local public bodies with a June 30 fiscal year-end, the due date is December 1. Local public bodies with a fiscal year end other than June 30 must submit the audit report no later than five months after the fiscal year-end. An organized bound hard copy of the report should be submitted. Reports submitted via fax or email will not be accepted. A copy of the signed dated engagement letter and

the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the office is closed due to inclement weather, the 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 the due date to be considered filed by the due date. The state auditor will grant no extensions of time to the established due dates.

I. Implementation date: 2.2.2.16 NMAC is effective for local public bodies with fiscal years ending on or after June 30, 2010.

J. Review of agreed upon procedures reports and related workpapers: Agreed upon procedures reports will be reviewed by the office for compliance with the professional services contract. After its review of the agreed upon procedures report for compliance with the professional services contract, the office will authorize the IPA to print and submit the final report; the required number of hardcopies specified in the professional services contract and an electronic version of the agreed upon procedures report, in PDF format, must be delivered to the office within two business days. The office will not release the agreed upon procedures report until the electronic version of the report is received by the office. The office will provide the agency with a letter authorizing the release of the report after the required five day waiting period, and final payment to the IPA. Released reports may be selected by the office for comprehensive report and workpaper reviews. After a comprehensive review is completed, the office will issue a letter to advise the IPA about the results of the review. The IPA is required to respond to all review comments as directed. If during the course of its review, the office finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with the provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

(1) as instructed by the office, the IPA may be required to correct the working papers and reissue the agreed upon procedures report to the agency, and any others receiving copies;

(2) the IPA's future engagements may be limited in number;

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

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

[2.2.2.16 NMAC - N, 2-12-10]

NEW MEXICO STATE PERSONNEL BOARD

1.7.8 NMAC, Drug and Alcohol Abuse, filed June 14, 2001 is repealed effective February 12, 2010 and replaced by 1.7.8 NMAC, Drug and Alcohol Abuse, effective February 12, 2010.

NEW MEXICO STATE PERSONNEL BOARD

TITLE 1 G E N E R A L GOVERNMENT ADMINISTRATION CHAPTER 7 STATE PERSONNEL ADMINISTRATION PART 8 DRUG AND ALCOHOL ABUSE

1.7.8.1 ISSUING AGENCY:
State Personnel Board.

[1.7.8.1 NMAC - Rp, 1.7.8.1 NMAC, 02/12/2010]

1.7.8.2 SCOPE: All state agencies in the classified service.

[1.7.8.2 NMAC - Rp, 1.7.8.2 NMAC, 02/12/2010]

1.7.8.3 STATUTORY AUTHORITY: NMSA 1978, Section 10-9-10(A).

[1.7.8.3 NMAC - Rp, 1.7.8.3 NMAC, 02/12/2010]

1.7.8.4 DURATION:
Permanent.

[1.7.8.4 NMAC - Rp, 1.7.8.4 NMAC, 02/12/2010]

1.7.8.5 EFFECTIVE DATE:
February 12, 2010, unless a later date is cited at the end of a section.

[1.7.8.5 NMAC - Rp, 1.7.8.5 NMAC, 02/12/2010]

1.7.8.6 OBJECTIVE: The objective of Part 8 of Chapter 7 is: to require every state agency to provide its employees with information on the effects of drug and alcohol abuse; to require drug, alcohol testing or both; and to establish required collection, screening, rehabilitative and sanction parameters.

[1.7.8.6 NMAC - Rp, 1.7.8.6 NMAC, 02/12/2010]

1.7.8.7 DEFINITIONS:

A. "Alcohol" means all consumable non-prescription substances which contain alcohol, specifically including, without limitation, spirits, wine, malt beverages, and intoxicating liquors.

B. "Aliquot" means a portion of a urine specimen used for testing.

C. "Chain of custody" refers to procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. In any dispute regarding chain of custody, the identity and integrity of the sample at issue may be established by a preponderance of the evidence.

D. "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite in a urine specimen by gas chromatography/mass spectrometry (GC/MS).

E. "Drug" means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines; a metabolite of those drugs; or any non-prescription substance containing those drugs.

F. "Initial test" means an immunoassay screen which meets the requirements of the food and drug administration to eliminate negative specimens from further consideration.

G. "Medical review officer" means a New Mexico based and licensed physician knowledgeable in the medical use of prescription drugs and alcohol and the pharmacology and toxicology of illicit drugs and alcohol.

H. "Non-prescription" refers to all substances other than a substance prescribed by a doctor or licensed health professional to the employee or particular candidate.

I. "On duty" means any time during an employee's regular workday or other period during which the employee is required or permitted to work by the employer, including overtime, lunch and other breaks, and anytime while operating or riding in a state vehicle.

J. "Possession" means to knowingly have, own, or have on oneself the drug, the alcohol or both.

K. "Random selection basis" means a system for selecting employees or groups of employees for drug testing in a statistically random system based on a neutral criterion, such as employment or position numbers, without individualized suspicion that a particular employee is using drugs.

L. "Reasonable suspicion" means a belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts.

M. "Safety-sensitive position" is a position approved as such by the board, including a supervisory or managerial position in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety and includes, but is not limited to, peace officers, pilots, correctional officers, employees who are required to regularly

carry a firearm, employees who regularly transport other people as their principal job; and positions involving use of equipment that could pose a risk to public health or safety.

[1.7.8.7 NMAC - Rp, 1.7.8.7 NMAC, 02/12/2010]

1.7.8.8 O M N I B U S TRANSPORTATION EMPLOYEE TESTING ACT OF 1991:

A. Employees in safety-sensitive positions within the meaning of the *Omnibus Transportation Employee Testing Act of 1991* ("Omnibus Act" (49 U.S.C. Subtitle VI Part B § 31306) are exempt from and are not covered by the provisions of **1.7.8.7 NMAC** and **1.7.8.9 NMAC** through **1.7.8.20 NMAC**.

B. Agencies with employees covered by the Omnibus Act shall develop and submit to the director a policy for implementing drug and alcohol tests.

C. The policy shall contain at the least the:

- (1) covered positions;
- (2) testing requirements for drugs and alcohol;
- (3) collection of specimen;
- (4) reporting and explanation of test results;
- (5) confidentiality;
- (6) training;
- (7) rehabilitation and sanctions;
- (8) record retention;
- (9) rehabilitative and sanction parameters of drug and alcohol abuse; and
- (10) reasonable suspicion.

D. Agencies shall advise the board annually of those positions covered by the Omnibus Act.

[1.7.8.8 NMAC - Rp, 1.7.8.8 NMAC, 02/12/2010]

1.7.8.9 DESIGNATION OF SAFETY-SENSITIVE POSITIONS:

A. Only those positions specifically designated by the board as such shall be considered to be safety-sensitive positions for purposes of **1.7.8 NMAC**.

B. The director shall maintain a list of positions designated by the board as being safety-sensitive.

C. The board shall review and approve annually the positions designated as safety-sensitive.

D. The director shall seek the board's approval for out-of-cycle requests for additions and deletions of safety-sensitive positions.

[1.7.8.9 NMAC - Rp, 1.7.8.9 NMAC, 02/12/2010]

1.7.8.10 SUBSTANCE ABUSE COORDINATOR:

A. Each agency shall

appoint a substance abuse coordinator who shall be responsible for the agency's drug and alcohol abuse program.

B. The substance abuse coordinator shall provide drug and alcohol abuse awareness information to employees including but not limited to the:

(1) dangers of drug and alcohol abuse;

(2) availability of counseling, rehabilitation, and employee assistance programs; and

(3) sanctions that may be imposed upon employees as provided in **1.7.8.19 NMAC**.

C. The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the duties required by **1.7.8 NMAC**.

[1.7.8.10 NMAC - Rp, 1.7.8.10 NMAC, 02/12/2010]

1.7.8.11 AUTHORIZED DRUG AND ALCOHOL TESTING:

A. All candidates for safety-sensitive positions are required to submit to drug testing after an offer of employment is made and prior to final selection.

B. Agencies that require employees in safety-sensitive positions to undergo regular physical examinations shall require such employees to undergo drug testing as part of those physical examinations.

C. Agencies shall require employees to undergo drug, alcohol testing or both if the agency has a reasonable suspicion that the employee has committed drug or alcohol abuse based on, but not limited to:

(1) direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while on duty; such symptoms may include, but are not limited to liquor on breath, slurred speech, unsteady walk, or impaired coordination; or

(2) direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty.

D. An employee shall submit to a reasonable suspicion drug or alcohol test provided the requesting supervisor has secured the next level supervisor's approval, unless the requesting supervisor is the agency head. The requesting supervisor shall prepare a contemporaneous memorandum outlining the details leading up to the reasonable suspicion drug or alcohol test. The memorandum shall be submitted to the substance abuse coordinator within 24 hours of the request for testing.

E. At least ten percent (10%) of employees in safety-sensitive positions in each agency shall be required to

undergo drug testing on a yearly basis.

(1) The director shall identify the employees on a random selection basis.

(2) At the discretion of the agency head or substance abuse coordinator, employees may be excused from random drug testing if:

(a) they have previously requested referral in accordance with the provisions of **Subsection B of 1.7.8.19 NMAC**;

(b) the selection for random drug testing is made during the first 30 calendar days following the request for referral; or

(c) they are on an authorized absence for 30 calendar days or more.

(3) The agency head or substance abuse coordinator shall inform the director of any employee excused from random drug testing within 10 working days of receipt of the notice of safety sensitive testing.

F. The director may authorize an agency to conduct more than 10% random drug testing on employees in safety sensitive positions upon receipt of an agency's written request that would include justification of how the additional testing is related to the conditions of employment and the use of equipment that could pose a risk to public health or safety.

[1.7.8.11 NMAC - Rp, 1.7.8.11 NMAC, 02/12/2010]

1.7.8.12 COLLECTION OF SPECIMENS:

A. Unless otherwise specified in **1.7.8 NMAC**, urine specimens for drug testing shall be collected by a laboratory meeting state licensure requirements and certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

B. Breath specimens may be collected by a certified person, a medical or a laboratory facility. Should the medical or laboratory facility not be available or should the equipment fail, the substance abuse coordinator or designee shall designate another testing facility and report this referral to the director within ten working days of taking the breath specimen. [1.7.8.12 NMAC - Rp, 1.7.8.12 NMAC, 02/12/2010]

1.7.8.13 DRUG TESTS:

A. The initial and confirmatory drug tests shall be performed by a state licensed laboratory in accordance with the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. The laboratory shall have the capability of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

B. The following initial cutoff levels shall be used when screening

specimens on the initial drug tests to determine whether they are negative for these five drugs or classes of drugs.

(1) Marijuana metabolites50 (ng/ml)

(2) Cocaine metabolites300 (ng/ml)

(3) Opiate metabolites.....2,000 (ng/ml)

(4) Phencyclidine25 (ng/ml)

(5) Amphetamines.....1,000 (ng/ml)

C. All specimens identified as positive on the initial drug test, shall be confirmed by the laboratory at the cutoff values listed below for each drug. All confirmations shall be by quantitative analysis:

(1) Marijuana metabolites¹.....15 (ng/ml)

(2) Cocaine metabolites².....150 (ng/ml)

(3) Opiates:

(a) Morphine2,000 (ng/ml)

(b) Codeine.....2,000 (ng/ml)

(4) Phencyclidine25 (ng/ml)

(5) Amphetamines:

(a) Amphetamine.....500 (ng/ml)

(b) Methamphetamine.....500 (ng/ml)

(6) ¹Delta - 9-tetrahydrocannabinol - 9-carboxylic acid

(7) ²Benzoylcegonine

D. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.

E. The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

[1.7.8.13 NMAC - Rp, 1.7.8.13 NMAC, 02/12/2010]

1.7.8.14 ALCOHOL TESTS:

A. A test for alcohol shall be administered by a legally recognized and approved method.

B. A test by a legally recognized or approved method with results of blood alcohol content (BAC) level of .04 or more shall be deemed positive for alcohol.

C. An agency may request

in writing through the director that the board approve a lower test result for blood alcohol content (BAC).

D. For employees who have undergone alcohol rehabilitation, pursuant to **Paragraph (1) of Subsection D of 1.7.8.19 NMAC**, a positive test result during the 30 to 180 calendar days following the first positive test shall subject an employee to disciplinary action. Such a test may be performed by urinalysis.

[1.7.8.14 NMAC - Rp, 1.7.8.14 NMAC, 02/12/2010]

1.7.8.15 REPORTING OF TEST RESULTS:

A. Drug and alcohol test results shall be reported only to the substance abuse coordinator or designee.

B. The test report shall contain the specimen number assigned by the agency, the laboratory accession number and results of the tests. All specimens negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed positive shall be reported positive. Results may be transmitted to the substance abuse coordinator by various means including certified mail with return receipt requested, courier service, or electronic mail in a secure area (e.g., facsimile or computer). Certified copies of all analytical results and chain-of-custody forms shall be available from the laboratory when requested by the director, the agency head, or substance abuse coordinator or designee.

C. The substance abuse coordinator or designee shall advise candidates and employees in writing of positive test results.

D. All records pertaining to a given urine specimen shall be retained by the laboratory for a minimum of two years.

E. Only those members of management who need to know shall be made aware of the test results. Breach of confidentiality may be grounds for disciplinary action.

[1.7.8.15 NMAC - Rp, 1.7.8.15 NMAC, 02/12/2010]

1.7.8.16 EXPLANATION OF POSITIVE TEST RESULTS:

A. Candidates for a safety sensitive position who test positive for drugs, alcohol or both may, within two workdays of being advised of the test results, submit a written request to the agency's substance abuse coordinator for a review of the test results by the medical review officer. The test results of all employees who test positive for drugs, alcohol or both shall be referred by the agency's substance abuse coordinator or designee to the medical review officer.

(1) If the candidate does not request a review of the test results within two

workdays, the candidate waives review by the medical review officer and any retesting of the sample and consents to rejection for selection.

(2) The medical review officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel. The medical review officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications for medical or dental treatment. The medical review officer shall also review the results of any retest done according to the provisions of **1.7.8.17 NMAC**.

(a) Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the medical review officer is authorized on behalf of the state to order a reanalysis of the original sample and such retests are authorized to be performed only at a laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

(b) Prior to making a final decision to verify a positive test result, the medical review officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the medical review officer and the candidate or employee may be in person or by telephone.

(c) The medical review officer shall advise the appropriate substance abuse coordinator of his or her medical conclusions from the review of the test results. If there are conflicting factual statements, the medical review officer shall not attempt to resolve that factual conflict, but shall report it along with his or her medical conclusions to the agency substance abuse coordinator. Similarly, the medical review officer shall not attempt to ascertain the factual correctness of any claim by the candidate or employee of involuntary ingestion of drugs or alcohol or both, but shall simply report such claims to the agency substance abuse coordinator with his or her medical opinion as to the possibility that such occurrence could have affected the test results.

B. Based upon the medical review officer's report and such other inquiries or facts as the agency may consider, the agency shall determine whether the explanations or challenges of the confirmed positive test results are satisfactory.

(1) If the explanations or challenges of the positive test results are unsatisfactory the agency:

(a) shall provide a written

explanation to the candidate or employee as to why the explanation is unsatisfactory, along with the test results, within 11 calendar days of the agency's determination; and

(b) shall retain such records as confidential for one year.

(2) If the explanations or challenges of the positive test results are satisfactory the agency:

(a) shall notify the candidate or employee in writing within 11 calendar days of the agency's determination; and

(b) shall retain such records as confidential for one year.

[1.7.8.16 NMAC - Rp, 1.7.8.16 NMAC, 02/12/2010]

1.7.8.17 RETESTING :

Candidates who have sought review of their positive drug or alcohol urine tests by the medical review officer and all employees who tested positive for drugs or alcohol urine tests may elect to have, at their expense, an aliquot of the original urine specimen retested by another laboratory that meets applicable provisions of any state licensure requirements and is certified in forensic urine drug testing by either the substance abuse and mental health services administration or the college of American pathologists. The drug testing laboratory shall arrange for the shipment of the aliquot to the laboratory of the candidates' or employees' choosing. The agency shall pay for the retest if the retest is negative.

[1.7.8.17 NMAC - Rp, 1.7.8.17 NMAC, 02/12/2010]

1.7.8.18 CONFIDENTIALITY:

No laboratory reports or test results shall appear in the employee's personnel file unless he or she is subject of a disciplinary action taken in accordance with the provisions of **1.7.8 NMAC**. Laboratory reports or test results shall be placed in a special locked file maintained by the substance abuse coordinator. Files relating to laboratory reports or test results maintained by the substance abuse coordinator are confidential within the meaning of **1.7.1.12 NMAC**.

[1.7.8.18 NMAC - Rp, 1.7.8.18 NMAC, 02/12/2010]

1.7.8.19 REHABILITATION AND SANCTIONS:

A. Candidates for employment:

(1) A candidate for employment in a safety-sensitive position shall be rejected for selection when he tests positive for drugs and does not seek review by the medical review officer or cannot satisfactorily explain the positive test results.

(2) An employee for transfer or promotion to a safety-sensitive position who tests positive for drugs and is unable to satisfactorily explain the positive test

results shall be subject to disciplinary action including dismissal if the employee occupies a safety-sensitive position. If the employee is not in a safety-sensitive position, the employee shall be treated in accordance with the provisions of **Subsection D of 1.7.8.19 NMAC**.

B. Voluntary self-identification by employees:

(1) Any employee who requests referral to an EAP, counseling or a drug or alcohol rehabilitation program, prior to selection for drug and alcohol testing shall be referred by the substance abuse counselor. Any costs for counseling or rehabilitation shall be borne by the employee.

(2) The agency may grant administrative leave to an employee to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial voluntary self-identification only.

(3) Employees in safety-sensitive positions, who have requested referral shall be assigned to non safety-sensitive duties until successful completion of the approved substance abuse program or treatment plan and release by the substance abuse program provider.

(4) Employees are subject to drug, alcohol testing or both at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of requesting referral.

(a) Employees in safety-sensitive positions who test positive during this time period or fail to successfully complete such program are subject to disciplinary action including dismissal.

(b) Employees in non safety-sensitive positions who test positive during this time period or fail to successfully complete such program may be subject to disciplinary action including dismissal. The agency may allow the employee to use annual leave, sick leave, or leave without pay for additional counseling or rehabilitation by the agency after considering all factors relevant to the employee's condition and job performance history.

(5) For employees who have been required to undergo an alcohol rehabilitation program, any indication of alcohol at any level during the 30 to 180 calendar day period following the request for referral shall be considered a positive test result.

C. Safety-sensitive positions:

Employees in safety-sensitive positions who have not requested referral to an employee assistance program, counseling, or a drug or alcohol rehabilitation program and test positive on a required drug, alcohol test or both shall be subject to disciplinary action including dismissal if they do not have a satisfactory explanation for the positive test results.

D. Non safety-sensitive positions:

(1) Employees in non safety-sensitive positions who test positive on a reasonable suspicion drug or alcohol test or both required by **Subsection D of 1.7.8.11 NMAC** and do not have a satisfactory explanation for the positive test results shall be referred to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Employees are subject to drug or alcohol testing at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of the first positive test. Any such employee who tests positive for drugs, alcohol or both between 30 and 180 calendar days of the first positive test without a satisfactory explanation or who fails to enter and successfully complete a program shall be subject to disciplinary action including dismissal.

(2) The agency may grant an employee administrative leave to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial reasonable suspicion referral only.

E. Refusal to cooperate in testing procedure: Any employee who refuses or fails without good cause to cooperate in the drug or alcohol testing or both procedure by refusing or failing to complete the specified forms, by refusing or failing to submit a urine or breath specimen, or otherwise refuses or fails to cooperate shall be subject to disciplinary action including dismissal.

F. Possession of drugs or alcohol:

(1) Employees who illegally sell, purchase, or convey from one person or one place to another drugs or any substance in *Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to 30-31-41 NMSA 1978 (Repl. Pamp. 1994)*, while on duty shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.

(2) When employees, while on duty at the worksite, consume or have in their possession drugs, open containers of alcohol or any substance in *Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to 30-31-41 NMSA 1978 (Repl. Pamp. 1994)* without a valid prescription or as otherwise authorized by law, they shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.

[1.7.8.19 NMAC - Rp, 1.7.8.19 NMAC, 02/12/2010]

1.7.8.20 PILOT PROGRAM:

The board may authorize a pilot program to evaluate impairment testing. Such pilot programs may authorize variances from

provisions of **1.7.8 NMAC**, including random drug testing for participants in the pilot program.

[1.7.8.20 NMAC - Rp, 1.7.8.20 NMAC, 02/12/2010]

HISTORY OF 1.7.8 NMAC:**Pre-NMAC History:**

Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives as:

SPB-14, Drug and Alcohol Abuse, filed 04-04-90.

SPB-14, Drug and Alcohol Abuse, filed 10-17-90.

SPB-14, Drug and Alcohol Abuse, filed 12-13-90.

SPB 11, Drug and Alcohol Abuse, filed 12-15-92.

SPB 11, Drug and Alcohol Abuse, filed 03-18-94.

SPB 11, Drug and Alcohol Abuse, filed 12-29-94.

History of Repealed Material:

1 NMAC 7.8, Drug and Alcohol Abuse (filed 06-13-97) repealed 07-07-01.

1.7.8 NMAC, Drug and Alcohol Abuse (filed 06-14-01) repealed 02-12-10.

Other History:

SPB 11, Drug and Alcohol Abuse (filed 12-29-94) was replaced by 1 NMAC 7.10, Drug and Alcohol Abuse, effective 01-31-96.

1 NMAC 7.10, Drug and Alcohol Abuse (filed 01-12-96) was replaced by 1 NMAC 7.10, Drug and Alcohol Abuse, effective 05-15-96.

1 NMAC 7.10, Drug and Alcohol Abuse (filed 05-02-96) was replaced by 1 NMAC 7.8, Drug and Alcohol Abuse, effective 07-01-97.

1 NMAC 7.8, Drug and Alcohol Abuse (filed 06-13-97) was replaced by 1.7.8 NMAC, Drug and Alcohol Abuse, effective 07-07-01.

1.7.8 NMAC, Drug and Alcohol Abuse (filed 06-14-01) was replaced by 1.7.8 NMAC, Drug and Alcohol Abuse, effective 02-12-10.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

Explanatory paragraph. This is an amendment to 6.29.1 NMAC, Section 9, Subsection J, effective 02-12-2010. Graduation requirements must be planned and documented in each student's next step plan. New Mexico Statute 22-13-1.1(I)(2) states that in order to earn a New Mexico diploma of excellence, students are required to earn, "... four units in mathematics, of which one shall be the equivalent or higher

than the level of algebra 2, unless the parent submitted written, signed permission for the student to complete a lesser mathematics unit. . ." The following amendment outlines these requirements and the relationship to the next step plan to ensure all students either take and pass algebra 2 or have a written, signed record of parental waiver of the algebra 2 requirement in order to receive a New Mexico diploma of excellence.

6.29.1.9 PROCEDURAL REQUIREMENTS:

J. Graduation requirements.

(2) The next step plan. Each student shall complete a next step plan for each high school year. For students with individualized education programs (IEPs), the transition plan substitutes for the next step plan. The next step plan requires that:

(a) each grade-level next step plan shall be completed within the last 60 school days of the preceding school year (for example, the 9th grade interim next step plan shall be made before the end of the 8th grade year);

(b) only one grade-level next step plan shall be completed for a student each year;

(c) the development of the next step plan shall include the student, the student's parent or guardian and the advisor, but may include additional relevant parties;

(d) to write the next step plan, the advisor shall consult with the student and the student's parent or guardian on academic choices that target the student's interests and meet graduation requirements;

(e) the next step plan shall address career clusters in career and technical education, academic support and study skills, extracurricular experiences and out-of-school activities, exposure to post-secondary education and career options, family and social supports, assessments, credentials and any other relevant information; as part of the next step plan, the advisor shall disseminate and share information concerning advanced placement, honors, dual-credit and distance learning programs;

(f) the next step plan determines whether or not the student is on track with graduation requirements; the plan ensures that gaps in courses and test-taking are filled;

(g) the next step plan may be made in large-group, small-group or individual student settings;

(h) the advisor has the responsibility to see that the student is reasonably informed about curricular and course options, opportunities available that lead to broader post-high school options, and alternative opportunities available if the student does not finish a planned curriculum;

(i) the next step plan shall be signed by the student, the student's parent or

guardian and the advisor;

(j) the completed next step plan shall be filed with the school principal or charter school administrator and only the final next step plan shall be filed in the student's cumulative file upon graduation;

(k) during the development of the student's next step plan for the eleventh grade and no later than the spring of the tenth grade, a plan allowing the student to complete a fourth mathematics course other than algebra 2 may be developed using data from the student's high school short-cycle assessments, the student's most recent SBA score in mathematics, other relevant assessment scores and coursework grades and educational career plans recorded in the student's next step plan;

(l) for the student to take four mathematics courses that contain a lesser content than that recommended for inclusion in algebra 2 or its equivalent, the student's parent shall provide written, signed permission on the student's next step plan; parental signature on the next step plan for the eleventh grade indicating the mathematics courses the student will take shall serve as the required signed permission.

[6.29.1.9 NMAC - Rp, 6.30.2.10 NMAC, 6-30-2009; A, 02-12-2010]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2010

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